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West Virginia Election Laws and Reference Manual – 2011 Edition

U.S. Constitution

1. Poll Tax Payment Not Required to Vote in Federal Elections.

2. Power to Enforce Article.

Amendment XXVI

1. Voting by Persons Eighteen Years of Age.

2. Power to Enforce Article.

Amendment XXIV. Qualifications of electors; poll tax

[Poll Tax Payment Not Required to Vote in Federal Elections]

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[Power to Enforce Article]

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Amendment XXVI. Right to vote; citizens eighteen years of age or older

[Voting by Persons Eighteen Years of Age]

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

[Power to Enforce Article]

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

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PREAMBLE

Preamble

Since through Divine Providence we enjoy the blessings of civil, political and religious liberty, we, the people of West Virginia, in and through the provisions of this Constitution, reaffirm our faith in and constant reliance upon God and seek diligently to promote, preserve and perpetuate good government in the state of West Virginia for the common welfare, freedom and security of ourselves and our posterity.

Acts 1959, H.J.R. 8 and Acts 1960, c. 4, ratified Nov. 8, 1960.

ARTICLE I

1-1. Relations to the government of the United States

The state of West Virginia is, and shall remain, one of the United States of America. The constitution of the United States of America, and the laws and treaties made in pursuance thereof, shall be the supreme law of the land.

1-2. Internal government and police

The government of the United States is a government of enumerated powers, and all powers not delegated to it, nor inhibited to the states, are reserved to the states or to the people thereof. Among the powers so reserved to the states is the exclusive regulation of their own internal government and police; and it is the high and solemn duty of the several departments of government, created by this constitution, to guard and protect the people of this state, from all encroachments upon the rights so reserved.

1-3. Continuity of constitutional operation

The provisions of the constitution of the United States, and of this state, are operative alike in a period of war as in time of peace, and any departure therefrom, or violation thereof, under the plea of necessity, or any other plea, is subversive of good government, and tends to anarchy and despotism.

1-4. Representatives to Congress

For the election of representatives to Congress, the state shall be divided into districts, corresponding in number with the representatives to which it may be entitled; which districts shall be formed of contiguous counties, and be compact. Each district shall contain, as nearly as may be, an equal number of population, to be determined according to the rule prescribed in the constitution of the United States.

ARTICLE II

2-1. The state

The territory of the following counties, formerly parts of the commonwealth of Virginia, shall constitute and form the state of West Virginia, viz:

The counties of Barbour, Berkeley, Boone, Braxton, Brooke, Cabell, Calhoun, Clay, Doddridge, Fayette, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jackson, Jefferson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, McDowell, Mercer, Mineral, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Summers, Taylor, Tucker, Tyler, Upshur, Wayne, Webster, Wetzel, Wirt, Wood and Wyoming. The state of West Virginia includes the bed, bank and shores of the Ohio River, and so much of the Big Sandy River as was formerly included in the commonwealth of Virginia; and all territorial rights and property in, and jurisdiction over, the same, heretofore reserved by, and vested in, the commonwealth of Virginia, are vested in and shall hereafter be exercised by, the state of West Virginia. And such parts of the said beds, banks and shores as lie opposite, and adjoining the several counties of this state, shall form parts of said several counties respectively.

2-2. Powers of government in citizens

The powers of government reside in all the citizens of the state, and can be rightfully exercised only in accordance with their will and appointment.

2-3. Requisites of citizenship

All persons residing in this state, born, or naturalized in the United States, and subject to the jurisdiction thereof, shall be citizens of this state.

2-4. Equal representation

Every citizen shall be entitled to equal representation in the government, and, in all apportionments of representation, equality of numbers of those entitled thereto, shall as far as practicable, be preserved.

2-5. Provisions regarding property

No distinction shall be made between resident aliens and citizens, as to the acquisition, tenure, disposition or descent of property.

2-6. Treason, what constitutes—Penalty

Treason against the state, shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court. Treason shall be punished according to the character of the acts committed, by the infliction of one, or more, of the penalties of death, imprisonment or fine, as may be prescribed by law.

2-7. "Montani Semper Liberi"—State seal

The present seal of the state, with its motto, "Montani Semper Liberi," shall be the great seal of the state of West Virginia, and shall be kept by the secretary of state, to be used by him officially, as directed by law.

2-8. Writs, commissions, official bonds—Indictments

Writs, grants and commissions, issued under the authority of this state, shall run in the name of, and official bonds shall be made payable to the state of West Virginia. Indictments shall conclude, "Against the peace and dignity of the state."

ARTICLE III

3-1. Bill of rights

All men are, by nature, equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity, namely: The enjoyment of life and liberty, with the means of acquiring and possessing property, and of pursuing and obtaining happiness and safety.

3-2. Magistrates servants of people

All power is vested in, and consequently derived from, the people. Magistrates are their trustees and servants, and at all times amenable to them.

3-3. Rights reserved to people

Government is instituted for the common benefit, protection and security of the people, nation or community. Of all its various forms that is the best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and when any government shall be found inadequate or contrary to these purposes, a majority of the community has an indubitable, inalienable, and indefeasible right to reform, alter or abolish it in such manner as shall be judged most conducive to the public weal.

3-4. Writ of habeas corpus

The privilege of the writ of habeas corpus shall not be suspended. No person shall be held to answer for treason, felony or other crime, not cognizable by a justice, unless on presentment or indictment of a grand jury. No bill of attainder, ex post facto law, or law impairing the obligation of a contract, shall be passed.

3-5. Excessive bail not required

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. Penalties shall be proportioned to the character and degree of the offence. No person shall be transported out of, or forced to leave the state for any offence committed within the same; nor shall any person, in any criminal case, be compelled to be a witness against himself, or be twice put in jeopardy of life or liberty for the same offence.

3-6. Unreasonable searches and seizures prohibited

The rights of the citizens to be secure in their houses, persons, papers and effects, against unreasonable searches and seizures, shall not be violated. No warrant shall issue except upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, or the person or thing to be seized.

3-7. Freedom of speech and press guaranteed

No law abridging the freedom of speech, or of the press, shall be passed; but the Legislature may, by suitable penalties, restrain the publication or sale of obscene books, papers, or pictures, and provide for the punishment of libel, and defamation of character, and for the recovery, in civil actions, by the aggrieved party, of suitable damages for such libel, or defamation.

3-8. Relating to civil suits for libel

In prosecutions and civil suits for libel, the truth may be given in evidence; and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the verdict shall be for the defendant.

3-9. Private property, how taken

Private property shall not be taken or damaged for public use, without just compensation; nor shall the same be taken by any company, incorporated for the

purposes of internal improvement, until just compensation shall have been paid, or secured to be paid, to the owner; and when private property shall be taken, or damaged for public use, or for the use of such corporation, the compensation to the owner shall be ascertained in such manner as may be prescribed by general law: *Provided,* That when required by either of the parties, such compensation shall be ascertained by an impartial jury of twelve freeholders.

3-10. Safeguards for life, liberty and property

No person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers.

3-11. Political tests condemned

Political tests, requiring persons, as a prerequisite to the enjoyment of their civil and political rights, to purge themselves by their own oaths, of past alleged offences, are repugnant to the principles of free government, and are cruel and oppressive. No religious or political test oath shall be required as a prerequisite or qualification to vote, serve as a juror, sue, plead, appeal, or pursue any profession or employment. Nor shall any person be deprived by law, of any right, or privilege, because of any act done prior to the passage of such law.

3-12. Military subordinate to civil power

Standing armies, in time of peace, should be avoided as dangerous to liberty. The military shall be subordinate to the civil power; and no citizen, unless engaged in the military service of the state, shall be tried or punished by any military court, for any offence that is cognizable by the civil courts of the state. No soldier shall, in time of peace, be quartered in any house, without consent of the owner; nor in time of war, except in the manner to be prescribed by law.

3-13. Right of jury trial

In suits at common law, where the value in controversy exceeds twenty dollars exclusive of interest and costs, the right of trial by jury, if required by either party, shall be preserved; and in such suit in a court of limited jurisdiction a jury shall consist of six persons. No fact tried by a jury shall be otherwise reexamined in any case than according to the rule of court or law.

Acts 1879, J.R. 11 and Acts 1879, c. 50, ratified Oct. 12, 1880; Acts 1974, S.J.R. 6, ratified Nov. 5, 1974.

3-14. Trials of crimes—Provisions in interest of accused

Trials of crimes, and of misdemeanors, unless herein otherwise provided, shall be by a jury of twelve men, public, without unreasonable delay, and in the county where the alleged offence was committed, unless upon petition of the accused, and for good cause shown, it is removed to some other county. In all such trials, the accused shall be fully and plainly informed of the character and cause of the accusation, and be confronted with the witnesses against him, and shall have the assistance of counsel, and a reasonable time to prepare for

his defence; and there shall be awarded to him compulsory process for obtaining witnesses in his favor.

3-15. Religious freedom guaranteed

No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened, in his body or goods, or otherwise suffer, on account of his religious opinions or belief, but all men shall be free to profess and by argument, to maintain their opinions in matters of religion; and the same shall, in nowise, affect, diminish or enlarge their civil capacities; and the Legislature shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this state, to levy on themselves, or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry, but it shall be left free for every person to select his religious instructor, and to make for his support, such private contracts as he shall please.

3-15a. Voluntary contemplation, meditation or prayer in schools

Public schools shall provide a designated brief time at the beginning of each school day for any student desiring to exercise their right to personal and private contemplation, meditation or prayer. No student of a public school may be denied the right to personal and private contemplation, meditation or prayer nor shall any student be required or encouraged to engage in any given contemplation, meditation or prayer as a part of the school curriculum.

Acts 1984, S.J.R. 1, ratified Nov. 6, 1984.

3-16. Right of public assembly held inviolate

The right of the people to assemble in a peaceable manner, to consult for the common good, to instruct their representatives, or to apply for redress of grievances, shall be held inviolate.

3-17. Courts open to all—Justice administered speedily

The courts of this state shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay.

3-18. Conviction not to work corruption of blood or forfeiture

No conviction shall work corruption of blood or forfeiture of estate.

3-19. Hereditary emoluments, etc., provided against

No hereditary emoluments, honors or privileges shall ever be granted or conferred in this state.

3-20. Preservation of free government

Free government and the blessings of liberty can be preserved to any people only by a firm adherence to justice, moderation, temperance, frugality and virtue, and by a frequent recurrence to fundamental principles.

3-21. Jury service for women

Regardless of sex all persons, who are otherwise qualified, shall be eligible to serve as petit jurors, in both civil and criminal cases, as grand jurors and as coroner's jurors.

Acts 1955, H.J.R. 2 and Acts 1955, c. 22, ratified Nov. 6, 1956.

3-22. Right to keep and bear arms

A person has the right to keep and bear arms for the defense of self, family, home and state, and for lawful hunting and recreational use.

Acts 1985, H.J.R. 18, ratified Nov. 4, 1986.

ARTICLE IV

4-1. Election and officers

The citizens of the state shall be entitled to vote at all elections held within the counties in which they respectively reside; but no person who is a minor, or who has been declared mentally incompetent by a court of competent jurisdiction, or who is under conviction of treason, felony or bribery in an election, or who has not been a resident of the state and of the county in which he offers to vote, for thirty days next preceding such offer, shall be permitted to vote while such disability continues; but no person in the military, naval or marine service of the United States shall be deemed a resident of this state by reason of being stationed therein.

Acts 1994, H.J.R. 13, ratified Nov. 8, 1994.

4-2. Mode of voting by ballot

In all elections by the people, the mode of voting shall be by ballot; but the voter shall be left free to vote by either open, sealed or secret ballot, as he may elect.

4-3. Voter not subject to arrest on civil process

No voter, during the continuance of an election at which he is entitled to vote, or during the time necessary and convenient for going to and returning from the same, shall be subject to arrest upon civil process, or be compelled to attend any court, or judicial proceeding, as suitor, juror or witness; or to work upon the public roads; or, except in time of war or public danger, to render military service.

4-4. Persons entitled to hold office—Age requirements

No person, except citizens entitled to vote, shall be elected or appointed to any state, county or municipal office; but the governor and judges must have

attained the age of thirty, and the attorney general and senators the age of twenty-five years, at the beginning of their respective terms of service; and must have been citizens of the state for five years next preceding their election or appointment, or be citizens at the time this constitution goes into operation.

4-5. Oath or affirmation to support the constitution

Every person elected or appointed to any office, before proceeding to exercise the authority, or discharge the duties thereof, shall make oath or affirmation that he will support the constitution of the United States and the constitution of this state, and that he will faithfully discharge the duties of his said office to the best of his skill and judgment; and no other oath, declaration, or test shall be required as a qualification, unless herein otherwise provided.

4-6. Provision for removal of officials

All officers elected or appointed under this constitution, may, unless in cases herein otherwise provided for, be removed from office for official misconduct, incompetence, neglect of duty, or gross immorality, in such manner as may be prescribed by general laws, and unless so removed they shall continue to discharge the duties of their respective offices until their successors are elected, or appointed and qualified.

4-7. General elections, when held—Terms of officials

The general elections of state and county officers, and of members of the Legislature, shall be held on the Tuesday next after the first Monday in November, until otherwise provided by law. The terms of such officers, not elected, or appointed to fill a vacancy, shall, unless herein otherwise provided, begin on the first day of January; and of the members of the Legislature, on the first day of December next succeeding their election. Elections to fill vacancies, shall be for the unexpired term. When vacancies occur prior to any general election, they shall be filled by appointments, in such manner as may be prescribed herein, or by general law, which appointments shall expire at such time after the next general election as the person so elected to fill such vacancy shall be qualified.

Acts 1883, J.R. 9 and Acts 1883, c. 43, ratified Oct. 14, 1884.

4-8. Further provisions regarding state's officers and agents

The Legislature, in cases not provided for in this constitution, shall prescribe, by general laws, the terms of office, powers, duties and compensation of all public officers and agents, and the manner in which they shall be elected, appointed and removed.

4-9. Impeachment of officials

Any officer of the state may be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. The House of Delegates shall have the sole power of impeachment. The Senate shall have the sole power to try impeachments and no person shall be convicted without the concurrence of two thirds of the members elected thereto.

When sitting as a court of impeachment, the president of the supreme court of appeals, or, if from any cause it be improper for him to act, then any other judge of that court, to be designated by it, shall preside; and the senators shall be on oath or affirmation, to do justice according to law and evidence. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit, under the state; but the party convicted shall be liable to indictment, trial judgment, and punishment according to law. The Senate may sit during the recess of the Legislature, for the trial of impeachments.

4-10. Fighting of duels prohibited

Any citizen of this state, who shall, after the adoption of this constitution, either in or out of the state, fight a duel with deadly weapons, or send or accept a challenge so to do, or who shall act as a second or knowingly aid or assist in such duel, shall, ever thereafter, be incapable of holding any office of honor, trust or profit in this state.

4-11. Safeguards for ballots

The Legislature shall prescribe the manner of conducting and making returns of elections, and of determining contested elections; and shall pass such laws as may be necessary and proper to prevent intimidation, disorder or violence at the polls, and corruption or fraud in voting, counting the vote, ascertaining or declaring the result, or fraud in any manner upon the ballot.

4-12. Registration laws provided for

The Legislature shall enact proper laws for the registration of all qualified voters in this state.

Acts 1901, J.R. 19 and Acts 1901, c. 154, ratified Nov. 4, 1902.

ARTICLE V

5-1. Division of powers

The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the Legislature.

Acts 1976, c. 33, provided that all references to "justice of the peace" in the Code of West Virginia mean "magistrate." See § 50-1-17.

ARTICLE VI

6-1. The Legislature

The legislative power shall be vested in a Senate and House of Delegates. The style of their acts shall be, "Be it enacted by the Legislature of West Virginia."

6-2. Composition of Senate and House of Delegates

The Senate shall be composed of twenty-four, and the House of Delegates of sixty-five members, subject to be increased according to the provisions hereinafter contained.

6-3. Senators and delegates—Terms of office

Senators shall be elected for the term of four years, and delegates for the term of two years. The senators first elected, shall divide themselves into two classes, one senator from every district being assigned to each class; and of these classes, the first to be designated by lot in such manner as the Senate may determine, shall hold their seats for two years and the second for four years, so that after the first election, one half of the senators shall be elected biennially.

6-4. Division of state into senatorial districts

For the election of senators, the state shall be divided into twelve senatorial districts, which number shall not be diminished, but may be increased as hereinafter provided. Every district shall elect two senators, but, where the district is composed of more than one county, both shall not be chosen from the same county. The districts shall be compact, formed of contiguous territory, bounded by county lines, and, as nearly as practicable, equal in population, to be ascertained by the census of the United States. After every such census, the Legislature shall alter the senatorial districts, so far as may be necessary to make them conform to the foregoing provision.

6-5. Senatorial districts designated

Until the senatorial districts shall be altered by the Legislature as herein prescribed, the counties of Hancock, Brooke and Ohio, shall constitute the first senatorial district; Marshall, Wetzel and Marion, the second; Ritchie, Doddridge, Harrison, Gilmer and Calhoun, the third; Tyler, Pleasants, Wood and Wirt, the fourth; Jackson, Mason, Putnam and Roane, the fifth; Kanawha, Clay, Nicholas, Braxton and Webster, the sixth; Cabell, Wayne, Lincoln, Boone, Logan, Wyoming, McDowell and Mercer, the seventh; Monroe, Greenbrier, Summers, Pocahontas, Fayette and Raleigh, the eighth; Lewis, Randolph, Upshur, Barbour, Taylor and Tucker, the ninth; Preston and Monongalia, the tenth; Hampshire, Mineral, Hardy, Grant and Pendleton, the eleventh; Berkeley, Morgan and Jefferson, the twelfth.

6-6. Provision for delegate representation

For the election of delegates, every county containing a population of less than three fifths of the ratio of representation for the House of Delegates, shall, at each apportionment, be attached to some contiguous county or counties, to form a delegate district.

6-7. After census, delegate apportionment

After every census the delegates shall be apportioned as follows: The ratio of representation for the House of Delegates shall be ascertained by dividing the whole population of the state by the number of which the House is to consist

and rejecting the fraction of a unit, if any, resulting from such division. Dividing the population of every delegate district, and of every county not included in a delegate district, by the ratio thus ascertained, there shall be assigned to each a number of delegates equal to the quotient obtained by this division, excluding the fractional remainder. The additional delegates necessary to make up the number of which the House is to consist, shall then be assigned to those delegate districts, and counties not included in a delegate district, which would otherwise have the largest fractions unrepresented; but every delegate district and county not included in a delegate district, shall be entitled to at least one delegate.

6-8. Designation of delegate districts

Until a new apportionment shall be declared, the counties of Pleasants and Wood shall form the first delegate district, and elect three delegates; Ritchie and Calhoun, the second, and elect two delegates; Barbour, Harrison and Taylor, the third, and elect one delegate; Randolph and Tucker, the fourth, and elect one delegate; Nicholas, Clay and Webster, the fifth, and elect one delegate; McDowell and Wyoming, the sixth, and elect one delegate.

6-9. Further apportionments

Until a new apportionment shall be declared, the apportionment of delegates to the counties not included in delegate districts, and to Barbour, Harrison and Taylor counties, embraced in such district, shall be as follows:

To Barbour, Boone, Braxton, Brooke, Cabell, Doddridge, Fayette, Hampshire, Hancock, Jackson, Lewis, Logan, Greenbrier, Monroe, Mercer, Mineral, Morgan, Grant, Hardy, Lincoln, Pendleton, Putnam, Roane, Gilmer, Taylor, Tyler, Upshur, Wayne, Wetzel, Wirt, Pocahontas, Summers and Raleigh counties, one delegate each.

To Berkeley, Harrison, Jefferson, Marion, Marshall, Mason, Monongalia and Preston counties, two delegates each.

To Kanawha county, three delegates.

To Ohio county, four delegates.

6-10. Arrangement of senatorial and delegate districts

The arrangement of the senatorial and delegate districts, and apportionment of delegates, shall hereafter be declared by law, as soon as possible after each succeeding census, taken by authority of the United States. When so declared they shall apply to the first general election for members of the Legislature, to be thereafter held, and shall continue in force unchanged, until such districts shall be altered, and delegates apportioned, under the succeeding census.

6-11. Additional territory may be admitted into state

Additional territory may be admitted into, and become part of this state, with the consent of the Legislature and a majority of the qualified voters of the state, voting on the question. And in such case provision shall be made by law

for the representation thereof in the Senate and House of Delegates, in conformity with the principles set forth in this constitution. And the number of members of which each house of the Legislature is to consist, shall thereafter be increased by the representation assigned to such additional territory.

6-12. Senators and delegates required to be residents of districts

No person shall be a senator or delegate who has not for one year next preceding his election, been a resident within the district or county from which he is elected; and if a senator or delegate remove from the district or county for which he was elected, his seat shall be thereby vacated.

6-13. Eligibility to seat in Legislature

No person holding any other lucrative office or employment under this state, the United States, or any foreign government; no member of Congress; and no person who is sheriff, constable, or clerk of any court of record, shall be eligible to a seat in the Legislature.

Acts 1970, H.J.R. 8 and Acts 1970, c. 22, ratified Nov. 3, 1970.

Acts 1976, c. 33, abolished the office of the constable and transferred all duties and powers of the constables to deputy sheriffs. See § 50-1-17.

6-14. Bribery conviction forfeits eligibility

No person who has been, or hereafter shall be convicted of bribery, perjury, or other infamous crimes, shall be eligible to a seat in the Legislature. No person who may have collected or been entrusted with public money, whether state, county, township, district, or other municipal organization, shall be eligible to the Legislature, or to any office of honor, trust, or profit in this state, until he shall have duly accounted for and paid over such money according to law.

6-15. Senators and delegates not to hold civil office for profit

No senator or delegate, during the term for which he shall have been elected, shall be elected or appointed to any civil office of profit under this state, which has been created, or the emoluments of which have been increased during such term, except offices to be filled by election by the people. Nor shall any member of the Legislature be interested, directly or indirectly, in any contract with the state, or any county thereof, authorized by any law passed during the term for which he shall have been elected.

6-16. Oath of senators and delegates

Members of the Legislature, before they enter upon their duties, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of West Virginia, and faithfully discharge the duties of Senator (or Delegate) according to the best of my ability"; and they shall also take this further oath, to wit: "I will not accept or receive, directly or indirectly, any money or other valuable thing, from any corporation, company,

or person for any vote or influence I may give or withhold, as Senator (or Delegate) on any bill, resolution or appropriation, or for any act I may do or perform as Senator (or Delegate)." These oaths shall be administered in the hall of the house to which the member is elected, by a judge of the supreme court of appeals, or of a circuit court, or by any other person authorized by law to administer an oath; and the secretary of state shall record and file said oaths subscribed by each member; and no other oath or declaration shall be required as a qualification. Any member who shall refuse to take the oath herein prescribed, shall forfeit his seat; and any member who shall be convicted of having violated the oath last above required to be taken, shall forfeit his seat and be disqualified thereafter from holding any office of profit or trust in this state.

6-17. Members of Legislature privileged from civil arrest

Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest during the session, and for ten days before and after the same; and for words spoken in debate, or any report, motion or proposition made in either house, a member shall not be questioned in any other place.

6-18. Time and place of assembly of Legislature

The Legislature shall assemble annually at the seat of government, and not oftener unless convened by the governor. Regular sessions of the Legislature shall commence on the second Wednesday of January of each year. Upon the convening of the Legislature in each odd-numbered year, each house shall proceed to organize by the election of its officers for two-year terms and both houses shall then in joint assembly open and publish the election returns delivered to the Legislature as prescribed by other provisions of this constitution and by general law. When all of these matters have been completed in the year one thousand nine hundred seventy-three and every fourth year thereafter, the Legislature shall adjourn until the second Wednesday of February following. Notwithstanding the provisions of section fifty-one of this article and any other provisions of this constitution, on and after the effective date hereof, there shall be submitted by the governor to the Legislature, on the second Wednesday of February in the year one thousand nine hundred seventy-three and every fourth year thereafter, and on the second Wednesday of January of all other years, unless a later time in any year be fixed by the Legislature, a budget for the next ensuing fiscal year and a bill for the proposed appropriations of such budget.

Acts 1953, S.J.R. 4 and Acts 1953, c. 31, ratified Nov. 2, 1954; Acts 1970, H.J.R. 8 and Acts 1970, c. 22, ratified Nov. 3, 1970.

6-19. Convening of Legislature by governor

The governor may convene the Legislature by proclamation whenever, in his opinion, the public safety or welfare shall require it. It shall be his duty to convene it, on application in writing, of three fifths of the members elected to each house.

6-20. Seat of government

The seat of government shall be at Charleston, until otherwise provided by law.

6-21. Provisions for assembling of Legislature other than at the seat of government

The governor may convene the Legislature at another place, when, in his opinion, it can not safely assemble at the seat of government, and the Legislature may, when in session, adjourn to some other place, when in its opinion, the public safety or welfare, or the safety of the members, or their health, shall require it.

6-22. Length of legislative session

The regular session of the Legislature held in the year one thousand nine hundred seventy-three and every fourth year thereafter shall, in addition to the meeting days preceding the adjournment provided for in section eighteen of this article, not exceed sixty calendar days computed from and including the second Wednesday of February, and the regular session held in all other years shall not exceed sixty calendar days computed from and including the second Wednesday of January. Any regular session may be extended by a concurrent resolution adopted by a two-thirds vote of the members elected to each house determined by yeas and nays and entered on the journals.

Acts 1919, S.J.R. 3 and Acts 1919, c. 127, ratified Nov. 2, 1920; Acts 1927, S.J.R. 9 and Acts 1927, c. 28, ratified Nov. 6, 1928; Acts 1953, S.J.R. 4 and Acts 1953, c. 31, ratified Nov. 2, 1954; Acts 1970, H.J.R. 8 and Acts 1970, c. 22, ratified Nov. 3, 1970.

6-23. Concerning adjournment

Neither house shall, during the session, adjourn for more than three days, without the consent of the other. Nor shall either, without such consent, adjourn to any other place than that in which the Legislature is sitting.

6-24. Rules governing legislative proceedings

A majority of the members elected to each house of the Legislature shall constitute a quorum. But a smaller number may adjourn from day to day, and shall be authorized to compel the attendance of absent members, as each house may provide. Each house shall determine the rules of its proceedings and be the judge of the elections, returns and qualifications of its own members. The Senate shall choose, from its own body, a president; and the House of Delegates, from its own body, a speaker. Each house shall appoint its own officers, and remove them at pleasure. The oldest delegate in point of continuous service present at the assembly of the Legislature at which officers thereof are to be selected, and if there be two or more such delegates with equal continuous service the one agreed upon by such delegates or chosen by such delegates by lot, shall call the House to order, and preside over it until the speaker thereof shall have been chosen, and have taken his seat. The oldest member of the Senate in point of continuous service present at the assembly of the Legislature at which officers thereof are to be selected, and if there be two or more such members with equal continuous service the one agreed upon by such members or chosen by such members by lot, shall call the Senate to order, and preside over the same until a president of the Senate

shall have been chosen, and have taken his seat.

Acts 1970, H.J.R. 8 and Acts 1970, c. 22, ratified Nov. 3, 1970.

6-25. Authority to punish members

Each house may punish its own members for disorderly behavior, and with the concurrence of two thirds of the members elected thereto, expel a member, but not twice for the same offence.

6-26. Provisions for undisturbed transaction of business

Each house shall have power to provide for its own safety, and the undisturbed transaction of its business, and may punish, by imprisonment, any person not a member, for disrespectful behavior in its presence; for obstructing any of its proceedings, or any of its officers in the discharge of his duties, or for any assault, threat or abuse of a member, for words spoken in debate. But such imprisonment shall not extend beyond the termination of the session, and shall not prevent the punishment of any offence, by the ordinary course of law.

6-27. Accounting for state moneys

Laws shall be enacted and enforced, by suitable provisions and penalties, requiring sheriffs, and all other officers, whether state, county, district or municipal, who shall collect or receive, or whose official duty it is, or shall be, to collect, receive, hold or pay out any money belonging to, or which is, or shall be, for the use of the state or of any county, district, or municipal corporation, to make annual account and settlement therefor. Such settlement, when made, shall be subject to exceptions, and take such direction, and have only such force and effect, as may be provided by law; but in all cases such settlement shall be recorded, and be open to the examination of the people at such convenient place or places as may be appointed by law.

6-28. Origination of bills

Bills and resolutions may originate in either house, but may be passed, amended or rejected by the other.

6-29. Requirement for reading of bills

No bill shall become a law until it has been fully and distinctly read, on three different days, in each house, unless in case of urgency, by a vote of four fifths of the members present, taken by yeas and nays on each bill, this rule be dispensed with: Provided, in all cases, that an engrossed bill shall be fully and distinctly read in each house.

6-30. Acts to embrace but one object—Time of effect

No act hereafter passed shall embrace more than one object, and that shall be expressed in the title. But if any object shall be embraced in an act which is not so expressed, the act shall be void only as to so much thereof, as shall not be so expressed, and no law shall be revived, or amended, by reference to its title only; but the law revived, or the section amended, shall be inserted at large, in the new act. And no act of the Legislature, except such as may be

passed at the first session under this constitution, shall take effect until the expiration of ninety days after its passage, unless the Legislature shall by a vote of two thirds of the members elected to each house, taken by yeas and nays, otherwise direct.

6-31. How bills may be amended

When a bill or joint resolution, passed by one house, shall be amended by the other, the question on agreeing to the bill, or joint resolution, as amended, shall be again voted on, by yeas and nays, in the house by which it was originally passed, and the result entered upon its journals; in all such cases, the affirmative vote of a majority of all the members elected to such house shall be necessary.

6-32. "Majority" defined

Whenever the words, "a majority of the members elected to either house of the Legislature," or words of like import, are used in this constitution, they shall be construed to mean a majority of the whole number of members to which each house is, at the time, entitled, under the apportionment of representation, established by the provisions of this constitution.

6-33. Compensation and expenses of members

Members of the Legislature shall receive such compensation in connection with the performance of their respective duties as members of the Legislature and such allowances for travel and other expenses in connection therewith as shall be (1) established in a resolution submitted to the Legislature by the Citizens Legislative Compensation Commission hereinafter created, and (2) thereafter enacted into general law by the Legislature at a regular session thereof, subject to such requirements and conditions as shall be prescribed in such general law. The Legislature may in any such general law reduce but shall not increase any item of compensation or expense allowance established in such resolution. All voting on the floor of both houses on the question of passage of any such general law shall be by yeas and nays to be entered on the journals.

The Citizens Legislative Compensation Commission is hereby created. It shall be composed of seven members who have been residents of this state for at least ten years prior to the date of appointment, to be appointed by the governor within twenty days after ratification of this amendment, no more than four of whom shall be members of the same political party. The members shall be broadly representative of the public at large. Members of the Legislature and officers and employees of the state or of any county, municipality or other governmental unit of the state shall not be eligible for appointment to or to serve as members of the commission. Each member of the commission shall serve for a term of seven years, except of the members first appointed, one member shall be appointed for a term of one year, and one each for terms ending two, three, four, five, six and seven years after the date of appointment. As the term of each member first appointed expires, a successor shall be appointed for a seven-year term. Any member may be reappointed for any number of terms, and any vacancy shall be filled by the governor for the unexpired term. Any member of the commission may be removed by the governor prior to the expiration of such member's term for official misconduct, incompetency or neglect of duty.

The governor shall designate one member of the commission as chairman. The members of the commission shall serve without compensation, but shall be entitled to be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as such members.

The commission shall meet as often as may be necessary and shall within fifteen days after the beginning of the regular session of the Legislature in the year one thousand nine hundred seventy-one and within fifteen days after the beginning of the regular session in each fourth year thereafter submit by resolution to the Legislature its determination of compensation and expense allowances, which resolution must be concurred in by at least four members of the commission.

Notwithstanding any other provision of this constitution, such compensation and expense allowances as may be provided for by any such general law shall be paid on and after the effective date of such general law. Until the first such general law becomes effective, the provisions of this section in effect immediately prior to the ratification of this amendment shall continue to govern.

Acts 1919, S.J.R. 3 and Acts 1919, c. 127, ratified Nov. 2, 1920; Acts 1953, S.J.R. 4 and Acts 1953, c. 31, ratified Nov. 2, 1954; Acts 1970, H.J.R. 8 and Acts 1970, c. 22, ratified Nov. 3, 1970.

6-34. Distribution of laws and journals provided for—Contracts for printing

The Legislature shall provide by law that the fuel, stationery and printing paper, furnished for the use of the state; the copying, printing, binding and distributing the laws and journals; and all other printing ordered by the Legislature, shall be let by contract to the lowest responsible bidder, bidding under a maximum price to be fixed by the Legislature; and no member or officer thereof, or officer of the state, shall be interested, directly or indirectly, in such contract, but all such contracts shall be subject to the approval of the governor, and in case of his disapproval of any such contract, there shall be a reletting of the same in such manner as may be prescribed by law.

6-35. State not to be made defendant in any court

The state of West Virginia shall never be made defendant in any court of law or equity, except the state of West Virginia, including any subdivision thereof, or any municipality therein, or any officer, agent, or employee thereof, may be made defendant in any garnishment or attachment proceeding, as garnishee or suggestee.

Acts 1935, H.J.R. 3 and Acts 1935, c. 23, ratified Nov. 3, 1936.

6-36. Lotteries; bingo; raffles; county option

The legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this State; except that the Legislature may authorize lotteries which are regulated, controlled, owned and operated by the State of West Virginia in the manner provided by general law, either separately by this state or jointly or in cooperation with one or more other states and may

authorize state-regulated bingo games and raffles for the purpose of raising money by charitable or public service organizations or by the State Fair of West Virginia for charitable or public service purposes: **Provided**, That each county may disapprove the holding of bingo games and raffles within that county at a regular, primary or special election but once having disapproved such activity, may thereafter authorize the holding of bingo games and raffles, by majority vote at a regular, primary or special election held not sooner than five years after the election resulting in disapproval; that all proceeds from the bingo games and raffles be used for the purpose of supporting charitable or public service purposes; and that the Legislature shall provide a means of regulating the bingo games and raffles so as to ensure that only charitable or public service purposes are served by the conducting of the bingo games and raffles.

Acts 1980, H.J.R. 13, ratified Nov. 4, 1980; Acts 1983, S.J.R. 3, ratified Nov. 6, 1984.

6-37. Terms of office not to be extended after election

No law shall be passed after the election of any public officer, which shall operate to extend the term of his office.

6-38. Salaries of officials cannot be increased during official terms

No extra compensation shall be granted or allowed to any public officer, agent, servant or contractor, after the services shall have been rendered or the contract made; nor shall any Legislature authorize the payment of any claim or part thereof, hereafter created against the state, under any agreement or contract made, without express authority of law; and all such unauthorized agreements shall be null and void. Nor shall the salary of any public officer be increased or diminished during his term of office, nor shall any such officer, or his or their sureties be released from any debt or liability due to the state: **Provided**, the Legislature may make appropriations for expenditures hereafter incurred in suppressing insurrection, or repelling invasion.

6-39. Local laws not to be passed in enumerated cases

The Legislature shall not pass local or special laws in any of the following enumerated cases; that is to say, for

Granting divorces;

Laying out, opening, altering and working roads or highways;

Vacating roads, town plats, streets, alleys and public grounds;

Locating, or changing county seats;

Regulating or changing county or district affairs;

Providing for the sale of church property, or property held for charitable uses;

Regulating the practice in courts of justice;

Incorporating cities, towns or villages, or amending the charter of any city, town or village, containing a population of less than two thousand;

Summoning or impaneling grand or petit juries;

The opening or conducting of any election, or designating the place of voting;

The sale and mortgage of real estate belonging to minors, or others under disability;

Chartering, licensing, or establishing ferries or toll bridges;

Remitting fines, penalties or forfeitures;

Changing the law of descent;

Regulating the rate of interest;

Authorizing deeds to be made for land sold for taxes;

Releasing taxes;

Releasing title to forfeited lands.

The Legislature shall provide, by general laws, for the foregoing and all other cases for which provision can be so made; and in no case shall a special act be passed, where a general law would be proper, and can be made applicable to the case, nor in any other case in which the courts have jurisdiction, and are competent to give the relief asked for.

6-39(a). Home rule for municipalities

No local or special law shall hereafter be passed incorporating cities, towns or villages, or amending their charters. The Legislature shall provide by general laws for the incorporation and government of cities, towns and villages, and shall classify such municipal corporations, upon the basis of population, into not less than two nor more than five classes. Such general laws shall restrict the powers of such cities, towns and villages to borrow money and contract debts, and shall limit the rate of taxes for municipal purposes, in accordance with section one, article ten of the constitution of the state of West Virginia. Under such general laws, the electors of each municipal corporation, wherein the population exceeds two thousand, shall have power and authority to frame, adopt and amend the charter of such corporation, or to amend an existing charter thereof, and through its legally constituted authority, may pass all laws and ordinances relating to its municipal affairs: **Provided**, That any such charter or amendment thereto, and any such law or ordinance so adopted, shall be invalid and void if inconsistent or in conflict with this constitution or the general laws of the state then in effect, or thereafter from time to time enacted.

Acts 1935, S.J.R. 3 and Acts 1935, c. 22, ratified Nov. 3, 1936.

6-40. Limiting powers of court or judge

The Legislature shall not confer upon any court, or judge, the power of appointment to office, further than the same is herein provided for.

6-41. Each house to keep journal of proceedings

Each house shall keep a journal of its proceedings, and cause the same to be published from time to time, and all bills and joint resolutions shall be described therein, as well by their title as their number, and the yeas and nays on any question, if called for by one tenth of those present shall be entered on the journal.

6-42. Appropriation bills to be specific

Bills making appropriations for the pay of members and officers of the Legislature, and for salaries for the officers of the government, shall contain no provision on any other subject.

6-43. Board or court of registration of voters prohibited

The Legislature shall never authorize or establish any board or court of registration of voters.

6-44. Election of legislative, county and municipal officers

In all elections to office which may hereafter take place in the Legislature, or in any county, or municipal body, the vote shall be viva voce, and be entered on its journals.

6-45. Bribery and attempt to bribe—Punishment

It shall be the duty of the Legislature, at its first session after the adoption of this constitution, to provide, by law, for the punishment by imprisonment in the penitentiary, of any person who shall bribe, or attempt to bribe, any executive or judicial officer of this state, or any member of the Legislature in order to influence him, in the performance of any of his official or public duties; and also to provide by law for the punishment by imprisonment in the penitentiary of any of said officers, or any member of the Legislature, who shall demand, or receive, from any corporation, company or person, any money, testimonial, or other valuable thing, for the performance of his official or public duties, or for refusing or failing to perform the same, or for any vote or influence a member of the Legislature may give or withhold as such member; and also to provide by law for compelling any person, so bribing or attempting to bribe, or so demanding or receiving a bribe, fee, reward, or testimonial, to testify against any person or persons, who may have committed any of said offences: **Provided**, That any person so compelled to testify, shall be exempted from trial and punishment for the offence of which he may have been guilty, and concerning which he is compelled to testify; and any person convicted of any of the offences specified in this section, shall, as a part of the punishment thereof, be forever disqualified from holding any office or position of honor, trust, or profit in this state.

6-46. Manufacture and sale of liquor

The Legislature shall by appropriate legislation regulate the manufacture and sale of intoxicating liquors within the limits of this state, and any law authorizing the sale of such liquors shall forbid and penalize the consumption and the sale thereof for consumption in a saloon or other public place.

Acts 1911, S.J.R. 6 and Acts 1911, c. 15, ratified Nov. 5, 1912; Acts 1933 , H.J.R. 1 and Acts 1933, c. 25, ratified Nov. 6, 1934.

6-47. Incorporation of religious denominations prohibited

No charter of incorporation shall be granted to any church or religious denomination. Provisions may be made by general laws for securing the title to church property, and for the sale and transfer thereof, so that it shall be held, used, or transferred for the purposes of such church, or religious denomination.

6-48. Homestead exemption

Any husband or parent, residing in this state, or the infant children of deceased parents, may hold a homestead of the value of five thousand dollars, and personal property to the value of one thousand dollars, exempt from forced sale, subject to such regulations as shall be prescribed by law: **Provided**, That such homestead exemption shall in nowise affect debts or liabilities existing at the time of the adoption of this constitution and the increases in such homestead exemption provided by this amendment shall in nowise affect debts or liabilities existing at the time of the ratification of such amendment: **Provided, however**, That no property shall be exempt from sale for taxes due thereon, or for the payment of purchase money due upon said property, or for debts contracted for the erection of improvements thereon.

Acts 1973, H.J.R. 7, ratified Nov. 6, 1973.

6-49. Property of married woman

The Legislature shall pass such laws as may be necessary to protect the property of married women from the debts, liabilities and control of their husbands.

6-50. Plan of proportional representation

The Legislature may provide for submitting to a vote of the people at the general election to be held in 1876, or at any general election thereafter, a plan or scheme of proportional representation in the Senate of this state; and if a majority of the votes cast at such election be in favor of the plan submitted to them, the Legislature shall, at its session succeeding such election, rearrange the senatorial districts in accordance with the plan so approved by the people.

6-51. Budget and supplementary appropriation bills

The Legislature shall not appropriate any money out of the treasury except in accordance with the provisions of this section.

Subsection A—Appropriation Bills

(1) Every appropriation bill shall be either a budget bill, or a supplementary appropriation bill, as hereinafter provided.

Subsection B—Budget Bills

(2) Within ten days after the convening of the regular session of the Legislature in odd-numbered years, unless such time shall be extended by the Legislature, and on the second Wednesday of January in even-numbered years, the governor shall submit to the Legislature a budget for the next ensuing fiscal year. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the fiscal year and shall show the estimated surplus or deficit of revenues at the end of each fiscal year. Accompanying each budget shall be a statement showing: (a) An estimate of the revenues and expenditures for the current fiscal year, including the actual revenues and actual expenditures to the extent available, and the revenues and expenditures for the next preceding fiscal year; (b) the current assets, liabilities, reserves and surplus or deficit of the state; (c) the debts and funds of the state; (d) an estimate of the state's financial condition as of the beginning and end of the fiscal year covered by the budget; (e) any explanation the governor may desire to make as to the important features of the budget and any suggestions as to methods for reduction or increase of the state's revenue.

(3) Each budget shall embrace an itemized estimate of the appropriations, in such form and detail as the governor shall determine or as may be prescribed by law: (a) For the Legislature as certified to the governor in the manner hereinafter provided; (b) for the executive department; (c) for the judiciary department, as provided by law, certified to the governor by the auditor; (d) for payment and discharge of the principal and interest of any debt of the state created in conformity with the constitution, and all laws enacted in pursuance thereof; (e) for the salaries payable by the state under the constitution and laws of the state; (f) for such other purposes as are set forth in the constitution and in laws made in pursuance thereof.

(4) The governor shall deliver to the presiding officer of each house the budget and a bill for all the proposed appropriations of the budget clearly itemized and classified, in such form and detail as the governor shall determine or as may be prescribed by law; and the presiding officer of each house shall promptly cause the bill to be introduced therein, and such bill shall be known as the "Budget Bill." The governor may, with the consent of the Legislature, before final action thereon by the Legislature, amend or supplement the budget to correct an oversight, or to provide funds contingent on passage of pending legislation, and in case of an emergency, he may deliver such an amendment or supplement to the presiding officers of both houses; and the amendment or supplement shall thereby become a part of the budget bill as an addition to the items of the bill or as a modification of or a substitute for any item of the bill the amendment or supplement may affect.

(5) The Legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or decreasing any item therein: **Provided,%** That no item relating to the judiciary shall be decreased, and except as otherwise provided in this constitution, the salary or compensation of any public officer shall not be increased or decreased during his term of office: **Provided further,** That the Legislature shall not increase the estimate

of revenue submitted in the budget without the approval of the governor.

(6) The governor and such representatives of the executive departments, boards, officers and commissions of the state expending or applying for state moneys as have been designated by the governor for this purpose, shall have the right, and when requested by either house of the Legislature it shall be their duty, to appear and be heard with respect to any budget bill, and to answer inquiries relative thereto.

Subsection C—Supplementary Appropriation Bills

(7) Neither house shall consider other appropriations until the budget bill has been finally acted upon by both houses, and no such other appropriations shall be valid except in accordance with the provisions following: (a) Every such appropriation shall be embodied in a separate bill limited to some single work, object or purpose therein stated and called therein a supplementary appropriation bill; (b) each supplementary appropriation bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as shall be directed in the bill unless it appears from such budget that there is sufficient revenue available.

Subsection D—General Provisions

(8) If the budget bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session, the governor shall issue a proclamation extending the session for such further period as may, in his judgment, be necessary for the passage of the bill; but no matter other than the bill shall be considered during such an extension of a session except a provision for the cost thereof.

(9) For the purpose of making up the budget, the governor shall have the power, and it shall be his duty, to require from the proper state officials, including herein all executive departments, all executive and administrative officers, bureaus, boards, commissions and agencies expending or supervising the expenditure of, and all institutions applying for state moneys and appropriations, such itemized estimates and other information, in such form and at such times as he shall direct. The estimates for the legislative department, certified by the presiding officer of each house, and for the judiciary, as provided by law, certified by the auditor, shall be transmitted to the governor in such form and at such times as he shall direct, and shall be included in the budget.

(10) The governor may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies and all institutions applying for state moneys. After such public hearings he may, in his discretion, revise all estimates except those for the legislative and judiciary departments.

(11) Every budget bill or supplementary appropriation bill passed by a majority of the members elected to each house of the Legislature shall, before it becomes a law, be presented to the governor. The governor may veto the bill, or he may disapprove or reduce items or parts of items contained therein. If he approves he shall sign it and thereupon it shall become a law. The bill, items or parts thereof, disapproved or reduced by the governor, shall be

returned with his objections to each house of the Legislature.

Each house shall enter the objections at large upon its journal and proceed to reconsider. If, after reconsideration, two thirds of the members elected to each house agree to pass the bill, or such items or parts thereof, as were disapproved or reduced, the bill, items or parts thereof, approved by two thirds of such members, shall become law, notwithstanding the objections of the governor. In all such cases, the vote of each house shall be determined by yeas and nays to be entered on the journal.

A bill, item or part thereof, which is not returned by the governor within five days (Sundays excepted) after the bill has been presented to him shall become a law in like manner as if he had signed the bill, unless the Legislature, by adjournment, prevents such return, in which case it shall be filed in the office of the secretary of state, within five days after such adjournment, and shall become a law; or it shall be so filed within such five days with the objections of the governor, in which case it shall become law to the extent not disapproved by the governor.

(12) The Legislature may, from time to time, enact such laws, not inconsistent with this section, as may be necessary and proper to carry out its provisions.

(13) In the event of any inconsistency between any of the provisions of this section and any of the other provisions of the constitution, the provisions of this section shall prevail. But nothing herein shall be construed as preventing the governor from calling extraordinary sessions of the Legislature, as provided by section nineteen of this article, or as preventing the Legislature at such extraordinary sessions from considering any emergency appropriation or appropriations.

(14) If any item of any appropriation bill passed under the provisions of this section shall be held invalid upon any ground, such invalidity shall not affect the legality of the bill or of any other item of such bill or bills.

Acts 1917, 2nd Ex. Sess, S.J.R. 1 and Acts 1917, 2nd Ex. Sess., c. 15, ratified Nov. 5, 1918; Acts 1967, H.J.R. 3 and Acts 1968, c. 15, ratified Nov. 5, 1968.

6-52. Revenues applicable to roads

Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, and all other revenue derived from motor vehicles or motor fuels shall, after the deduction of statutory refunds and cost of administration and collection authorized by legislative appropriation, be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and also the payment of the interest and principal on all road bonds heretofore issued or which may be hereafter issued for the construction, reconstruction or improvement of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

Acts 1941, H.J.R. 6 and Acts 1941, c. 11, ratified Nov. 3, 1942.

6-53. Forestry amendment

The Legislature may by general law define and classify forest lands and provide for cooperation by contract between the state and the owner in the planting, cultivation, protection, and harvesting thereof. Forest lands embraced in any such contract may be exempted from all taxation or be taxed in such manner, including the imposition of a severance tax or charge as trees are harvested, as the Legislature may from time to time provide. But any tax measured by valuation shall not exceed the aggregate rates authorized by section one of article ten of this constitution.

Acts 1945, H.J.R. 7 and Acts 1945, c. 22, ratified Nov. 5, 1946.

6-54. Continuity of government amendment

The Legislature of West Virginia, in order to insure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such officers, and (2) to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations.

Acts 1959, H.J.R. 9 and Acts 1959, c. 19, ratified Nov. 8, 1960.

6-55. Revenues and properties applicable to fish and wildlife conservation

Fees, moneys, interest or funds arising from the sales of all permits and licenses to hunt, trap, fish or otherwise hold or capture fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation shall be expended solely for the conservation, restoration, management, educational benefit, recreational use and scientific study of the state's fish and wildlife, including the purchases or other acquisition of property for said purposes and for the administration of the laws pertaining thereto and for no other purposes. In the event that any such properties or facilities are converted to uses other than those specified in this section and the conversion jeopardizes the availability of the receipt of federal funds by the state, the agency of the state responsible for the conservation of its fish and wildlife resources shall receive fair market compensation for the converted properties or facilities. Such compensation shall be expended only for the purposes specified in this section. All moneys shall be deposited within the state treasurer in the "license fund" and other specific funds created especially for fish and wildlife conservation and the public's use of fish and wildlife. Nothing in this section shall prevent the Legislature from reducing or increasing the amount of any permit or license to hunt, trap, fish or otherwise hold or capture fish or wildlife or to repeal or enact additional fees or requirements for the privilege of hunting, trapping, fishing or to otherwise hold or capture fish or wildlife.

Acts 1995, H.J.R. 2, ratified Nov. 5, 1996.

6-56. Revenues applicable to nongame wildlife resources in the state

Notwithstanding any provision of section fifty-two of article six of this Constitution, the legislature may, by general law, provide funding for

conservation, restoration, management, educational benefit and recreational and scientific use of nongame wildlife resources in this state by providing a specialized nongame wildlife motor vehicle registration plate for motor vehicles registered in this state. The registration plate shall be issued on a voluntary basis pursuant to terms and conditions provided by general law for an additional fee above the basic registration and license fees and costs otherwise dedicated to the road fund. Any moneys collected from the issuance of these specialized registration plates in excess of those revenues otherwise dedicated to the road fund shall be deposited in a special revenue account in the state treasury and expended only in accordance with appropriations made by the Legislature as provided by general law for the conservation, restoration, management, educational benefit and recreational and scientific use of nongame wildlife resources in this state. All moneys collected which are in excess of the revenues otherwise dedicated to the road fund shall be deposited by the state treasurer in the "nongame wildlife fund" created especially for nongame wildlife resources in this state.

Acts 1995, S.J.R. 8, ratified Nov. 5, 1996.

ARTICLE VII

7-1. Executive department

The executive department shall consist of a governor, secretary of state, auditor, treasurer, commissioner of agriculture and attorney general, who shall be ex officio reporter of the court of appeals. Their terms of office shall be four years and shall commence on the first Monday after the second Wednesday of January next after their election. They shall reside at the seat of government during their terms of office, keep there the public records, books and papers pertaining to their respective offices and shall perform such duties as may be prescribed by law.

Acts 1933, 1st Ex. Sess. H.J.R. 7 and Acts 1933, 1st Ex. Sess., c. 30, ratified Nov. 6, 1934; Acts 1957, S.J.R. 1 and Acts 1957, c. 19, ratified Nov. 4, 1958.

7-2. Election

An election for governor, secretary of state, auditor, treasurer, commissioner of agriculture and attorney general shall be held at such times and places as may be prescribed by law.

Acts 1901, J.R. 2 and Acts 1901, c. 153, ratified Nov. 4, 1902; Acts 1957, S.J.R. 1 and Acts 1957, c. 19, ratified Nov. 4, 1958.

7-3. Certification of election returns—Contests

The returns of every election for the above named officers shall be sealed up and transmitted by the returning officers to the secretary of state, directed "to the speaker of the House of Delegates," who shall, immediately after the organization of the House, and before proceeding to business, open and publish the same, in the presence of a majority of each house of the Legislature, which shall for that purpose assemble in the hall of the House of Delegates. The person having the highest number of votes for either of said offices, shall be declared duly elected thereto; but if two or more have an equal and the

highest number of votes for the same office, the Legislature shall, by joint vote, choose one of such persons for said office. Contested elections for the office of governor shall be determined by both houses of the Legislature by joint vote, in such manner as may be prescribed by law.

Acts 1901, J.R. 2 and Acts 1901, c. 153, ratified Nov. 4, 1902.

7-4. Eligibility

None of the executive officers mentioned in this article shall hold any other office during the term of his service. A person who has been elected or who has served as governor during all or any part of two consecutive terms shall be ineligible for the office of governor during any part of the term immediately following the second of the two consecutive terms. The person holding the office of governor when this section is ratified shall not be prevented from holding the office of governor during the term immediately following the term he is then serving.

Acts 1901, J.R. 2 and Acts 1901, c. 153, ratified Nov. 4, 1902; Acts 1970, H.J.R. 4 and Acts 1970, c. 23, ratified Nov. 3, 1970.

7-5. Chief executive—Powers

The chief executive power shall be vested in the governor, who shall take care that the laws be faithfully executed.

7-6. Governor's message

The governor shall at the commencement of each session, give to the Legislature information by message, of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall accompany his message with a statement of all money received and paid out by him from any funds, subject to his order, with vouchers therefor; and at the commencement of each regular session, present estimates of the amount of money required by taxation for all purposes.

7-7. Extraordinary legislative sessions

The governor may, on extraordinary occasions convene, at his own instance, the Legislature; but when so convened it shall enter upon no business except that stated in the proclamation by which it was called together.

7-8. Governor to nominate certain officers

The governor shall nominate, and by and with the advice and consent of the Senate, (a majority of all the senators elected concurring by yeas and nays), appoint all officers whose offices are established by this constitution, or shall be created by law, and whose appointment or election is not otherwise provided for; and no such officer shall be appointed or elected by the Legislature.

7-9. Recess vacancies—How filled

In case of a vacancy, during the recess of the Senate, in any office which is

not elective, the governor shall, by appointment, fill such vacancy, until the next meeting of the Senate, when he shall make a nomination for such office, and the person so nominated, when confirmed by the Senate, (a majority of all the senators elected concurring by yeas and nays) shall hold his office during the remainder of the term, and until his successor shall be appointed and qualified. No person, after being rejected by the Senate, shall be again nominated for the same office, during the same session, unless at the request of the Senate; nor shall such person be appointed to the same office during the recess of the Senate.

7-10. Governor's power of removal

The governor shall have power to remove any officer whom he may appoint in case of incompetency, neglect of duty, gross immorality, or malfeasance in office; and he may declare his office vacant and fill the same as herein provided in other cases of vacancy.

7-11. Executive may remit fines and forfeitures

The governor shall have power to remit fines and penalties in such cases and under such regulations as may be prescribed by law; to commute capital punishment and, except where the prosecution has been carried on by the House of Delegates, to grant reprieves and pardons after conviction; but he shall communicate to the Legislature at each session the particulars of every case of fine or penalty remitted, or punishment commuted and of reprieve or pardon granted, with his reasons therefor.

7-12. Governor commander-in-chief of military forces

The governor shall be commander-in-chief of the military forces of the state, (except when they shall be called into the service of the United States) and may call out the same to execute the laws, suppress insurrection and repel invasion.

7-13. Official bond of state officers

When any state officer has executed his official bond, the governor shall, for such causes and in such manner as the Legislature may direct, require of such officer reasonable additional security; and if the security is not given as required his office shall be declared vacant, in such manner as may be provided by law.

7-14. Governor's Approval or Disapproval of Bills Passed by the Legislature

Subject to the provisions of section fifteen of this article, every bill passed by the Legislature shall, before it becomes a law, be presented to the governor. If he approves, he shall sign it, and thereupon it shall become a law; but if not, he shall return it, with his objections, to the house in which it originated, which house shall enter the objections at large upon its journal, and may proceed to reconsider the returned bill. Notwithstanding the provisions of section fifty-one, article six of this constitution, any such bill may be reconsidered even if the Legislature is at the time in extended session for the sole purpose of considering the budget bill, as specified in said section fifty-one. If, after any such reconsideration, a majority of the

members elected to that house agree to pass the bill, it shall be sent, together with the objections of the governor to the other house, by which it may likewise be reconsidered, and if approved by a majority of the members elected to that house, it shall become a law, notwithstanding the objections of the governor. If upon any such reconsideration the bill is amended and reenacted, then it shall be again sent to the governor and he shall act upon it as if it were before him for the first time. In all cases, the vote of each house shall be determined by yeas and nays to be entered on the journal.

Any bill which shall not be returned by the governor within five days, Sundays excepted, after it shall have been presented to him shall be a law, in the same manner as if he had signed it, unless the Legislature shall, by adjournment sine die, prevent its return, in which case it shall be filed with his objections in the office of the secretary of state within fifteen days, Sundays excepted, after such adjournment, or become a law.

Acts 1970, H.J.R. 8 and Acts 1970, c. 22, ratified Nov. 3, 1970.

7-15. Governor's approval or disapproval of bills making appropriations of money

A bill passed by the Legislature making appropriations of money must be submitted to the governor for his approval or disapproval to the extent and only to the extent required by section fifty-one, article six of this constitution, and any provision therein contained as to such approval or disapproval shall govern and control as to any such bill.

Acts 1970, H.J.R. 8 and Acts 1970, c. 22, ratified Nov. 3, 1970.

7-16. Vacancy in governorship, how filled

In case of the death, conviction or impeachment, failure to qualify, resignation, or other disability of the governor, the president of the Senate shall act as governor until the vacancy is filled, or the disability removed; and if the president of the Senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the House of Delegates; and in all other cases where there is no one to act as governor, one shall be chosen by joint vote of the Legislature. Whenever a vacancy shall occur in the office of governor before the first three years of the term shall have expired, a new election for governor shall take place to fill the vacancy.

7-17. Vacancies in other executive departments

If the office of secretary of state, auditor, treasurer, commissioner of agriculture or attorney general shall become vacant by death, resignation, or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be prescribed by law. The subordinate officers of the executive department and the officers of all public institutions of the state shall keep an account of all moneys received or disbursed by them, respectively, from all sources, and for every service performed, and make a semiannual report thereof to the governor under oath or affirmation; and any officer who shall wilfully make a false report shall be

deemed guilty of perjury.

Acts 1901, J.R. 2 and Acts 1901, c. 153, ratified Nov. 4, 1902; Acts 1957, S.J.R. 1 and Acts 1957, c. 19, ratified Nov. 4, 1958.

7-18. Executive heads to make reports

The subordinate officers of the executive department and the officers of all the public institutions of the state, shall, at least ten days preceding each regular session of the Legislature, severally report to the governor, who shall transmit such report to the Legislature; and the governor may at any time require information in writing, under oath, from the officers of his department, and all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices.

7-19. Salaries of Officials

The officers named in this article shall receive for their services a salary to be established by law, which shall not be increased or diminished during their official terms, and they shall not, after the expirations of the terms of those in office at the adoption of this amendment, receive to their own use any fees, costs, perquisites of office or other compensation, and all fees that may hereafter be payable by law, for any service performed by any officer provided for in this article of the Constitution, shall be paid in advance into the state treasury.

Acts 1901, J.R. 1 and Acts 1901, c. 153, ratified Nov. 4, 1902.

ARTICLE VIII

8-1. Judicial power

The judicial power of the state shall be vested solely in a supreme court of appeals and in the circuit courts, and in such intermediate appellate courts and magistrate courts as shall be hereafter established by the Legislature, and in the justices, judges and magistrates of such courts.

Acts 1879, J.R. 10 and Acts 1879, c. 49, ratified Oct. 12, 1880; Acts 1974, S.J.R. 6, ratified Nov. 5, 1974.

8-2. Supreme court of appeals

The supreme court of appeals shall consist of five justices. A majority of the justices of the court shall constitute a quorum for the transaction of business.

The justices shall be elected by the voters of the state for a term of twelve years, unless sooner removed or retired as authorized in this article. The Legislature may prescribe by law whether the election of such justices is to be on a partisan or nonpartisan basis.

Provision shall be made by rules of the supreme court of appeals for the selection of a member of the court to serve as chief justice thereof. If the

chief justice is temporarily disqualified or unable to serve, one of the justices of the court designated in accordance with the rules of the court shall serve temporarily in his stead.

When any justice is temporarily disqualified or unable to serve, the chief justice may assign a judge of a circuit court or of an intermediate appellate court to serve from time to time in his stead.

8-3. Supreme court of appeals; jurisdiction and powers; officers and employees; terms

The supreme court of appeals shall have original jurisdiction of proceedings in habeas corpus, mandamus, prohibition and certiorari.

The court shall have appellate jurisdiction in civil cases at law where the matter in controversy, exclusive of interest and costs, is of greater value or amount than three hundred dollars unless such value or amount is increased by the Legislature; in civil cases in equity; in controversies concerning the title or boundaries of land; in proceedings in quo warranto, habeas corpus, mandamus, prohibition and certiorari; and in cases involving personal freedom or the constitutionality of a law. It shall have appellate jurisdiction in criminal cases, where there has been a conviction for a felony or misdemeanor in a circuit court, and such appellate jurisdiction as may be conferred upon it by law where there has been such a conviction in any other court. In criminal proceedings relating to the public revenue, the right of appeal shall belong to the state as well as to the defendant. It shall have such other appellate jurisdiction, in both civil and criminal cases, as may be prescribed by law.

The court shall have power to promulgate rules for all cases and proceedings, civil and criminal, for all of the courts of the state relating to writs, warrants, process, practice and procedure, which shall have the force and effect of law.

The court shall have general supervisory control over all intermediate appellate courts, circuit courts and magistrate courts. The chief justice shall be the administrative head of all the courts. He may assign a judge from one intermediate appellate court to another, from one circuit court to another, or from one magistrate court to another, for temporary service. The court shall appoint an administrative director to serve at its pleasure at a salary to be fixed by the court. The administrative director shall, under the direction of the chief justice, prepare and submit a budget for the court.

The officers and employees of the supreme court of appeals, including the clerk and the law librarian, shall be appointed and may be removed by the court. Their duties and compensation shall be prescribed by the court.

The number, times and places of the terms of the supreme court of appeals shall be prescribed by law. There shall be at least two terms of the court held annually.

8-4. Writ of error, supersedeas and appeal; scope and form of decisions

A writ of error, supersedeas or appeal shall be allowed by the supreme court of appeals, or a justice thereof, only upon a petition assigning error in the

judgment or proceedings of a court and then only after the court, or a justice thereof, shall have examined and considered the record and is satisfied that there probably is error in the record, or that it presents a point proper for the consideration of the court.

No decision rendered by the court shall be considered as binding authority upon any court, except in the particular case decided, unless a majority of the justices of the court concur in such decision.

When a judgment or order of another court is reversed, modified or affirmed by the court, every point fairly arising upon the record shall be considered and decided; the reasons therefor shall be concisely stated in writing and preserved with the record; and it shall be the duty of the court to prepare a syllabus of the points adjudicated in each case in which an opinion is written and in which a majority of the justices thereof concurred, which shall be prefixed to the published report of the case.

8-5. Circuit Courts

The judge or judges of each circuit court shall be elected by the voters of the circuit for a term of eight years, unless sooner removed or retired as authorized in this article. The Legislature may prescribe by law whether the election of such judges is to be on a partisan or nonpartisan basis. Upon the effective date of this article, each statutory court of record of limited jurisdiction existing in the state immediately prior to such effective date shall become part of the circuit court for the circuit in which it presently exists, and each such judge of such statutory court of record of limited jurisdiction shall thereupon become a judge of such circuit court. During his continuance in office, a judge of a circuit court shall reside in the circuit of which he is a judge.

The Legislature may increase, or other than during term of office decrease, the number of circuit judges within any circuit. The judicial circuits in existence on the effective date of this article shall remain as so constituted until changed by law, and the Legislature, at any session thereof held in the odd-numbered year next preceding the time for the full-term election of the judges thereof, may rearrange the circuits and may increase or diminish the number of circuits. A judge of a circuit court in office at the time of any such change shall continue as a judge of the circuit in which he shall continue to reside after such change until his term shall expire, unless sooner removed or retired as authorized in this article.

There shall be at least one judge for each circuit court and as many more as may be necessary to transact the business of such court. If there be two or more judges of a circuit court, provision shall be made by rules of such circuit court for the selection of one of such judges to serve as chief judge thereof. If the chief judge is temporarily disqualified or unable to serve, one of the judges of the circuit court designated in accordance with the rules of such court shall serve temporarily in his stead.

The supreme court of appeals shall provide for dividing the business of those circuits in which there shall be more than one judge between the judges thereof so as to promote and secure the convenient and expeditious transaction of such business.

In every county in the state the circuit court for such county shall sit at least three times in each year. The supreme court of appeals shall designate the times at which each circuit court shall sit, but until this action is taken by the supreme court of appeals, each circuit court shall sit at the times prescribed by law. If there be two or more judges of a circuit court, such judges may hold court in the same county or in different counties within the circuit at the same time or at different times.

8-6. Circuit court; jurisdiction, authority and power

Circuit courts shall have control of all proceedings before magistrate courts by mandamus, prohibition and certiorari.

Circuit courts shall have original and general jurisdiction of all civil cases at law where the value or amount in controversy, exclusive of interest and costs, exceeds one hundred dollars unless such value or amount is increased by the Legislature; of all civil cases in equity; of proceedings in habeas corpus, mandamus, quo warranto, prohibition and certiorari; and of all crimes and misdemeanors. On and after January one, one thousand nine hundred seventy-six, the Legislature may provide that all matters of probate, the appointment and qualification of personal representatives, guardians, committees and curators, and the settlements of their accounts, shall be vested exclusively in circuit courts or their officers, but until such time as the Legislature provides otherwise, jurisdiction in such matters shall remain in the county commissions or tribunals existing in lieu thereof or the officers of such county commissions or tribunals.

Circuit courts shall have appellate jurisdiction in all cases, civil and criminal, where an appeal, writ of error or supersedeas is allowed by law to the judgment or proceedings of any magistrate court, unless such jurisdiction is conferred by law exclusively upon an intermediate appellate court or the supreme court of appeals.

Circuit courts shall also have such other jurisdiction, authority or power, original or appellate or concurrent, as may be prescribed by law.

Subject to the approval of the supreme court of appeals, each circuit court shall have the authority and power to establish local rules to govern the court.

Subject to the supervisory control of the supreme court of appeals, each circuit court shall have general supervisory control over all magistrate courts in the circuit. Under the direction of the chief justice of the supreme court of appeals, the judge of the circuit court, or the chief judge thereof if there be more than one judge of the circuit court, shall be the administrative head of the circuit court and all magistrate courts in the circuit.

8-7. General provisions relating to justices, judges and magistrates

All justices, judges and magistrates must be residents of this state and shall be commissioned by the governor. No person may hereafter be elected as a justice of the supreme court of appeals unless he has been admitted to practice law for at least ten years prior to his election, and no person may hereafter

be elected as a judge of a circuit court unless he has been admitted to practice law for at least five years prior to his election.

Justices, judges and magistrates shall receive the salaries fixed by law, which shall be paid entirely out of the state treasury, and which may be increased but shall not be diminished during their term of office, and they shall receive expenses as provided by law. The salary of a circuit judge shall also not be diminished during his term of office by virtue of the statutory courts of record of limited jurisdiction of his circuit becoming a part of such circuit as provided in section five of this article.

Any justice of the supreme court of appeals and any judge of any circuit court, including any statutory court of record of limited jurisdiction which becomes a part of a circuit court by virtue of section five of this article, in office on the effective date of this article shall continue in office until his term shall expire, unless sooner removed or retired as authorized in this article: Provided, That as to the term of any judge of a statutory court of record of limited jurisdiction which does not expire on the thirty-first day of December, one thousand nine hundred seventy-six, the following provisions shall govern and control unless any such judges shall be sooner removed or retired as authorized in this article: (1) If the term would otherwise expire before the thirty-first day of December, one thousand nine hundred seventy-six, such term shall continue through and expire on said thirty-first day of December, one thousand nine hundred seventy-six, (2) if the term would otherwise expire on the first day of January, one thousand nine hundred seventy-seven, such term shall terminate and expire on the thirty-first day of December, one thousand nine hundred seventy-six, and (3) if the term would otherwise expire after the thirty-first day of December, one thousand nine hundred seventy-six, but other than on the first day of January, one thousand nine hundred seventy-seven, such term shall continue through and expire on the thirty-first day of December, one thousand nine hundred eighty-four.

No justice, judge or magistrate shall hold any other office, or accept any appointment or public trust, under this or any other government; nor shall he become a candidate for any elective public office or nomination thereto, except a judicial office; and the violation of any of these provisions shall vacate his judicial office. No justice of the supreme court of appeals or judge of an intermediate appellate court or of a circuit court shall practice the profession of law during the term of his office, but magistrates who are licensed to practice this profession may practice law except to the extent prohibited by the Legislature.

If from any cause a vacancy shall occur in the office of a justice of the supreme court of appeals or a judge of a circuit court, the governor shall issue a directive of election to fill such vacancy in the manner prescribed by law for electing a justice or judge of the court in which the vacancy exists, and the justice or judge shall be elected for the unexpired term; and in the meantime, the governor shall fill such vacancy by appointment until a justice or judge shall be elected and qualified. If the unexpired term be less than two years, or such additional period, not exceeding a total of three years, as may be prescribed by law, the governor shall fill such vacancy by appointment for the unexpired term.

8-8. Censure, temporary suspension and retirement of justices, judges and

magistrates; removal

Under its inherent rule-making power, which is hereby declared, the supreme court of appeals shall, from time to time, prescribe, adopt, promulgate and amend rules prescribing a judicial code of ethics, and a code of regulations and standards of conduct and performances for justices, judges and magistrates, along with sanctions and penalties for any violation thereof, and the supreme court of appeals is authorized to censure or temporarily suspend any justice, judge or magistrate having the judicial power of the state, including one of its own members, for any violation of any such code of ethics, code of regulations and standards, or to retire any such justice, judge or magistrate who is eligible for retirement under the West Virginia judges' retirement system (or any successor or substituted retirement system for justices, judges and magistrates of this state) and who, because of advancing years and attendant physical or mental incapacity, should not, in the opinion of the supreme court of appeals, continue to serve as a justice, judge or magistrate.

No justice, judge or magistrate shall be censured, temporarily suspended or retired under the provisions of this section unless he shall have been afforded the right to have a hearing before the supreme court of appeals, nor unless he shall have received notice of the proceedings, with a statement of the cause or causes alleged for his censure, temporary suspension or retirement, at least twenty days before the day on which the proceeding is to commence. No justice of the supreme court of appeals may be temporarily suspended or retired unless all of the other justices concur in such temporary suspension or retirement. When rules herein authorized are prescribed, adopted and promulgated, they shall supersede all laws and parts of laws in conflict therewith, and such laws shall be and become of no further force or effect to the extent of such conflict.

A retired justice or judge may, with his permission and with the approval of the supreme court of appeals, be recalled by the chief justice of the supreme court of appeals for temporary assignment as a justice of the supreme court of appeals, or judge of an intermediate appellate court, a circuit court or a magistrate court.

A justice or judge may be removed only by impeachment in accordance with the provisions of section nine, article four of this constitution. A magistrate may be removed from office in the manner provided by law for the removal of county officers.

8-9. Clerks of circuit courts

The voters of each county shall elect a clerk of the circuit court, whose term of office shall be six years; his duties, responsibilities, compensation and the manner of removing him from office shall be prescribed by law. Whenever the clerk shall be so situated as to make it improper for him to act in any matter, a clerk to act therein shall be appointed by the judge of the circuit court or the chief judge thereof, if there be more than one judge of the circuit court. Vacancies shall be filled in the manner prescribed by law. A clerk of the circuit court in office on the effective date of this article shall continue in office until his term shall expire, unless sooner removed in the manner prescribed by law.

8-10. Magistrate courts

The Legislature shall establish in each county a magistrate court or courts with the right of appeal as prescribed by law. Such courts shall be courts of record if so prescribed by law.

The Legislature shall determine the qualifications and the number of magistrates for each such court to be elected by the voters of the county, and the Legislature may prescribe by law whether the election of such magistrates is to be on a partisan or nonpartisan basis: Provided, That any person in office as a justice of the peace of this state on the effective date of this article and who has served as a justice of the peace of this state for at least one year prior to such effective date shall, insofar as any qualifications established by the Legislature for the office of magistrate are concerned and notwithstanding the same, be deemed qualified for life to run for election as a magistrate of any such court: And provided further, That the Legislature shall not have the power to require that a magistrate be a person licensed to practice the profession of law, nor shall any justice or judge of any higher court establish any rules which by their nature would dictate or mandate that a magistrate be a person licensed to practice the profession of law. The magistrates of such courts shall hold their offices for the term of four years unless sooner removed or retired as authorized in this article. The Legislature shall also determine the number of officers to be selected for each such court and the manner of their selection. During his continuance in office a magistrate or officer of such a court shall reside in the county for which he is elected or selected. The Legislature shall prescribe by law for the filling of any vacancy in the office of a magistrate or officer of such court.

The jurisdiction of a magistrate court shall extend throughout the county for which it is established, shall be uniform for all counties of the state and shall be subject to such regulations as to venue of actions and the counties in which process may be executed or served on parties or witnesses as may be prescribed by law. The times and places for holding such courts shall be designated or determined in such manner as shall be prescribed by law.

Magistrate courts shall have such original jurisdiction in criminal matters as may be prescribed by law, but no person shall be convicted or sentenced for a felony in such courts. In criminal cases, the procedure may be by information or warrant of arrest, without presentment or indictment by a grand jury. Such courts shall have original jurisdiction in all civil cases at law wherein the value or amount in controversy, exclusive of interest and costs, shall not exceed fifteen hundred dollars, unless such amount and value shall be increased by the Legislature, except such civil matters as may be excluded from their jurisdiction by law; and, to the extent provided by law, in proceedings involving real estate when the title thereto is not in controversy. No judgment of a magistrate in any proceeding involving real estate or any right pertaining thereto shall bar the title of any party or any remedy therefor.

The division of the business of a magistrate court in any county in which there shall be more than one magistrate of such court between the magistrates thereof so as to promote and secure the convenient and expeditious transaction of such business shall be determined in such manner or by such method as shall be prescribed by the judge of the circuit court of such county, or the chief judge thereof, if there be more than one judge of such circuit court.

In a trial by jury in a magistrate court, the jury shall consist of six jurors who are qualified as prescribed by law.

No magistrate or any officer of a magistrate court shall be compensated for his services on a fee basis or receive to his own use for his services any pecuniary compensation, reward or benefit other than the salary prescribed by law.

Acts 1976, c. 33, provided that all references to "justice of the peace" in the Code of West Virginia mean "magistrate." See § 50-1-17.

8-11. Municipal courts

The Legislature may provide for the establishment in incorporated cities, towns or villages of municipal, police or mayors' courts, and may also provide the manner of selection of the judges of such courts. Such courts shall have jurisdiction to enforce municipal ordinances, with the right of appeal as prescribed by law. Until otherwise provided by law, all such courts heretofore established shall remain and continue as now constituted, and with the same right of appeal, insofar as their jurisdiction to enforce municipal ordinances is concerned; but on and after January one, one thousand nine hundred seventy-seven, any other jurisdiction now exercised by such courts shall cease. No judge of a municipal, police or mayor's court or any officer thereof shall be compensated for his services on a fee basis or receive to his own use for his services any pecuniary compensation, reward or benefit other than the salary prescribed therefor.

8-12. Issuance and execution of writs, warrants and process; admission to bail

The Legislature may designate the courts and officers or deputies thereof who shall have the power to issue, execute or serve such writs, warrants or any other process as may be prescribed by law, and may specify before what courts or officers thereof such writs, warrants or other process shall be returnable. The Legislature may also designate the courts and officers or deputies thereof who shall have the power to admit persons to bail. No person exercising such powers shall be compensated therefor on a fee basis.

8-13. Parts of existing law effective

Except as otherwise provided in this article, such parts of the common law, and of the laws of this state as are in force on the effective date of this article and are not repugnant thereto, shall be and continue the law of this state until altered or repealed by the Legislature.

8-14. Pending causes; transfer of causes; records

Until otherwise provided by law, all matters pending in any court on the effective date of this article shall remain and be prosecuted in the court in which they are pending.

Whenever the jurisdiction, powers or duties of any court are terminated or changed, the Legislature shall provide by law for the transfer of all matters pending therein as to which the court shall not thereafter act, together with

all of the records and papers pertaining thereto, to a court having jurisdiction, powers or duties as to such matters, and shall provide for the prosecution therein of such matters as if then and there pending.

All records and papers pertaining to matters already disposed of in any court shall be preserved or disposed of in a manner prescribed by law.

8-15. Offices phased out; effective date of article; certain provisions to be operable at time specified; effect of article on certain provisions of constitution

Notwithstanding the provisions of section one of this article, the office of justice of the peace, as heretofore constituted, shall continue until January one, one thousand nine hundred seventy-seven. No person shall be elected to the office of justice of the peace or constable at the general election to be held in the year one thousand nine hundred seventy-six, and said offices shall cease to exist as of January one, one thousand nine hundred seventy-seven.

This article shall take effect from the time of ratification, but in any case where it is specified in this article that a provision shall become operable on and after a certain date, such date shall govern and control as to the operable date of such provision.

The provisions of this article shall supersede and prevail over all other provisions of this constitution which are expressly or impliedly in conflict or inconsistent therewith.

Acts 1976, c. 33, provided that all references to "justice of the peace" in the Code of West Virginia mean "magistrate." See § 50-1-17.

Acts 1976, c. 33, abolished the office of the constable and transferred all duties and powers of the constables to deputy sheriffs. See § 50-1-17.

8-16. Family Courts

There is hereby created under the general supervisory control of the supreme court of appeals a unified family court system in the state of West Virginia to rule on family law and related matters. Family courts shall have original jurisdiction in the areas of family law and related matters as may hereafter be established by law. Family courts may also have such further jurisdiction as established by law.

Family court judges shall be elected by the voters for a term prescribed by law not to exceed eight years, unless sooner removed or retired as authorized in this article. Family court judges must be admitted to practice law in this state for at least five years prior to their election. Family court judges shall reside in the circuit for which he or she is a judge.

The necessary number of family court judges, the number of family court circuits and the arrangement of circuits shall be established by law. Staggered terms of office for family court judges may also be established by law.

The supreme court of appeals shall have general supervisory control over all

family courts and may provide for the assignment of a family court judge to another court for temporary service. The provisions of section seven and eight of this article applicable to circuit judges shall also apply to family court judges.

Acts 1999, H.J.R. 30, ratified Nov. 7, 2000.

ARTICLE IX

9-1. County organization

The voters of each county shall elect a surveyor of lands, a prosecuting attorney, a sheriff, and one and not more than two assessors, who shall hold their respective offices for the term of four years.

9-2. Constables, coroners and overseers of the poor

There shall also be elected in each district of the county, by the voters thereof, one constable, and if the population of any district shall exceed twelve hundred, an additional constable, whose term of office shall be four years, and whose powers as such shall extend throughout their county. The assessor shall, with the advice and consent of the county court, have the power to appoint one or more assistants. Coroners, overseers of the poor and surveyors of roads, shall be appointed by the county court. The foregoing officers, except the prosecuting attorneys, shall reside in the county and district for which they shall be respectively elected.

Acts 1976, c. 33, abolished the office of the constable and transferred all duties and powers of the constables to deputy sheriffs. See § 50-1-17.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

9-3. Sheriffs

A person who has been elected or who has served as sheriff during all or any part of two consecutive terms shall be ineligible for the office of sheriff during any part of the term immediately following the second of the two consecutive terms. The person holding the office of sheriff when this section is ratified shall not be prevented from holding the office of sheriff during the term immediately following the term he is then serving.

Acts 1973, 1st Ex. Sess., H.J.R. 3, ratified Nov. 6, 1973.

9-4. Malfeasance and misfeasance in office

The presidents of the county courts, the justices of the peace, sheriffs, prosecuting attorneys, clerks of the circuit and of the county courts, and all other county officers shall be subject to indictment for malfeasance, misfeasance, or neglect of official duty and upon conviction thereof, their office shall become vacant.

Acts 1976, c. 33, provided that all references to "justice of the peace" in the code of West Virginia mean "magistrate." See § 50-1-17.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

9-5. Commissioning of officers not otherwise provided for

The Legislature shall provide for commissioning such of the officers herein mentioned, as it may deem proper, not provided for in this constitution, and may require any class of them to give bond with security for the faithful discharge of the duties of their respective offices.

9-6. Compensation—Deputies

It shall further provide for the compensation, the duties and responsibilities of such officers, and may provide for the appointment of their deputies and assistants by general laws.

9-7. Conservators of the peace

The president of the county court and every justice and constable shall be a conservator of the peace throughout his county.

Acts 1976, c. 33, abolished the office of the constable and transferred all duties and powers of the constables to deputy sheriffs. See § 50-1-17.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

9-8. Formation of new counties

No new county shall hereafter be formed in this state with an area of less than four hundred square miles; nor with a population of less than six thousand; nor shall any county, from which a new county, or part thereof shall be taken, be reduced in area below four hundred square miles, nor in population below six thousand. Nor shall a new county be formed without the consent of a majority of the voters residing within the boundaries of the proposed new county, and voting on the question.

9-9. County commissions

The office of county court or tribunal in lieu thereof heretofore created is hereby continued in all respects as heretofore constituted, but from and after the effective date of this amendment shall be designated as the county commission and wherever in this constitution, the code of West Virginia, acts of the Legislature or elsewhere in law a reference is made to the county court of any county, such reference shall be read, construed and understood to mean the county commission.

Except as otherwise provided in section eleven or thirteen of this article, there shall be in each county of the state a county commission, composed of three commissioners, and two of said commissioners shall be a quorum for the transaction of business. It shall hold four regular sessions in each year, and at such times as may be fixed and entered of record by the said commission. Provisions may be made by law for holding special sessions of said commissions.

Acts 1974, S.J.R. 6, ratified Nov. 5, 1974.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

9-10. Terms of office of county commissioners

The commissioners shall be elected by the voters of the county, and hold their office for a term of six years, except that at the first meeting of said commissioners they shall designate by lot, or otherwise in such manner as they may determine, one of their number, who shall hold his office for a term of two years, one for four years, and one for six years, so that one shall be elected every two years; but no two of said commissioners shall be elected from the same magisterial district. If two or more persons residing in the same district shall receive the greater number of votes cast at any election, then only the one of such persons receiving the highest number shall be declared elected, and the person living in another district, who shall receive the next highest number of votes, shall be declared elected. Said commissioners shall annually elect one of their number as president. The commissioners of said commissions, now in office, shall remain therein for the term for which they have been elected, unless sooner removed therefrom, in the manner prescribed by law.

Acts 1974, S.J.R. 6, ratified Nov. 5, 1974.

9-11. Powers of county commissions

The county commissions, through their clerks, shall have the custody of all deeds and other papers presented for record in their counties, and the same shall be preserved therein, or otherwise disposed of, as now is, or may be prescribed by law. They shall also, under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of their counties, including the establishment and regulation of roads, ways, bridges, public landings, ferries and mills, with authority to lay and disburse the county levies: Provided, That no license for the sale of intoxicating liquors in any incorporated city, town or village, shall be granted without the consent of the municipal authorities thereof, first had and obtained. Until otherwise prescribed by law, they shall, in all cases of contest, be the judge of the election, qualification and returns of their own members, and of all county and district officers, subject to such regulations, by appeal or otherwise, as may be prescribed by law. Such commissions may exercise such other powers, and perform such other duties, not of a judicial nature, as may be prescribed by law. Such existing tribunals as have been heretofore established by the Legislature to act as to police and fiscal matters in lieu of county commissions in certain counties shall remain and continue as now constituted in the counties in which they have been respectively established until otherwise provided by law, and they shall have and exercise the powers which the county commissions have under this article, and, until otherwise provided by law, such clerk as is mentioned in section twelve of this article shall exercise any powers and discharge any duties, heretofore conferred on, or required of, any such tribunal or the clerk of such tribunal respecting the recording and preservation of deeds and other papers presented for record and such other matters as are prescribed by law to be

exercised and discharged by the clerk thereof.

Acts 1974, S.J.R. 6, ratified Nov. 5, 1974.

9-12. Clerk of county commission

The voters of each county shall elect a clerk of the county commission, whose term of office shall be six years. His duties and compensation and the manner of his removal shall be prescribed by law. But the clerks of said commissions, now in office, shall remain therein for the term for which they have been elected, unless sooner removed therefrom, in the manner prescribed by law.

Acts 1974, S.J.R. 6, ratified Nov. 5, 1974.

9-13. Reformation of county commissions

The Legislature shall, upon the application of any county, reform, alter or modify the county commission established by this article in such county, and in lieu thereof, with the assent of a majority of the voters of such county voting at an election, create another tribunal for the transaction of the business required to be performed by the county commission created by this article. Whenever a county commission shall receive a petition signed by ten percent of the registered voters of such county requesting the reformation, alteration or modification of such county commission, it shall be the mandatory duty of such county commission to request the Legislature, at its next regular session thereafter, to enact an act reforming, altering or modifying such county commission and establishing in lieu thereof another tribunal for the transaction of the business required to be performed by such county commission, such act to take effect upon the assent of the voters of such county, as aforesaid. Whenever any such tribunal is established, all of the provisions of this article in relation to the county commission shall be applicable to the tribunal established in lieu of said commission. When such tribunal has been established, it shall continue to act in lieu of the county commission until otherwise provided by law.

Acts 1974, S.J.R. 6, ratified Nov. 5, 1974.

ARTICLE X

10-1. Taxation and finance

Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the state, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value; except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including livestock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon and upon all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants, one dollar; and

upon all other property situated outside of municipalities, one dollar and fifty cents; and upon all other property situated within municipalities, two dollars; and the Legislature shall further provide by general law for increasing the maximum rates, authorized to be fixed, by the different levying bodies upon all classes of property, by submitting the question to the voters of the taxing units affected, but no increase shall be effective unless at least sixty percent of the qualified voters shall favor such increase, and such increase shall not continue for a longer period than three years at any one time, and shall never exceed by more than fifty percent the maximum rate herein provided and prescribed by law; and the revenue derived from this source shall be apportioned by the Legislature among the levying units of the state in proportion to the levy laid in said units upon real and other personal property; but property used for educational, literary, scientific, religious or charitable purposes, all cemeteries, public property, the personal property, including livestock, employed exclusively in agriculture as above defined and the products of agriculture as so defined while owned by the producers may by law be exempted from taxation; household goods to the value of two hundred dollars shall be exempted from taxation. The Legislature shall have authority to tax privileges, franchises, and incomes of persons and corporations and to classify and graduate the tax on all incomes according to the amount thereof and to exempt from taxation incomes below a minimum to be fixed from time to time, and such revenues as may be derived from such tax may be appropriated as the Legislature may provide. After the year nineteen hundred thirty-three, the rate of the state tax upon property shall not exceed one cent upon the hundred dollars valuation, except to pay the principal and interest of bonded indebtedness of the state now existing.

Acts 1932, Ex. Sess., H.J.R. 3 and Acts 1932, Ex. Sess., c. 10, ratified Nov. 8, 1932.

10-1a. Exemptions from and Additional Adjustments to Ad Valorem Property Taxation

Notwithstanding the provisions of sections one and one-b of this article, household goods and personal effects, if such household goods or personal effects are not held or used for profit, and all intangible personal property shall be exempt from ad valorem property taxation: Provided, That intangible personal property may be made subject to such taxation only to the extent provided by the Legislature by general law not inconsistent with this section.

The Legislature shall not impose ad valorem property taxation upon money, bank deposits and other investments determined by such law to be in the nature of deposits in a bank or other financial institution, or upon pensions, moneys or investments determined by the Legislature in such law to be in lieu of or otherwise in the nature of pensions.

The Legislature by general law may exempt from such taxation any amount of the value of all or certain intangible personal property and any type, group or class of such intangibles but such exemptions shall be uniform throughout the state. No tax imposed upon such intangibles shall be at a rate or rates in excess of the maximum rate permitted to be imposed upon personal property employed exclusively in agriculture as provided in sections one, one-b or ten of this article, as the case may be, in the county wherein the intangible personal property has situs, as such situs is determined by the Legislature in

such general law.

The valuations with respect to property acquired or created subsequent to any statewide reappraisal and the valuations with respect to any intangible personal property subjected to ad valorem property taxation pursuant to this section shall be allocated and phased-in over a period of years and be valued with respect to the same base year as other property subject to ad valorem property taxation in order to provide for equitable and similar treatment of such property subsequently acquired or created or such intangible personal property as compared to similarly situated previously existing property of similar value whose owner is receiving the benefit of any allocation and phase-in allowed pursuant to section one-b of this article.

Any intangible personal property which would be subject to ad valorem property taxation under prior provisions of this Constitution shall continue to be subjected to such taxation as provided by and in accordance with current statutory law for the assessment of such taxes upon such property, which laws are hereby validated for such purpose or purposes, until the first day of July in the year one thousand nine hundred eighty-five or until the first statewide reappraisal of property pursuant to section one-b of this article shall be first implemented and employed to fix values for ad valorem property taxation, whichever shall last occur, and thereafter no intangible personal property shall be subject to such taxation save for and except as provided by the Legislature by general law enacted after the ratification of the amendment of this section in the year one thousand nine hundred eighty-four.

Acts 1957, S.J.R. 4 and Acts 1957, c. 16, ratified Nov. 4, 1958; Acts 1972, S.J.R. 11, ratified Nov. 7, 1972; Acts 1984, H.J.R. 21, ratified Nov. 6, 1984.

10-1b. Property Tax Limitation and Homestead Exemption Amendment of 1982

Ad valorem property taxation shall be in accordance with this section and other applicable provisions of this article not inconsistent with this section.

Subsection A—Value; Rate of Assessment; Exceptions

Notwithstanding any other provisions of this Constitution and except as otherwise provided in this section, all property subject to ad valorem taxation shall be assessed at sixty percent of its value, as directed to be ascertained in this section, except that the Legislature may from time to time, by general law agreed to by two thirds of the members elected to each house, establish a higher percentage for the purposes of this paragraph, which percentage shall be uniform as to all classes of property defined in section one of this article, but not more than one hundred percent of such value.

Notwithstanding the foregoing, for the first day of July, one thousand nine hundred eighty-two, and the first day of July of each year thereafter until the values may be fixed as a result of the first statewide reappraisal hereinafter required, assessments shall be made under the provisions of current statutory law, which is hereby validated for such purpose until and unless amended by the Legislature. Assessment and taxation in accord with this section shall be deemed to be equal and uniform for all purposes.

Subsection B—Determination of Value

The Legislature shall provide by general law for periodic statewide reappraisal of all property, which reappraisal shall be related for all property to a specified base year which, as to each such reappraisal, shall be uniform for each appraisal for all classes of property and all counties. In such law, the Legislature shall provide for consideration of (1) trends in market values over a fixed period of years prior to the base year, (2) the location of the property, and (3) such other factors and methods as it may determine: Provided, That with respect to reappraisal of all property upon the base year of one thousand nine hundred eighty, such reappraisals are deemed to be valid and in compliance with this section: Provided, however, That with respect to farm property, as defined from time to time by the Legislature by general law, the determination of value shall be according to its fair and reasonable value for farming purposes, as may be defined by general law.

The results of each statewide appraisal shall upon completion be certified and published and errors therein may be corrected, all as provided by general law. The first such statewide appraisal shall be completed, certified and published on or before the thirty-first day of March, one thousand nine hundred eighty-five, for use when directed by the Legislature.

The Legislature shall further prescribe by general law the manner in which each statewide reappraisal shall be employed to establish the value of the various separately assessed parcels or interests in parcels of real property and various items of personal property subject to ad valorem property taxation, the methods by which increases and reductions in value subsequent to the base year of each statewide reappraisal shall be ascertained, and require the enforcement thereof.

Subsection C—General Homestead Exemption

Notwithstanding any other provisions of this Constitution to the contrary, the first twenty thousand dollars of assessed valuation of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his residence who is a citizen of this state and who is sixty-five years of age or older or is permanently and totally disabled as that term may be defined by the Legislature, shall be exempt from ad valorem property taxation, subject to such requirements, limitations and conditions as shall be prescribed by general law.

Notwithstanding any other provision of this Constitution to the contrary, the Legislature shall have the authority to provide by general law for an exemption from ad valorem property taxation in an amount not to exceed the first twenty thousand dollars of value of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his residence who is a citizen of this state, and who is under sixty-five years of age and not totally and permanently disabled: Provided, That upon enactment of such general law, this exemption shall only apply to such property in any county in which the property was appraised at its value as of the first day of January, one thousand nine hundred eighty, or thereafter, as determined by the Legislature, and this exemption shall be phased in over such period of time not to exceed five years from the date such property was so appraised, or such longer time as the

Legislature may determine by general law: Provided, however, That in no event shall any one person and his spouse, or one homestead be entitled to more than one exemption under these provisions: Provided further, That these provisions are subject to such requirements, limitations and conditions as shall be prescribed by general law.

The Legislature shall have the authority to provide by general law for property tax relief to citizens of this state who are tenants of residential or farm property.

Subsection D—Additional Limitations on Value

With respect to the first statewide reappraisal, pursuant to this section, the resulting increase in value in each and every parcel of land or interest therein and various items of personal property subject to ad valorem property taxation over and above the previously assessed value shall be allocated over a period of ten years in equal amounts annually.

The Legislature may by general law also provide for the phasing in of any subsequent statewide reappraisal of property.

Subsection E—Levies for Free Schools

In equalizing the support of free schools provided by state and local taxes, the Legislature may require that the local school districts levy all or any portion of the maximum levies allowed under section one of this article which has been allocated to such local school districts.

Within the limits of the maximum levies permitted for excess levies for schools or better schools in sections one and ten of this article, the Legislature may, in lieu of the exercise of such powers by the local school districts as heretofore provided, submit to the voters, by general law, a statewide excess levy, and if it be approved by the required number of voters, impose such levy, subject however to all the limitations and requirements for the approval of such levies as in the case of a district levy. The law submitting the question to the voters shall provide, upon approval of the levy by the voters, for the assumption of the obligation of any local excess levies for schools then in force theretofore authorized by the voters of a local taxing unit to the extent of such excess levies imposed by the state and so as to avoid double taxation of those local districts. The Legislature may also by general law reserve to the school districts such portions of the power to lay authorized excess levies as it may deem appropriate to enable local school districts to provide educational services which are not required to be furnished or supported by the state. If a statewide excess levy for the support of free schools is approved by the required majority, the revenue from such a statewide excess levy shall be deposited in the state treasury and be allocated first for the local obligations assumed and thereafter for such part of the state effort to support free schools, by appropriation or as the law submitting the levy to the voters shall require, as the case may be.

The defeat of any such proposed statewide excess levy for school purposes shall not in any way abrogate or impair any local existing excess levy for such purpose nor prevent the adoption of any future local excess levy for such purpose.

Subsection F—Implementation

In the event of any inconsistency between any of the provisions of this section and other provisions of this Constitution, the provisions of this section shall prevail. The Legislature shall have plenary power to provide by general law for the equitable application of this article and, as to taxes to be assessed prior to the first statewide reappraisal, to make such laws retroactive to the first day of July, one thousand nine hundred eighty-two, or thereafter.

Acts 1973, H.J.R. 7, ratified Nov. 6, 1973; Acts 1980, H.J.R. 39, ratified Nov. 4, 1980; Acts 1982, Ex. Sess., H.J.R. 1, ratified Nov. 2, 1982.

10-1c. Exemption from ad valorem taxation of certain personal property of inventory and warehouse goods, with phase in to full exemption over five-year period

Notwithstanding any other provisions of this Constitution, tangible personal property which is moving in interstate commerce through or over the territory of the State of West Virginia, or which was consigned from a point of origin outside the State to a warehouse, public or private, within the State for storage in transit to a final destination outside the State, whether specified when transportation begins or afterward, but in any case specified timely for exempt status determination purposes, shall not be deemed to have acquired a tax situs in West Virginia for purposes of ad valorem taxation and shall be exempt from such taxation, except as otherwise provided in this section. Such property shall not be deprived of such exemption because while in the warehouse the personal property is assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged for delivery out of state, unless such activity results in a new or different product, article, substance or commodity, or one of different utility. Personal property of inventories of natural resources shall not be exempt from ad valorem taxation unless required by paramount federal law.

The exemption allowed by the preceding paragraph shall be phased in over a period of five consecutive assessment years, at the rate of one fifth of the assessed value of the property per assessment year, beginning the first day of July, one thousand nine hundred eighty-seven.

Acts 1986, 2nd Ex. Sess., H.J.R. 1, ratified Nov. 4, 1986.

10-2. Repealed by Acts 1970, H.J.R. 6 and Acts 1970, c. 21, ratified Nov. 3, 1970

10-3. Receipts and expenditures of public moneys

No money shall be drawn from the treasury but in pursuance of an appropriation made by law, and on a warrant issued thereon by the auditor; nor shall any money or fund be taken for any other purpose than that for which it has been or may be appropriated or provided. A complete and detailed statement of the receipts and expenditures of the public moneys shall be published annually.

10-4. Limitation on contracting of state debt

No debt shall be contracted by this state, except to meet casual deficits in the revenue, to redeem a previous liability of the state, to suppress insurrection, repel invasion or defend the state in time of war; but the payment of any liability other than that for the ordinary expenses of the state, shall be equally distributed over a period of at least twenty years.

10-5. Power of taxation

The power of taxation of the Legislature shall extend to provisions for the payment of the state debt, and interest thereon, the support of free schools, and the payment of the annual estimated expenses of the state; but whenever any deficiency in the revenue shall exist in any year, it shall, at the regular session thereof held next after the deficiency occurs, levy a tax for the ensuing year, sufficient with the other sources of income, to meet such deficiency, as well as the estimated expenses of such year.

10-6. Credit of state not to be granted in certain cases

The credit of the state shall not be granted to, or in aid of any county, city, township, corporation or person; nor shall the state ever assume, or become responsible for the debts or liabilities of any county, city, township, corporation or person. The investment of state or public funds shall be subject to procedures and guidelines heretofore or hereafter established by the Legislature for the prudent investment of such funds.

Acts 1997, S.J.R. 4, ratified Sept. 27, 1997.

10-6a. Appropriations and taxation for the benefit of counties, municipalities or other political subdivisions of the state

Notwithstanding the provisions of section six of this article, (1) the Legislature may appropriate state funds for use in matching or maximizing grants-in-aid for public purposes from the United States or any department, bureau, commission or agency thereof, or any other source, to any county, municipality or other political subdivision of the state, under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe by law, and (2) the Legislature may impose a state tax or taxes or dedicate a state tax or taxes or any portion thereof for the benefit of and use by counties, municipalities or other political subdivisions of the state for public purposes, the proceeds of any such imposed or dedicated tax or taxes or portion thereof to be distributed to such counties, municipalities or other political subdivisions of the state under such circumstances and subject to such terms, conditions and restrictions as the Legislature may prescribe by law.

Acts 1972, H.J.R. 18, ratified Nov. 7, 1972.

10-7. Duties of county authorities in assessing taxes

County authorities shall never assess taxes, in any one year, the aggregate of which shall exceed ninety-five cents per one hundred dollars' valuation, except for the support of free schools; payment of indebtedness existing at the time of the adoption of this constitution; and for the payment of any indebtedness with the interest thereon, created under the succeeding section, unless such

assessment, with all questions involving the increase of such aggregate, shall have been submitted to the vote of the people of the county, and have received three fifths of all the votes cast for and against it.

10-8. Bonded indebtedness of counties, etc.

No county, city, school district, or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted, in any manner, or for any purpose, to an amount, including existing indebtedness, in the aggregate, exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for state and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax on all taxable property therein, in the ratio, as between the several classes or types of such taxable property, specified in section one of this article, separate and apart from and in addition to all other taxes for all other purposes, sufficient to pay, annually, the interest on such debt, and the principal thereof, within, and not exceeding thirty-four years. Such tax, in an amount sufficient to pay the interest and principal on bonds issued by any school district not exceeding in the aggregate three per centum of such assessed value, may be levied outside the limits fixed by section one of this article: Provided, That no debt shall be contracted under this section, unless all questions connected with the same, shall have been first submitted to a vote of the people, and have received three fifths of all the votes cast for and against the same.

Acts 1949, S.J.R. 1 and Acts, 1949, c. 18, ratified Nov. 7, 1950.

10-8a. Issuance of Bonds or Other Obligations Payable From Property Taxes on Increases in Value Due to Economic Development or Redevelopment Projects In Counties and Municipalities

Notwithstanding any other provision of this Constitution to the contrary, the Legislature by general law may authorize the issuance of revenue bonds or other obligations by counties and municipalities to assist in financing qualified economic development or redevelopment projects that benefit public health, welfare and safety subject to conditions, restrictions or limitations as the Legislature may prescribe by general law.

The bonds or other obligations are payable from property tax revenues generated by the increases in value of property located within the development or redevelopment project area or district due to capital invest in the project. The Legislature shall prescribe by general law the manner in which these increases are determined.

The term for any bonds or other obligations issued may not exceed thirty tax years. The bonds or other obligations may not be deemed to be general obligations of the issuing county or municipality or of this state. The bonds or other obligations may provide for the pledge of any other funds as the owner of the improvements may by contract or otherwise be required to pay. Upon payment in full of the bonds, the increased tax revenues shall revert to the levying bodies authorized under the provisions of this Constitution to receive the revenues. The bonds or other obligations may not be paid from excess levy, bond levy or other special levy revenues.

Acts 2002, 2nd Ex. Sess., H.J.R. 201, ratified Nov. 5, 2002.

10-9. Municipal taxes to be uniform

The Legislature may, by law, authorize the corporate authorities of cities, towns and villages, for corporate purposes, to assess and collect taxes; but such taxes shall be uniform, with respect to persons and property within the jurisdiction of the authority imposing the same.

10-10. School Levy and Bond Amendment

Notwithstanding any other provision of the Constitution to the contrary, the maximum rates authorized and allocated by law for tax levies on the several classes of property for the support of public schools may be increased in any school district for a period not to exceed five years, and in an amount not to exceed one hundred percent of such maximum rates, if such increase is approved, in the manner provided by law, by at least a majority of the votes cast for and against the same.

Notwithstanding any other provision of the Constitution to the contrary, the maximum rates provided for tax levies by school districts on the several classes of property may be used entirely for current expense purposes; and all levies required for principal and interest payments on any bonded indebtedness, now or hereafter contracted, not to exceed five per cent on the value of the taxable property therein, the value to be ascertained in accordance with section eight of this article, shall be laid separate and apart and in addition to such maximum rates, but in the same proportions as such maximum rates are levied on the several classes of property.

Notwithstanding the provisions of section eight of this article relating to a vote of the people or any other provisions of this Constitution, a county board of education may contract indebtedness and issue bonds for public school purposes as provided by law, if, when submitted to a vote of the people of the county, in the manner provided by law, the question of contracting indebtedness and issuing bonds is approved by a majority of the votes cast for and against the same.

Acts 1957, S.J.R. 8 and Acts 1957, c. 17, ratified Nov. 4, 1958; Acts 1982, H.J.R. 14, ratified Nov. 2, 1982.

10-11. County and Municipal Excess Levy Amendment

Notwithstanding any other provision of this Constitution to the contrary, the maximum rates authorized and allocated by law for tax levies on the several classes of property by county commissions and municipalities may be increased in any county or municipality, as provided in section one of this article, for a period not to exceed five years.

Acts 2002, 2nd Ex. Sess., H.J.R. 202, ratified Nov. 5, 2002.

ARTICLE XI

11-1. Corporations

The Legislature shall provide for the organization of all corporations hereafter to be created, by general laws, uniform as to the class to which they relate; but no corporation shall be created by special law: Provided, That nothing in this section contained, shall prevent the Legislature from providing by special laws for the connection, by canal, of the waters of the Chesapeake with the Ohio River by line of the James River, Greenbrier, New River and Great Kanawha.

11-2. Corporate liability for indebtedness

The stockholders of all corporations and joint-stock companies, except banks and banking institutions, created by laws of this state, shall be liable for the indebtedness of such corporations to the amount of their stock subscribed and unpaid, and no more.

11-3. Exclusive privileges prohibited

All existing charters or grants of special or exclusive privileges under which organization shall not have taken place, or which shall not have been in operation within two years from the time this constitution takes effect, shall thereafter have no validity or effect whatever: Provided, That nothing herein shall prevent the execution of any bona fide contract heretofore lawfully made in relation to any existing charter or grant in this state.

11-4. Rights of stockholders

The Legislature shall provide by law that every corporation, other than a banking institution, shall have power to issue one or more classes and series within classes of stock, with or without par value, with full, limited or no voting powers, and with preferences and special rights and qualifications, and that in all elections for directors or managers of incorporated companies, every stockholder holding stock having the right to vote for directors, shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

Acts 1957, S.J.R. 5 and Acts 1957, c. 18, ratified Nov. 4, 1958.

11-5. Street railroads

No law shall be passed by the Legislature, granting the right to construct and operate a street railroad within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

11-6. Banks

The Legislature may provide by general law for the creation, organization, and regulation of banking institutions.

Acts 1937, H.J.R. 3 and Acts 1937, c. 7, ratified Nov. 8, 1938.

11-7. Railroads

Every railroad corporation organized or doing business in this state shall annually, by their proper officers, make a report under oath, to the auditor of public accounts of this state, or some officer to be designated by law, setting forth the condition of their affairs, the operations of the year, and such other matters relating to their respective railroads as may be prescribed by law. The Legislature shall pass laws enforcing by suitable penalties the provisions of this section.

11-8. Rolling stock considered personal property

The rolling stock and all other movable property belonging to any railroad company or corporation in this state, shall be considered personal property and shall be liable to execution and sale in the same manner as the personal property of individuals; and the Legislature shall pass no law exempting any such property from execution and sale.

11-9. Railroads—public highways

Railroads heretofore constructed, or that may hereafter be constructed in this state, are hereby declared public highways and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as shall be prescribed by law; and the Legislature shall, from time to time, pass laws, applicable to all railroad corporations in the state, establishing reasonable maximum rates of charges for the transportation of passengers and freights, and providing for the correction of abuses, the prevention of unjust discriminations between through and local or way freight and passenger tariffs, and for the protection of the just rights of the public, and shall enforce such laws by adequate penalties.

11-10. Stations to be established

The Legislature shall, in the law regulating railway companies, require railroads running through, or within a half mile of a town or village, containing three hundred or more inhabitants, to establish stations for the accommodation of trade and travel of said town or village.

11-11. Competing lines—Legislative permission

No railroad corporation shall consolidate its stock, property or franchise with any other railroad owning a parallel or competing line, or obtain the possession or control of such parallel or competing line, by lease or other contract, without the permission of the Legislature.

11-12. Right of eminent domain

The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking, by the Legislature, of the property and franchises of incorporated companies already organized, and subjecting them to the public use, the same as of individuals.

ARTICLE XII

12-1. Education

The Legislature shall provide, by general law, for a thorough and efficient system of free schools.

12-2. Supervision of free schools

The general supervision of the free schools of the State shall be vested in the West Virginia board of education which shall perform such duties as may be prescribed by law. The board shall consist of nine members to be appointed by the governor, by and with the advice and consent of the senate, for overlapping terms of nine years, except that the original appointments shall be for terms of one, two, three, four, five, six, seven, eight, and nine years, respectively. No more than five members of the board shall belong to the same political party, and in addition to the general qualifications otherwise required by the Constitution, the legislature may require other specific qualifications for membership on the board. No member of the board may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, or gross immorality, and then only in the manner prescribed by law for the removal by the governor of state elective officers.

The West Virginia board of education shall in the manner prescribed by law, select the state superintendent of free schools who shall serve at its will and pleasure. He shall be the chief school officer of the State and shall have such powers and shall perform such duties as may be prescribed by law.

The state superintendent of free schools shall be a member of the board of public works as provided by subsection B, section fifty-one, article six of this Constitution.

Acts 1957, S.J.R. 1 and Acts 1957, c. 19, ratified Nov. 4, 1958.

Acts 1998, c. 126, stated that state superintendent means state superintendent of free schools. See § 18-1-1.

12-3. County superintendents

The Legislature may provide for county superintendents and such other officers as may be necessary to carry out the objects of this article and define their duties, powers and compensation.

12-4. Existing permanent and invested school fund

The existing permanent and invested school fund, and all money accruing to this state from forfeited, delinquent, waste and unappropriated lands; and from lands heretofore sold for taxes and purchased by the state of Virginia, if hereafter redeemed or sold to others than this state; all grants, devises or bequests that may be made to this state, for the purposes of education or where the purposes of such grants, devises or bequests are not specified; this state's just share of the literary fund of Virginia, whether paid over or otherwise liquidated; and any sums of money, stocks or property which this

state shall have the right to claim from the state of Virginia for educational purposes; the proceeds of the estates of persons who may die without leaving a will or heir, and of all escheated lands; the proceeds of any taxes that may be levied on the revenues of any corporations; all moneys that may be paid as an equivalent for exemption from military duty; and such sums as may from time to time be appropriated by the Legislature for the purpose, shall be set apart as a separate fund, to be called the "School Fund," and invested under such regulations as may be prescribed by law, in the interest-bearing securities of the United States, or of this state, or if such interest-bearing securities cannot be obtained, then said "School Fund" shall be invested in such other solvent, interest-bearing securities as shall be approved by the governor, superintendent of free schools, auditor and treasurer, who are hereby constituted the "Board of the School Fund," to manage the same under such regulations as may be prescribed by law; and the interest thereof shall be annually applied to the support of free schools throughout the state, and to no other purpose whatever. But any portion of said interest remaining unexpended at the close of a fiscal year shall be added to and remain a part of the capital of the "School Fund": Provided, That all taxes which shall be received by the state upon delinquent lands, except the taxes due to the state thereon, shall be refunded to the county or district by or for which the same were levied.

12-5. Support of free schools

The Legislature shall provide for the support of free schools by appropriating thereto the interest of the invested "School Fund," the net proceeds of all forfeitures and fines accruing to this state under the laws thereof and by general taxation of persons and property or otherwise. It shall also provide for raising in each county or district, by the authority of the people thereof, such a proportion of the amount required for the support of free schools therein as shall be prescribed by general laws.

Acts 1970, H.J.R. 6 and Acts 1970, c. 21, ratified Nov. 3, 1970.

12-6. School districts

The school districts into which the state is divided shall continue until changed pursuant to act of the Legislature: Provided, That the school board of any district shall be elected by the voters of the respective district without reference to political party affiliation. No more than two of the members of such board may be residents of the same magisterial district within any school district.

Acts 1986, 2nd Ex. Sess., H.J.R. 6, ratified Nov. 4, 1986.

12-7. Levies for school purposes

All levies that may be laid by any county or district for the purpose of free schools shall be reported to the clerk of the county court, and shall, under such regulations as may be prescribed by law, be collected by the sheriff, or other collector, who shall make annual settlement with the county court; which settlements shall be made a matter of record by the clerk thereof, in a book to be kept for that purpose.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

12-8. Repealed by Acts 1994, H.J.R. 13, ratified Nov. 8, 1994

12-9. Certain acts prohibited

No person connected with the free school system of the state, or with any educational institution of any name or grade under state control, shall be interested in the sale, proceeds or profits of any book or other thing used, or to be used therein, under such penalties as may be prescribed by law: Provided, That nothing herein shall be construed to apply to any work written, or thing invented, by such person.

12-10. Creation of independent free school districts

No independent free school district, or organization shall hereafter be created, except with the consent of the school district or districts out of which the same is to be created, expressed by a majority of the voters voting on the question.

12-11. Appropriation for state normal schools

No appropriation shall hereafter be made to any state normal school, or branch thereof, except to those already established and in operation, or now chartered.

12-12. Legislature to foster general school improvements

The Legislature shall foster and encourage, moral, intellectual, scientific and agricultural improvement; it shall, whenever it may be practicable, make suitable provision for the blind, mute and insane, and for the organization of such institutions of learning as the best interests of general education in the state may demand.

ARTICLE XIII

13-1. Land titles

All private rights and interests in lands in this state derived from or under the laws of the state of Virginia, and from or under the constitution and laws of this state prior to the time this constitution goes into operation, shall remain valid and secure and shall be determined by the laws in force in Virginia, prior to the formation of this state, and by the constitution and laws in force in this state prior to the time this constitution goes into effect.

13-2. Land entry prohibited

No entry by warrant on land in this state shall hereafter be made.

13-3. Repealed by Acts 1992, H.J.R. 113, ratified Nov. 3, 1992

13-4. Repealed by Acts 1992, H.J.R. 113, ratified Nov. 3, 1992

13-5. Repealed by Acts 1992, H.J.R. 113, ratified Nov. 3, 1992

13-6. Repealed by Acts 1992, H.J.R. 113, ratified Nov. 3, 1992

ARTICLE XIV

14-1. Amendments

No convention shall be called, having the authority to alter the constitution of the state, unless it be in pursuance of law, passed by the affirmative vote of a majority of the members elected to each house of the Legislature and providing that polls shall be opened throughout the state, on the same day therein specified, which shall not be less than three months after the passage of such law, for the purpose of taking the sense of the voters on the question of calling a convention. And such convention shall not be held unless a majority of the votes cast at such polls be in favor of calling the same; nor shall the members be elected to such convention, until, at least, one month after the result of the vote shall be duly ascertained, declared and published. And all acts and ordinances of the said convention shall be submitted to the voters of the State for ratification or rejection, and shall have no validity whatever until they are ratified.

14-2. How amendments are made

Any amendment to the constitution of the state may be proposed in either house of the Legislature at any regular or extraordinary session thereof; and if the same, being read on three several days in each house, be agreed to on its third reading, by two thirds of the members elected thereto, the proposed amendment, with the yeas and nays thereon, shall be entered on the journals, and it shall be the duty of the Legislature to provide by law for submitting the same to the voters of the state for ratification or rejection, at a special election, or at the next general election thereafter, and cause the same to be published, at least three months before such election in some newspaper in every county in which a newspaper is printed. If a majority of the qualified voters, voting on the question at the polls held pursuant to such law, ratify the proposed amendment, it shall be in force from the time of such ratification, as part of the constitution of the state. If two or more amendments be submitted at the same time, the vote on the ratification or rejection shall be taken on each separately, but an amendment may relate to a single subject or to related subject matters and may amend or modify as many articles and as many sections of the constitution as may be necessary and appropriate in order to accomplish the objectives of the amendment. Whenever one or more amendments are submitted at a special election, no other question, issue or matter shall be voted upon at such special election, and the cost of such special election throughout the state shall be paid out of the state treasury.

AMENDMENTS

AMD-1. The Judicial Amendment

The supreme court of appeals shall consist of five judges. Those judges in office when this amendment takes effect shall continue in office until their terms shall expire and the Legislature shall provide for the election of an

additional judge of said court at the next general election, whose term shall begin on the first day of January, one thousand nine hundred and five, and the governor shall, as for a vacancy, appoint a judge of said court to hold office until the first day of January, one thousand nine hundred and five. The judges of the supreme court of appeals and of the circuit courts shall receive such salaries as shall be fixed by law, for those now in or those hereafter to come into office.

Acts 1901, J.R. 6 and Acts 1901, c. 153, ratified Nov. 4, 1902.

AMD-2. The Irreducible School Fund Amendment

The accumulation of the school fund provided for in section four of article twelve, of the constitution of this state, shall cease upon the adoption of this amendment, and all money to the credit of said fund over one million dollars, together with the interest on said fund, shall be used for the support of free schools of this state.

All money and taxes heretofore payable into the treasury under the provisions of said section four, to the credit of the school fund, shall be hereafter paid into the treasury to the credit of the general school fund for the support of the free schools of the state.

Acts 1901, J.R. 11 and Acts 1901, c. 153, ratified Nov. 4, 1902.

AMD-3. The Good Roads Amendment of 1920

The Legislature shall make provision by law for a system of state roads and highways connecting at least the various county seats of the state, and to be under the control and supervision of such state officers and agencies as may be prescribed by law. The Legislature shall also provide a state revenue to build, construct, and maintain, or assist in building, constructing and maintaining the same and for that purpose shall have power to authorize the issuing and selling of state bonds, the aggregate outstanding amount of which, at any one time, shall not exceed fifty million dollars.

When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay annually the interest on such debt, and the principal thereof within and not exceeding thirty years.

Acts 1919, S.J.R. 15 and Acts 1919, c. 77, ratified Nov. 2, 1920.

AMD-4. The Good Roads Amendment of 1928

The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate thirty-five million dollars in addition to the state bonds which were authorized to be issued and sold by the amendment to the constitution proposed by Senate Joint Resolution No. 15, adopted February 15, 1919, and afterwards ratified by a vote of the people. The proceeds of said additional bonds hereby authorized to be issued and sold shall be used and appropriated solely for the building and constructing, or for the assisting in building and constructing the system of state roads and highways provided for by the amendment to the constitution above mentioned.

When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay annually the interest on such debt and to pay the principal thereof within and not exceeding thirty years.

Acts 1927, H.J.R. 17 and Acts 1927, c. 29, ratified Nov. 6, 1928.

AMD-5. Fifty Million Dollar Bond Issue For Roads Amendment

The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate fifty million dollars in addition to the state bonds which were authorized to be issued and sold by the amendment to the constitution proposed by Senate Joint Resolution No. 15, adopted February fifteenth, one thousand nine hundred nineteen, and afterwards ratified by a vote of the people, and Senate Joint Resolution No. 17, adopted by the Legislature at the regular session, one thousand nine hundred twenty-seven, and afterwards ratified by a vote of the people. The proceeds of said additional bonds hereby authorized to be issued and sold shall be used and appropriated solely for the building and construction, or for assisting in building and constructing a system of state secondary roads and highways.

When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay annually the interest on such debt and to pay the principal thereof within and not exceeding thirty years.

Acts 1947, S.J.R. 5 and Acts 1947, c. 143, ratified Nov. 2, 1948.

AMD-6. Veterans Bonus Amendment

The Legislature shall by law provide for the issuance and sale of state bonds, not to exceed in the aggregate ninety million dollars, which shall be in addition to all other state bonds heretofore authorized. The proceeds of such additional bonds, or so many thereof as may be necessary for the purpose, shall be used and appropriated solely for the purpose of paying a cash bonus to veterans of World War I and World War II. Such bonus shall be paid to all persons who rendered active service in the armed forces of the United States in World War I between the sixth day of April, one thousand nine hundred seventeen, and the eleventh day of November, one thousand nine hundred eighteen, both dates inclusive, or in World War II between the seventh day of December, one thousand nine hundred forty-one, and the second day of September, one thousand nine hundred forty-five, both dates inclusive, or in both such wars, who were bona fide residents of the state of West Virginia at the time of their entry into such service and for a period of at least six months prior thereto, who were not dishonorably discharged from such forces, and who within the periods specified above actively served in such armed forces for a period of at least ninety days. Such a bonus shall also be paid to any disabled veteran, otherwise qualified, who was discharged within ninety days after entering the services because of a service-connected disability. The amount of such bonus shall be calculated on the basis of ten dollars for each month, or major fraction thereof, served within the territorial limits of the forty-eight states and the District of Columbia, and fifteen dollars for each month, or major fraction thereof, served outside such limits, but such amount shall in no

case exceed three hundred dollars for those who served only within the territorial limits specified above, and four hundred dollars for those who served outside such limits. The bonus to which any deceased veteran would be entitled, if living, shall be paid only to the following surviving relatives of such veteran, if such relatives are residents of this state when application for payment is made: Any unremarried widow, or if none, any child or children under the age of sixteen, or if none, any dependent parent or parents.

Whenever the Legislature shall provide for the issuance of any bonds under the authority of this amendment, it shall at the same time provide for the levy and collection of an additional cigarette tax, or an additional tax on nonintoxicating beer, or an additional charge on the sale of each bottle of wine and liquor, or an additional general consumers sales tax, or a graduated income tax, or any two or more thereof, in such amount as may be required to pay annually the interest on such bonds and the principal thereof within and not exceeding thirty years.

Acts 1949, H.J.R. 6 and Acts 1947, c. 19, ratified Nov. 7, 1950.

AMD-7. Korean Veterans Bonus Amendment

The Legislature shall by law provide for the issuance and sale of state bonds which shall be in addition to all other state bonds heretofore issued, for the following purposes:

(1) The paying of a cash bonus to veterans of the armed forces of the United States who served during the Korean conflict. Such bonus shall be paid to all persons who rendered active service in the armed forces of the United States between the twenty-seventh day of June, one thousand nine hundred fifty, and the twenty-seventh day of July, one thousand nine hundred fifty-three, both dates inclusive, who were bona fide residents of the state of West Virginia at the time of their entry into such service and for a period of at least six months prior thereto, who were not dishonorably discharged from such service, and who within the period specified above actively served in such armed forces for a period of at least ninety days. Such a bonus shall also be paid to any disabled veteran, otherwise qualified, who was discharged within ninety days after entering the services because of a service-connected disability. The amount of such bonus shall be calculated on the basis of ten dollars for each month, or major fraction thereof, served within the territorial limits of the forty-eight states and the District of Columbia, and fifteen dollars for each month, or major fraction thereof, served outside such limits, but such amount shall in no case exceed three hundred dollars for those who served only within the territorial limits specified above, and four hundred dollars for those who served outside such limits. The bonus to which any deceased veteran would be entitled, if living, shall be paid only to the following surviving relatives of such veteran, if such relatives are residents of this state when application for payment is made: Any unmarried widow, or if none, any child or children under the age of sixteen, or if none, any dependent parent or parents.

The principal amount of bonds to be issued for the purpose provided in paragraph (1) above shall not exceed the principal amount of the ninety million dollars bonds authorized by the veterans bonus amendment submitted by chapter nineteen of the acts of the Legislature of West Virginia of one thousand nine hundred forty-nine, regular session, and ratified by the people of West

Virginia at the general election held on the seventh day of November, one thousand nine hundred fifty (hereinafter referred to as "Veterans Bonus Amendment of One Thousand Nine Hundred Fifty"), which shall not have been issued on the date of the ratification of this amendment by the people of West Virginia: Provided, however, That such bonds issued under the provisions of paragraph (1) above may be funded or refunded at any time in the manner provided in paragraph (2) below.

(2) The funding or refunding of all or any part of the bonds heretofore issued pursuant to said veterans bonus amendment of one thousand nine hundred fifty. Said bonds issued pursuant to said veterans bonus amendment of one thousand nine hundred fifty may be so funded or refunded either on the maturity dates of said bonds or on any date on which said bonds are callable prior to maturity, and if any of said bonds have not matured or are not then callable prior to maturity, the Legislature may nevertheless provide at any time for the issuance of refunding bonds to fund or refund such bonds on the dates when said bonds mature or on any date on which said bonds are callable prior to maturity, and for the investment or reinvestment of the proceeds of such refunding bonds in direct obligations of the United States of America until the date or dates upon which such bonds issued pursuant to said veterans bonus amendment of one thousand nine hundred fifty mature or are callable prior to maturity.

The principal amount of bonds issued under the provisions of paragraph (2) above shall not exceed the principal amount of the bonds to be funded or refunded thereby.

Such bonds for the purposes authorized in paragraphs (1) and (2) above may be issued from time to time as separate issues for such purposes or as combined issues for such purposes.

Whenever the Legislature shall provide for the issuance of any bonds under the authority of this amendment, it shall at the same time provide for the levy and collection of an additional cigarette tax, or an additional tax on nonintoxicating beer, or an additional charge on the sale of each bottle of wine and liquor, or an additional general consumers sales tax, or a graduated income tax, or any two or more thereof, in such amount as may be required to pay annually the interest on such bonds and the principal thereof within and not exceeding thirty years, and all such taxes or charges so levied shall be irrevocably dedicated for the payment of the principal of and interest on such bonds until such principal of and interest on such bonds is finally paid and discharged, and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes or charges shall be enforceable in any court of competent jurisdiction by any of the holders of said bonds. The additional taxes on cigarettes and nonintoxicating beer and additional charges on the sale of each bottle of alcoholic liquor, provided for in chapters six, one hundred eighty-four and one hundred eighty-seven of the acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-one, shall continue to be pledged for the payment of the principal of and interest on bonds issued pursuant to said veterans bonus amendment of one thousand nine hundred fifty, or bonds issued pursuant to this amendment to fund or refund such bonds issued pursuant to said veterans bonus amendment of one thousand nine hundred fifty: Provided, however, That upon the funding or refunding of all outstanding bonds issued pursuant to said veterans bonus amendment of one thousand nine hundred fifty, or the deposit in trust of sufficient funds to pay all the principal of

and interest on such outstanding bonds issued pursuant to said veterans bonus amendment of one thousand nine hundred fifty to their respective dates of maturity or to the first date upon which said bonds are callable prior to maturity, the taxes and charges provided for in said chapters six, one hundred eighty-four and one hundred eighty-seven of the acts of the Legislature of West Virginia, regular session, one thousand nine hundred fifty-one, may be pledged to the payment of the principal of and interest on any bonds issued under any of the provisions of this amendment.

Acts 1955, H.J.R. 7 and Acts 1955, c. 23, ratified Nov. 6, 1956.

AMD-8. Better Roads Amendment

The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate two hundred million dollars. The proceeds of said bonds hereby authorized to be issued and sold shall be used and appropriated solely for the building and construction of state roads and highways provided for by this constitution and the laws enacted thereunder. Such bonds may be issued and sold in amounts not to exceed twenty million dollars in any fiscal year. When a bond issue as aforesaid is authorized, the Legislature shall, at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding twenty-five years. Such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of said bonds becoming due and payable in such year are insufficient therefor.

The authority to issue and sell and have outstanding additional bonds granted by the amendment to the constitution proposed by Senate Joint Resolution No. 15, adopted February 15, 1919, and afterwards ratified by a vote of the people, is hereby revoked as of January 1, 1965, but said amendment shall in all other respects remain in full force and effect.

Acts 1963, H.J.R. 10 and Acts 1964, c. 22, ratified Nov. 3, 1964.

AMD-9. Roads Development Amendment

The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate three hundred fifty million dollars. The proceeds of said bonds hereby authorized to be issued and sold shall be used and appropriated solely for the building and construction of free state roads and highways provided for by this constitution and the laws enacted thereunder. When a bond issue as aforesaid is authorized, the Legislature shall, at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding twenty-five years. Such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and principal of said bonds becoming due and payable in such year are insufficient therefor.

Acts 1968, S.C.R. 2 and Acts 1968, c. 16, ratified Nov. 5, 1968.

AMD-10. Better School Buildings Amendment

The Legislature shall have power to authorize the issuing and selling of state bonds, not exceeding in the aggregate two hundred million dollars, which shall be in addition to all other state bonds heretofore authorized. The proceeds of the bonds hereby authorized to be issued and sold shall, notwithstanding the provisions of section six, article ten of this constitution or any other provision of this constitution to the contrary, be distributed to such county boards of education as qualify therefor by meeting such conditions, qualifications and requirements as shall be prescribed by general law and used and appropriated by such county boards of education solely for the construction, renovation or remodeling of elementary or secondary public school buildings or facilities, the equipping of the same in connection with any such construction, renovation or remodeling and the acquisition and preparation of sites for elementary or secondary public school buildings or facilities. Such bonds may be issued and sold at such time or times and in such amount or amounts as the Legislature shall authorize. When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding thirty-four years, and all such taxes so levied shall be irrevocably dedicated for the payment of principal of and interest on such bonds until such principal of and interest on such bonds are finally paid and discharged, and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of the bonds.

Acts 1972, S.J.R. 4, ratified Nov. 7, 1972.

AMD-11. Better Highways Amendment

The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate five hundred million dollars. The proceeds of said bonds hereby authorized to be issued and sold shall be used and appropriated solely for the following purposes and in the following amounts:

(1) One hundred twenty million dollars for bridge replacement and improvement program;

(2) One hundred thirty million dollars for completion of the Appalachian highway system;

(3) Fifty million dollars for upgrading sections of trunkline and feeder systems;

(4) Fifty million dollars for upgrading West Virginia State Route 2;

(5) One hundred million dollars for upgrading state and local service roads;

(6) Fifty million dollars for construction, reconstruction, improving and upgrading of U.S. Route 52 between Huntington and Bluefield, West Virginia.

When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay as it

may accrue the interest on such bonds and the principal thereof within and not exceeding twenty-five years. Such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and the principal of said bonds becoming due and payable in such year are insufficient therefor.

Acts 1973, S.J.R. 17, ratified Nov. 6, 1973.

AMD-12. Vietnam Veterans Bonus Amendment

The Legislature shall provide by law, either for the appropriation from the general revenues of the state, or for the issuance and sale of state bonds, which shall be in addition to all other state bonds heretofore issued, or a combination of both as the Legislature may determine, for the purpose of paying a cash bonus to veterans of the armed forces of the United States who were in active service during the periods hereinafter described. Such bonus shall be paid to all persons who rendered active service in the armed forces of the United States between the first day of August, one thousand nine hundred sixty-four, and the date determined by the president or Congress of the United States as the end of involvement of United States armed forces in the Vietnam conflict, both dates inclusive, who were bona fide residents of the state of West Virginia at the time of their entry into such active service and for a period of at least six months immediately prior thereto, who have not been separated from such service under conditions other than honorable, and who, within the period specified above, actively served in such armed forces for a period of at least ninety days. Such bonus shall also be paid to any person, otherwise eligible under the preceding sentence, who rendered active service in the armed forces of the United States prior to the first day of August, one thousand nine hundred sixty-four, and who received the Vietnam armed forces expeditionary medal. Such bonus shall also be paid to any veteran, otherwise qualified under either of the two sentences next preceding, who was discharged within ninety days after entering the armed forces because of a service-connected disability. The amount of such bonus shall be calculated on the basis of twenty dollars per month for each month of active service, or major fraction thereof, for veterans who received the Vietnam armed forces expeditionary medal or the Vietnam service medal, up to four hundred dollars, and ten dollars per month for each month of active service, or major fraction thereof, for veterans who have not received the Vietnam armed forces expeditionary medal or the Vietnam service medal, up to three hundred dollars. Not more than one bonus shall be paid to or on behalf of the service of any one veteran.

The bonus to which any deceased veteran would have been entitled, if living, shall be paid to the following surviving relatives of such veteran, if such relatives are residents of the state when such application is made and if such relatives are living at the time payment is made: Any unremarried widow or widower, or, if none, all children, stepchildren and adopted children under the age of eighteen, or, if none, any parent, stepparent, adoptive parent or person standing in loco parentis. The categories of persons listed shall be treated as separate categories listed in order of entitlement and where there be more than one member of a class, the bonus shall be paid to each member according to his proportional share. Where a deceased veteran's death was connected with such service and resulted from such service during the time period specified,

however, the surviving relatives shall be paid, in accordance with the same order of entitlement, the sum of five hundred dollars in lieu of any bonus to which the deceased might have been entitled if living.

The principal amount of any bonds issued for the purpose of paying the bonuses provided for in this amendment shall not exceed the principal amount of forty million dollars, but may be funded or refunded either on the maturity dates of said bonds or on any date on which said bonds are callable prior to maturity, and if any of said bonds have not matured or are not then callable prior to maturity, the Legislature may nevertheless provide at any time for the issuance of refunding bonds to fund or refund such bonds on the dates when said bonds mature or on any date on which said bonds are callable prior to maturity and for the investment or reinvestment of the proceeds of such refunding bonds in direct obligations of the United States of America until the date or dates upon which such bonds mature or are callable prior to maturity. The principal amount of any refunding bonds issued under the provisions of this paragraph shall not exceed the principal amount of the bonds to be funded or refunded thereby.

The bonds may be issued from time to time for the purposes authorized by this amendment as separate issues or as combined issues.

Whenever the Legislature shall provide for the issuance of any bonds under the authority of this amendment, it shall at the same time provide for the levy and collection of an additional cigarette tax, or a tax on any other tobacco products, or an additional tax on nonintoxicating beer, or an additional charge on the sale of each bottle of wine and liquor, or an additional general consumers sales tax, or a graduated income tax, or any combination of one or more thereof, or such other dedicated tax as the Legislature may determine, in such amount as may be required to pay annually the interest on such bonds and the principal thereof within and not exceeding thirty years, and all such taxes or charges so levied shall be irrevocably dedicated for the payment of the principal of and interest on such bonds until such principal of and interest on such bonds are finally paid and discharged and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes or charges shall be enforceable in any court of competent jurisdiction by any of the holders of said bonds.

The Legislature shall have the power to enact legislation necessary and proper to implement the provisions of this amendment.

Acts 1973, H.J.R. 5, ratified Nov. 6, 1973.

AMD-13. Qualified Veterans Housing Bonds Amendment

I. The Legislature shall have the power to authorize the issuing and selling of general obligation bonds of the State which shall be in addition to all other state bonds heretofore authorized. The aggregate annual amount payable on all such bonds, including both principal and interest, shall be limited such that the debt service accruing on such bonds in any fiscal year shall not exceed $35,000,000, exclusive of any amounts payable on such bonds for which moneys or securities have been irrevocably set aside and dedicated solely for the purpose of such payment. The proceeds of the bonds hereby authorized to be issued and sold shall be used and appropriated to provide financing for owner-occupied

residences for persons determined by the Legislature to be qualified veterans, except that: (i) Part of the proceeds from each separate issuance of bonds may be set aside as a reserve for the purposes of the Veterans' Mortgage Fund herein authorized; and (ii) proceeds may be dedicated for the payment of principal, redemption price or interest on any such bonds to be refunded. Such bonds may be issued and sold at such time or times and in such amount or amounts as the Legislature shall authorize. All proceeds of such bonds, and all revenues derived from the use and investment of such proceeds, shall be deposited in a separate fund of the State, designated as the Veterans' Mortgage Fund. Amounts in such fund shall be used solely for the purposes of making loans for qualified veterans, providing for the payment or redemption of such bonds and the interest thereon, and providing for the payment of necessary expenses in connection therewith. When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding forty years, and all such taxes so levied shall be irrevocably dedicated for the payment of principal of and interest on such bonds until the obligation of the State with respect to the payment of such principal and interest has been discharged, and any of the covenants, agreements or provisions in the Acts of the Legislature levying such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of such bonds. Such tax shall be levied in any year only to the extent that the moneys on deposit in the Veteran's Mortgage Fund are insufficient to pay all amounts accruing on such bonds in such year.

II. The Legislature shall have the power to enact legislation to implement the provisions of this amendment.

Acts 1984, H.J.R. 32, ratified Nov. 6, 1984.

AMD-14. Veterans Bonus Amendment

(Persian Gulf, Lebanon, Grenada and Panama)

The Legislature shall provide by law, either for the appropriation from the general revenues of the State, or for the issuance and sale of state bonds, which shall be in addition to all other state bonds heretofore issued, or a combination of both as the Legislature may determine, for the purpose of paying a cash bonus to veterans of the armed forces of the United States who (1) served on active duty, or who were members of reserve components called to active duty by the President of the United States under Title 10, United States Code section 782(D), 783, or 783(B), during the Persian Gulf conflict, Operation Desert Shield/Desert Storm, between the first day of August, one thousand nine hundred ninety and the date determined by the president or congress of the United States as the end of the involvement of the United States armed forces in the Persian Gulf conflict, both dates inclusive; or (2) veterans, active service members, or members of reserve components, of the armed forces of the United States, who served on active duty in one of the military operations for which he or she received a campaign badge or expeditionary medal during the periods hereinafter described. For purposes of this amendment, periods of active duty in a campaign or expedition are designated as: The conflict in Panama, between the twentieth day of December, one thousand nine hundred eighty-nine, through the thirty-first day of January, one thousand nine hundred ninety, both dates inclusive; the conflict in

Grenada, between the twenty-third day of October, one thousand nine hundred eighty-three, and the twenty-first day of November, one thousand nine hundred eighty-three, both dates inclusive; and the conflict in Lebanon, between the twenty-fifth day of August, one thousand nine hundred eighty-two, and the twenty-sixth day of February, one thousand nine hundred eighty-four, both dates inclusive. For purposes of this amendment not more than one bonus shall be paid to or on behalf of the service of any one veteran. In order to be eligible to receive a bonus, such persons must have been bona fide residents of the State of West Virginia at the time of their entry into such active service and for a period of at least six months immediately prior thereto, who have not been separated from such service under conditions other than honorable. Such bonus shall also be paid to any veteran, otherwise qualified under the two sentences next preceding, who was discharged within ninety days after entering the armed forces because of a service-connected disability. The amount of such bonus shall be five hundred dollars per eligible person who was in active service, inside the combat zone designated by the President or Congress of the United States at anytime during the dates specified hereinabove. In the case of the Persian Gulf conflict, the amount of bonus shall be three hundred dollars per eligible person who was in active service outside of the combat zone designated by the President or Congress of the United States during the dates specified hereinabove. The bonus to which any deceased veteran would have been entitled, if living, shall be paid to the following surviving relatives of such veterans, if such relatives are residents of the State when such application is made and if such relatives are living at the time payment is made: Any unremarried widow or widower, or, if none, all children, stepchildren and adopted children under the age of eighteen, or, if none, any parent, stepparent, adoptive parent or person standing in loco parentis. The categories of persons listed shall be treated as separate categories listed in order of entitlement and where there be more than one member of a class, the bonus shall be paid to each member according to his proportional share. Where a deceased veteran's death was connected with such service and resulted from such service during the time period specified, however, the surviving relatives shall be paid, in accordance with the same order of entitlement, the sum of one thousand dollars in lieu of any bonus to which the deceased might have been entitled if living.

The principal amount of any bonds issued for the purpose of paying the bonuses provided for in this amendment shall not exceed the principal amount of four million dollars, but may be funded or refunded either on the maturity dates of said bonds or on any date on which said bonds are callable prior to maturity, and if any of said bonds have not matured or are not then callable prior to maturity, the Legislature may nevertheless provide at any time for the issuance of refunding bonds to fund or refund such bonds on the dates when said bonds mature or on any date on which said bonds are callable prior to maturity and for the investment or reinvestment of the proceeds of such refunding bonds in direct obligations of the United States of America until the date or dates upon which such bonds mature or are callable prior to maturity. The principal amount of any refunding bonds issued under the provisions of this paragraph shall not exceed the principal amount of the bonds to be funded or refunded thereby.

The bonds may be issued from time to time for the purposes authorized by this amendment as separate issues or as combined issues.

Whenever the Legislature shall provide for the issuance of any bonds under the authority of this amendment, it shall at the same time provide for the levy, collection and dedication of an additional tax, or enhancement to such other tax as the Legislature may determine, in such amount as may be required to pay annually the interest on such bonds and the principal thereof within and not exceeding fifteen years, and all such taxes or charges so levied shall be irrevocably dedicated for the payment of the principal of and interest on such bonds until such principal of and interest on such bonds are finally paid and discharged and any of the covenants, agreements or provisions in the acts of the Legislature levying such taxes or charges shall be enforceable in any court of competent jurisdiction by any of the holders of said bonds. Any revenue generated in excess of that which is required to pay the bonuses provided herein and to pay any administrative cost associated with such payment shall be used to pay the principal and interest on any bonds issued as soon as is economically practicable.

The Legislature shall have the power to enact legislation necessary and proper to implement the provisions of this amendment.

Acts 1991, H.J.R. 109, ratified Nov. 3, 1992.

AMD-15. Infrastructure Improvement Amendment

I. The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate three hundred million dollars, which shall be in addition to all other bonds heretofore authorized. The proceeds of said bonds hereby authorized to be issued and sold shall be used and appropriated solely for the construction, extension, expansion, rehabilitation, repair and improvement of water supply and sewage treatment systems and for the acquisition, preparation, construction and improvement of sites for economic development in this state in a manner and subject to such conditions, qualifications and requirements as shall be prescribed by general law. Such bonds may be issued and sold at such time or times and in such amount or amounts as the Legislature shall authorize. When a bond issue as aforesaid is authorized, the Legislature shall, at the same time, provide for the irrevocable dedication, prior to the application of such tax proceeds for any other purpose, of an annual portion of any gross receipts tax which is then currently imposed on businesses that sever, extract and, or produce natural resources within this state which will be sufficient to pay, as it may accrue, the interest on such bonds and the principal thereof, within and not exceeding thirty years and all such taxes so levied and the additional tax hereinafter described shall be irrevocably dedicated to such purpose until such principal and interest on such bonds are finally paid and discharged: Provided, That when a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an additional annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding thirty years: Provided, however, That such additional tax shall be levied in any year only to the extent that the moneys from the tax previously dedicated herein are insufficient therefor. Any of the covenants, agreements or provisions in the acts of the Legislature levying and dedicating such taxes shall be enforceable in any court of competent jurisdiction by any of the holders of the bonds.

II. The Legislature shall have power to enact legislation to implement the

provisions of this amendment.

Acts 1994, H.J.R. 500, ratified Nov. 8, 1994.

AMD-16. Safe Roads Amendment of 1996

(a) The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate five hundred fifty million dollars. The proceeds of said bonds hereby authorized to be issued and sold over a five-year period in the following amounts:

(1) The first day of July, one thousand nine hundred ninety-seven, one hundred ten million dollars;

(2) The first day of July, one thousand nine hundred ninety-eight, one hundred ten million dollars;

(3) The first day of July, one thousand nine hundred ninety-nine, one hundred ten million dollars;

(4) The first day of July, two thousand, one hundred ten million dollars;

(5) The first day of July, two thousand one, one hundred ten million dollars.

Any bonds not issued under the provisions of subdivisions (1) through (4) of this subsection may be carried forward and issued in any subsequent year.

(b) The proceeds of the bonds shall be used and appropriated for the following purposes:

(1) Matching available federal funds for highway construction in this state; and

(2) General highway construction or improvements in each of the fifty-five counties.

(c) When a bond issue as aforesaid is authorized, the Legislature shall at the same time provide for the collection of an annual state tax sufficient to pay as it may accrue the interest on such bonds and the principal thereof within and not exceeding twenty-five years. Such tax shall be levied in any year only to the extent that the moneys in the state road fund irrevocably set aside and appropriated for and applied to the payment of the interest on and the principal of said bonds becoming due and payable in such year are insufficient therefor. Any interest that accrues on the issued bonds prior to payment shall only be used for the purposes of the bonds.

Acts 1996, H.J.R. 22, ratified Nov. 5, 1996.

AMD-17. Veterans Bonus Amendment

(Kosovo, Afghanistan, and Iraq)

The Legislature shall provide by law, either for the appropriation from the general revenues of the State, or for the issuance and sale of state bonds,

which shall be in addition to all other state bonds heretofore issued, or a combination of both as the Legislature may determine, for the purpose of paying a cash bonus to: (1) Veterans of the armed forces of the United States who served on active duty in areas of conflict in Iraq, or were members of reserve components called to active duty by the President of the United States under Title 10, United States Code section 12301, 12302, 12303 or 12304 during the Iraqi War, between the nineteenth day of March, two thousand three and the date determined by the President or Congress of the United States as the end of the involvement of the United States armed forces in Iraq, both dates inclusive; or (2) veterans, active service members, or members of reserve components of the armed forces of the United States, who served on active duty in one of the military operations for which he or she received a campaign badge or expeditionary medal during the periods hereinafter described. For purposes of this amendment, periods of active duty in a campaign or expedition are designated as: The conflict in Kosovo between the twentieth day of November, one thousand nine hundred ninety-five and the thirty-first day of December, two thousand, both dates inclusive; and the conflict in Afghanistan, between the seventh day of October, two thousand one and the date determined by the President or Congress of the United States as the end of the involvement of the United States armed forces in Afghanistan, both dates inclusive. For purposes of this amendment not more than one bonus shall be paid to or on behalf of the service of a veteran. In order to be eligible to receive a bonus, a veteran must have been a bona fide resident of the State of West Virginia at the time of his or her entry into active service and for a period of at least six months immediately prior thereto, and has not been separated from service under conditions other than honorable. The bonus shall also be paid to any veteran otherwise qualified pursuant to this amendment, who was discharged within ninety days after entering the armed forces because of a service-connected disability. The amount of the bonus shall be six hundred dollars per eligible veteran who was in active service, inside the combat zone in Kosovo, Afghanistan or Iraq as designated by the President or Congress of the United States at anytime during the dates specified hereinabove. In the case of the Iraqi War and the conflict in Afghanistan, the amount of bonus shall be four hundred dollars per eligible veteran who was in active service outside the combat zone designated by the President or Congress of the United States during the dates specified hereinabove. The bonus to which any deceased veteran would have been entitled, if living, shall be paid to the following surviving relatives of the veteran, if the relatives are residents of the State when the application is made and if the relatives are living at the time payment is made: Any unremarried widow or widower, or, if none, all children, stepchildren and adopted children under the age of eighteen, or, if none, any parent, stepparent, adoptive parent or person standing in loco parentis. The categories of persons listed shall be treated as separate categories listed in order of entitlement and where there is more than one member of a class, the bonus shall be paid to each member according to his or her proportional share. Where a deceased veteran's death was connected with the service and resulted from the service during the time period specified, however, the surviving relatives shall be paid, in accordance with the same order of entitlement, the sum of two thousand dollars in lieu of any bonus to which the deceased might have been entitled if living. The person receiving the bonus shall not be required to include the bonus as income for state income tax purposes.

The principal amount of any bonds issued for the purpose of paying the bonuses provided for in this amendment shall not exceed the principal amount of eight

million dollars, but may be funded or refunded either on the maturity dates of the bonds or on any date on which the bonds are callable prior to maturity, and if any of the bonds have not matured or are not then callable prior to maturity, the Legislature may nevertheless provide at any time for the issuance of refunding bonds to fund or refund the bonds on the dates when the bonds mature or on any date on which the bonds are callable prior to maturity and for the investment or reinvestment of the proceeds of the refunding bonds in direct obligations of the United States of America until the date or dates upon which the bonds mature or are callable prior to maturity. The principal amount of any refunding bonds issued under the provisions of this paragraph shall not exceed the principal amount of the bonds to be funded or refunded thereby.

The bonds may be issued from time to time for the purposes authorized by this amendment as separate issues or as combined issues.

Whenever the Legislature shall provide for the issuance of any bonds under the authority of this amendment, it shall at the same time provide for the levy, collection and dedication of an additional tax, or enhancement to another tax as the Legislature may determine, in an amount as may be required to pay annually the interest on the bonds and the principal thereof within and not exceeding fifteen years, and all taxes or charges so levied shall be irrevocably dedicated for the payment of the principal of and interest on the bonds until the principal of and interest on the bonds are finally paid and discharged and any of the covenants, agreements or provisions in the acts of the Legislature levying the taxes or charges shall be enforceable in any court of competent jurisdiction by any of the holders of said bonds. Any revenue generated in excess of that which is required to pay the bonuses herein and to pay any administrative cost associated with the payment shall be used to pay the principal and interest on any bonds issued as soon as is economically practicable.

The Legislature shall have the power to enact legislation necessary and proper to implement the provisions of this amendment: *Provided,* That no bonus may be issued until the Governor certifies a list of veterans and relatives of deceased veterans eligible to receive such bonus to the Legislature at any regular or special session of the Legislature as the Legislature will provide by general law.

Acts 2004, H.J.R. 114, ratified Nov. 2, 2004.

CHAPTER 1

THE STATE AND ITS SUBDIVISIONS

ARTICLE 2

APPORTIONMENT OF REPRESENTATION

Section

1-2-1. Senatorial districts.

1-2-2. Apportionment of membership of House of Delegates.

1-2-2a. Repealed.

1-2-2b. Precinct boundary changes.

1-2-3. Congressional districts.

1-2-4. Severability of provisions of article.

§ 1-2-1. Senatorial districts

(a) This section shall be known and may be cited as the Senate Redistricting Act of 2011.

(b) As used in this section:

(1) "County" means the territory comprising a county of this state as such county existed on January 1, 2010, notwithstanding any boundary changes thereof made subsequent thereto;

(2) "Block" and "voting district" mean those geographic areas as defined by the Bureau of the Census of the United States Department of Commerce for the taking of the 2010 census of population and described on census maps prepared by the Bureau of the Census. Such maps are, at the time of this enactment, maintained by the Bureau of the Census and filed in the Redistricting Office of the Joint Committee on Government and Finance;

(3) "Incumbent senator" means a senator elected at the general election held in the year 2010 or at any general election thereafter, with an unexpired term of at least two years in duration.

(c) The Legislature recognizes that in dividing the state into senatorial districts, the Legislature is bound not only by the United States Constitution but also by the West Virginia Constitution; that in any instance where the West Virginia Constitution conflicts with the United States Constitution, the United States Constitution must govern and control, as recognized in section one, article I of the West Virginia Constitution; that the United States Constitution, as interpreted by the United States Supreme Court and other federal courts, requires state legislatures to be apportioned so as to achieve equality of population as near as is practicable, population disparities being permissible where justified by rational state policies; and that the West Virginia Constitution requires two senators to be elected from each senatorial district for terms of four years each, one such senator being elected every two years, with one half of the senators being elected biennially, and requires senatorial districts to be compact, formed of contiguous territory and bounded by county lines. The Legislature finds and declares that it is not possible to divide the state into senatorial districts so as to achieve equality of population as near as is practicable as required by the United States Supreme Court and other federal courts and at the same time adhere to all of these provisions of the West Virginia Constitution; but that, in an effort to adhere as closely as possible to all of these provisions of the West Virginia Constitution, the Legislature, in dividing the state into senatorial districts, as described and constituted in subsection (d) of this section, has:

(1) Adhered to the equality of population concept, while at the same time

recognizing that from the formation of this state in the year 1863, each Constitution of West Virginia and the statutes enacted by the Legislature have recognized political subdivision lines and many functions, policies and programs of government have been implemented along political subdivision lines;

(2) Made the senatorial districts as compact as possible, consistent with the equality of population concept;

(3) Formed the senatorial districts of "contiguous territory" as that term has been construed and applied by the West Virginia Supreme Court of Appeals;

(4) Deviated from the long-established state policy, recognized in subdivision (1) above, by crossing county lines only when necessary to ensure that all senatorial districts were formed of contiguous territory or when adherence to county lines produced unacceptable population inequalities and only to the extent necessary in order to maintain contiguity of territory and to achieve acceptable equality of population; and

(5) Also taken into account in crossing county lines, to the extent feasible, the community of interests of the people involved.

(d) The Senate shall be composed of thirty-four senators, one senator to be elected at the general election to be held in the year 2012, and biennially thereafter for a four-year term from each of the senatorial districts hereinafter in this subsection described and constituted as follows:

[This section, as amended by Acts 2011, 1st Ex. Sess., c. 6, also contains subsections (1) through (17), describing senatorial election districts, which have been omitted here due to their length. The complete tables may be found at http://www.legis.state.wv.us/WVCODE/Code.cfm. For more information, please contact the Secretary of State's Office at (304)558-6000 or elections@wvsos.com.]

(e) The West Virginia Constitution further provides, in section four, article VI thereof, that where a senatorial district is composed of more than one county, both senators for such district shall not be chosen from the same county, a residency dispersal provision which is clear with respect to senatorial districts which follow county lines, as required by such Constitution, but which is not clear in application with respect to senatorial districts which cross county lines. However, in an effort to adhere as closely as possible to the West Virginia Constitution in this regard, the following additional provisions, in furtherance of the rationale of such residency dispersal provision and to give meaning and effect thereto, are hereby established:

(1) With respect to a senatorial district which is composed of one or more whole counties and one or more parts of another county or counties, no more than one senator shall be chosen from the same county or part of a county to represent such senatorial district;

(2) With respect to a senatorial district which does not contain any whole county but only parts of two or more counties, no more than one senator shall be chosen from the same part to represent such senatorial district; and

(3) With respect to superimposed senatorial districts which contain only one whole county, all senators shall be chosen from such county to represent such senatorial districts.

(f) Candidates for the Senate shall be nominated as provided in section four, article five, chapter three of this code, except that such candidates shall be nominated in accordance with the residency dispersal provisions specified in section four, article VI of the West Virginia Constitution and the additional residency dispersal provisions specified in subsection (e) of this section. Candidates for the Senate shall also be elected in accordance with the residency dispersal provisions specified in said section and the additional residency dispersal provisions specified in subsection (e) of this section. In furtherance of the foregoing provisions of this subsection, no person may file a certificate of candidacy for election from a senatorial district described and constituted in subsection (d) of this section if he or she resides in the same county and the same such senatorial district wherein also resides an incumbent senator, whether the senatorial district wherein such incumbent senator resides was described and constituted by chapter ten, Acts of the Legislature, Fifth Extraordinary Session 2001, or was described and constituted in subsection (d) of this section or its immediately prior enactment. Any vacancy in a nomination shall be filled, any appointment to fill a vacancy in the Senate shall be made and any candidates in an election to fill a vacancy in the Senate shall be chosen so as to be consistent with the residency dispersal provisions specified in section four, article VI of the West Virginia Constitution and the additional residency dispersal provisions specified in subsection (e) of this section.

(g) Regardless of the changes in senatorial district boundaries made by the provisions of subsection (d) of this section, all senators elected at the general election held in the year 2008 and at the general election held in the year 2010 shall continue to hold their seats as members of the Senate for the term, and as representatives of the senatorial district, for which each thereof, respectively, was elected. Any appointment made or election held to fill a vacancy in the Senate shall be for the remainder of the term and as a representative of the senatorial district, for which the vacating senator was elected or appointed, and any such election shall be held in the district as the same was described and constituted at the time the vacating senator was elected or appointed.

(h) The Secretary of State may promulgate rules and regulations to implement the provisions of this section, including emergency rules and regulations promulgated pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code.

Acts 1882, c. 90, § 1; Acts 1891, c. 80; Acts 1901, c. 10; Acts 1937, c. 128; Acts 1951, c. 165; Acts 1963, c. 158; Acts 1964, 1st Ex. Sess., c. 1; Acts 1976, c. 66; Acts 1982, c. 99; Acts 1991, 3rd Ex. Sess., c. 2; Acts 1993, c. 85; Acts 2001, 5th Ex. Sess., c. 10, eff. Sept. 19, 2001; Acts 2011, 1st Ex. Sess., c. 6, eff. Aug. 5, 2011.

§ 1-2-2. Apportionment of membership of House of Delegates

(a) As used in this section:

(1) "County" means the territory comprising a county of this state as it existed on January 1, 2010, notwithstanding any boundary changes made subsequent thereto;

(2) "Block" and "VTD" (voting district) mean those geographic areas as defined by the Bureau of the Census of the United States Department of Commerce for the taking of the 2010 census of population and described on census maps prepared by the Bureau of the Census. The maps are, at the time of the reenactment of this section in the year 2011, maintained by the Bureau of the Census and filed in Redistricting Office of the Joint Committee on Government and Finance.

(b) The House of Delegates is composed of one hundred members elected from the delegate districts as described in subsection (c) of this section. Each delegate district is entitled to representation as described in this subsection:

(1) District one is entitled to two delegates;

(2) District two is entitled to one delegate;

(3) District three is entitled to two delegates;

(4) District four is entitled to two delegates;

(5) District five is entitled to one delegate;

(6) District six is entitled to one delegate;

(7) District seven is entitled to one delegate;

(8) District eight is entitled to one delegate;

(9) District nine is entitled to one delegate;

(10) District ten is entitled to three delegates;

(11) District eleven is entitled to one delegate;

(12) District twelve is entitled to one delegate;

(13) District thirteen is entitled to two delegates;

(14) District fourteen is entitled to one delegate;

(15) District fifteen is entitled to one delegate;

(16) District sixteen is entitled to three delegates;

(17) District seventeen is entitled to two delegates;

(18) District eighteen is entitled to one delegate;

(19) District nineteen is entitled to two delegates;

(20) District twenty is entitled to one delegate;

(21) District twenty-one is entitled to one delegate;

(22) District twenty-two is entitled to two delegates;

(23) District twenty-three is entitled to one delegate;

(24) District twenty-four is entitled to two delegates;

(25) District twenty-five is entitled to one delegate;

(26) District twenty-six is entitled to one delegate;

(27) District twenty-seven is entitled to three delegates;

(28) District twenty-eight is entitled to two delegates; not more than one delegate may be nominated, elected or appointed who is a resident of any single county within the district;

(29) District twenty-nine is entitled to one delegate;

(30) District thirty is entitled to one delegate;

(31) District thirty-one is entitled to one delegate;

(32) District thirty-two is entitled to three delegates;

(33) District thirty-three is entitled to one delegate;

(34) District thirty-four is entitled to one delegate;

(35) District thirty-five is entitled to four delegates;

(36) District thirty-six is entitled to three delegates;

(37) District thirty-seven is entitled to one delegate;

(38) District thirty-eight is entitled to one delegate;

(39) District thirty-nine is entitled to one delegate;

(40) District forty is entitled to one delegate;

(41) District forty-one is entitled to one delegate;

(42) District forty-two is entitled to two delegates;

(43) District forty-three is entitled to two delegates;

(44) District forty-four is entitled to one delegate;

(45) District forty-five is entitled to one delegate;

(46) District forty-six is entitled to one delegate;

(47) District forty-seven is entitled to one delegate;

(48) District forty-eight is entitled to four delegates;

(49) District forty-nine is entitled to one delegate;

(50) District fifty is entitled to three delegates;

(51) District fifty-one is entitled to five delegates;

(52) District fifty-two is entitled to one delegate;

(53) District fifty-three is entitled to one delegate;

(54) District fifty-four is entitled to one delegate;

(55) District fifty-five is entitled to one delegate;

(56) District fifty-six is entitled to one delegate;

(57) District fifty-seven is entitled to one delegate;

(58) District fifty-eight is entitled to one delegate;

(59) District fifty-nine is entitled to one delegate;

(60) District sixty is entitled to one delegate;

(61) District sixty-one is entitled to one delegate;

(62) District sixty-two is entitled to one delegate;

(63) District sixty-three is entitled to one delegate;

(64) District sixty-four is entitled to one delegate;

(65) District sixty-five is entitled to one delegate;

(66) District sixty-six is entitled to one delegate; and

(67) District sixty-seven is entitled to one delegate.

(c) The delegate districts consist of the following areas:

[This section, as amended by Acts 2011, 2nd Ex. Sess., c. 3, also contains tables describing delegate election districts, which have been omitted here due to their length. The complete tables may be found at http://www.legis.state.wv.us/WVCODE/Code.cfm. For more information, please contact the Secretary of State's Office at (304)558-6000 or elections@wvsos.com.]

(d) Regardless of the changes in delegate district boundaries made by the

provisions of subsection (c) of this section, the delegates elected at the general election held in the year 2010 continue to hold their offices as members of the House of Delegates for the term, and as representatives of the county or delegate district, for which each was elected. Any appointment made to fill a vacancy in the office of a member of the House of Delegates shall be made for the remainder of the term, and as representative of the county or delegate district, for which the vacating delegate was elected or appointed.

Acts 1882, c. 90; Acts 1891, c. 80; Acts 1901, c. 10; Acts 1915, c. 30; Acts 1933, 2nd Ex. Sess., c. 53; Acts 1951, c. 166; Acts 1963, c. 158; Acts 1964, 1st Ex. Sess., c. 1; Acts 1971, 2nd Ex. Sess., c. 4; Acts 1973, c. 71; Acts 1982, c. 99; Acts 1991, 3rd Ex. Sess., c. 3; Acts 1992, c. 119; Acts 2001, 5th Ex. Sess., c. 10, eff. Sept. 19, 2001; Acts 2011, 2nd Ex. Sess., c. 3, eff. Aug. 21, 2011.

§ 1-2-2a. Repealed by Acts 1974, c. 60

§ 1-2-2b. Precinct boundary changes

If an election precinct of this state includes territory contained in more than one senatorial or delegate district, as such senatorial districts are established by section one of this article and as such delegate districts are established by section two of this article, the county commission of the county in which the precinct is located shall, prior to January 21, 2012, alter the boundary lines of its election precincts so that no precinct contains territory included in more than one senatorial or delegate district.

Acts 1974, c. 37; Acts 1991, 3rd Ex. Sess., c. 3; Acts 2001, 5th Ex. Sess., c. 10, eff. Sept. 19, 2001; Acts 2002, c. 130, eff. Jan. 23, 2002; Acts 2011, 1st Ex. Sess., c. 5, eff. Aug. 5, 2011.

§ 1-2-3. Congressional districts

The number of members to which the state is entitled in the House of Representatives of the Congress of the United States are apportioned among the counties of the state, arranged into three congressional districts, numbered as follows:

First District: Barbour, Brooke, Doddridge, Gilmer, Grant, Hancock, Harrison, Marion, Marshall, Mineral, Monongalia, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel and Wood.

Second District: Berkeley, Braxton, Calhoun, Clay, Hampshire, Hardy, Jackson, Jefferson, Kanawha, Lewis, Morgan, Pendleton, Putnam, Randolph, Roane, Upshur and Wirt.

Third District: Boone, Cabell, Fayette, Greenbrier, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Raleigh, Summers, Wayne, Webster and Wyoming.

Acts 1882, c. 91; Acts 1901, c. 9; Acts 1915, c. 29; Acts 1929, c. 73; Acts 1933, 2nd Ex. Sess., c. 52; Acts 1951, c. 165; Acts 1961, c. 13; Acts 1963, c. 158; Acts 1968, 1st Ex. Sess., c. 1; Acts 1971, c. 16; Acts 1982, c. 32; Acts 1991, 2nd Ex. Sess., c. 14; Acts 2001, 5th Ex. Sess., c. 9, eff. Sept.

19, 2001; Acts 2011, 1st Ex. Sess., c. 5, eff. Aug. 5, 2011.

§ 1-2-4. Severability of provisions of article

If section one, two or three of this article or any part of any one or more of said sections is declared invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections or provisions of this article or the article in its entirety.

Acts 1964, 1st Ex. Sess., c. 1.

CHAPTER 2

COMMON LAW, STATUTES, LEGAL HOLIDAYS, DEFINITIONS, AND LEGAL CAPACITY

ARTICLE 2

LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS

Section

2-2-1. Legal holidays; official acts or court proceedings.

§ 2-2-1. Legal holidays; official acts or court proceedings

(a) The following days are legal holidays:

(1) The first day of January is "New Year's Day";

(2) The third Monday of January is "Martin Luther King's Birthday";

(3) The third Monday of February is "Presidents' Day";

(4) The last Monday in May is "Memorial Day";

(5) The twentieth day of June is "West Virginia Day";

(6) The fourth day of July is "Independence Day";

(7) The first Monday of September is "Labor Day";

(8) The second Monday of October is "Columbus Day";

(9) The eleventh day of November is "Veterans' Day";

(10) The fourth Thursday of November is "Thanksgiving Day";

(11) The day after Thanksgiving Day is "Lincoln's Day";

(12) The twenty-fifth day of December is "Christmas Day";

(13) Any day on which a general, primary or special election is held is a holiday throughout the state, a political subdivision of the state, a district or an incorporated city, town or village in which the election is conducted;

(14) General election day on even years shall be designated Susan B. Anthony Day, in accordance with the provisions of subsection (b), section one-a of this article; and

(15) Any day proclaimed or ordered by the Governor or the President of the United States as a day of special observance or Thanksgiving, or a day for the general cessation of business, is a holiday.

(b) If a holiday otherwise described in subsection (a) of this section falls on a Sunday, then the following Monday is the legal holiday. If a holiday otherwise described in subsection (a) of this section falls on a Saturday, then the preceding Friday is the legal holiday: *Provided,* That this subsection (b) shall not apply to subdivisions (13), (14) and (15), subsection (a) of this section.

(c) Any day or part thereof designated by the Governor as time off, without charge against accrued annual leave, for state employees statewide may also be time off for county employees if the county commission elects to designate the day or part thereof as time off, without charge against accrued annual leave for county employees. Any entire or part statewide day off designated by the Governor may, for all courts, be treated as if it were a legal holiday.

(d) In computing any period of time prescribed by any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code, the day of the act, event, default or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, a Sunday, a legal holiday or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday or designated day off.

(e) If any applicable provision of this code or any legislative rule or other administrative rule or regulation promulgated pursuant to the provisions of this code designates a particular date on, before or after which an act, event, default or omission is required or allowed to occur, and if the particular date designated falls on a Saturday, Sunday, legal holiday or designated day off, then the date on which the act, event, default or omission is required or allowed to occur is the next day that is not a Saturday, Sunday, legal holiday or designated day off.

(f) With regard to the courts of this state, the computation of periods of time, the specific dates or days when an act, event, default or omission is required or allowed to occur and the relationship of those time periods and dates to Saturdays, Sundays, legal holidays, or days designated as weather or other emergency days pursuant to section two of this article are governed by rules promulgated by the Supreme Court of Appeals.

(g) The provisions of this section do not increase or diminish the legal school holidays provided in section two, article five, chapter eighteen-a of this code.

Acts 1899, c. 13; Acts 1909, c. 77; Acts 1911, c. 40; Acts 1927, c. 59; Acts 1955, c. 100; Acts 1971, c. 84; Acts 1972, c. 62; Acts 1973, c. 70;

Acts 1976, c. 57; Acts 1980, c. 61; Acts 1982, c. 76; Acts 1985, c. 95; Acts 1995, c. 148, eff. 90 days after March 11, 1995; Acts 1998, c. 106, eff. 90 days after March 14, 1998; Acts 2002, c. 163, eff. 90 days after March 9, 2002; Acts 2005, 4th Ex. Sess., c. 13, eff. Sept. 13, 2005; Acts 2006, c. 108, eff. 90 days after March 11, 2006.

CHAPTER 3

ELECTIONS

Article

1. General Provisions and Definitions.

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1B. Fair Campaign Practices.

1C. Accessible Voting Technology Act.

2. Registration of Voters.

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3A. Vote by Mail Pilot Program.

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4. Voting Machines [Repealed].

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5. Primary Elections and Nominating Procedures.

6. Conduct and Administration of Elections.

7. Contested Elections.

8. Regulation and Control of Elections.

9. Offenses and Penalties.

10. Filling Vacancies.

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ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

Section

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§ 3-1-1. Short title; purpose

This chapter shall constitute and may be cited as the "West Virginia Election Code" and contemplates and comprehends a code of laws for the establishment, administration and regulation of elections and election procedures in the state of West Virginia.

Acts 1963, c. 64.

§ 3-1-2. Scope of chapter; definitions

Unless restricted by the context, the provisions of this chapter shall apply to every general, primary and special election in which candidates are nominated or elected or in which voters pass upon any public question submitted to them, except that the provisions hereof shall be construed to be operative in municipal elections only in those instances in which they are made expressly so applicable.

Unless the context clearly requires a different meaning, as herein used:

"Voter" shall mean any person who possesses the statutory and constitutional qualifications for voting;

"Election" shall mean the procedure whereby the voters of this state or any subdivision thereof elect persons to fill public offices, or elect members of a constitutional convention, or vote on public questions;

"Any election" or "all elections" shall include every general, primary, or special election held in this state, or in any of its subdivisions, for the purpose of nominating or electing federal or state officers, or county, city, town or village officers of any subdivision now existing or hereafter created, or for the purpose of electing members of a constitutional convention, or for voting upon any public question submitted to the people of the state or any of the aforesaid subdivisions;

"Office" shall be construed to mean "public office" which shall include (1) any elective office provided for by the constitution or laws of the United States or of this state to which a salary or other compensation attaches, and (2)

membership in a constitutional convention;

"Candidate" shall mean any person to be voted for at an election;

"Public question" shall mean any issue or proposition, now or hereafter required by the governing body of this state or any of its subdivisions to be submitted to the voters of the state or subdivision for decision at elections;

The term "minor" as used in article four, section one of the state constitution and as used in this chapter shall mean a person who has not become eighteen years of age.

Acts 1941, c. 43; Acts 1947, c. 92; Acts 1949, c. 57; Acts 1963, c. 64; Acts 1965, c. 69; Acts 1971, c. 55.

§ 3-1-2a. Municipal elections

(a) Notwithstanding other provisions of this code or of any special legislative or home rule city charter, the provisions of: (1) Articles eight and nine of this chapter; (2) any rules promulgated under authority granted in articles eight and nine of this chapter; and (3) any provisions of this chapter making a practice or conduct unlawful shall apply to every municipal election held for any purpose.

(b) For purposes of:

(1) This section;

(2) The application of articles eight and nine of this chapter;

(3) The application of the rules mentioned in this section; and

(4) The application of provisions of this chapter making a practice or conduct unlawful, the provisions of law which impose any duty upon or define any offense or prohibition with respect to the duty or authority of a county officer or county election officer or body of county election officers shall be construed to and shall apply with equal force and effect to the person or persons in a municipal election upon whom this code or the city charter or ordinance imposes such duty or vests the same or similar authority.

(c) Every municipality shall by charter or ordinance designate the persons in the municipality who perform the same duties as any officer in a county election. The designated persons shall attend a biannual election training held and conducted by the office of the Secretary of State.

(d) This section shall not be construed to abrogate the applicability of other provisions of this chapter to municipal elections.

Acts 1981, c. 102; Acts 2007, c. 97, eff. June 3, 2007.

§ 3-1-3. Persons entitled to vote

Citizens of the state shall be entitled to vote at all elections held within the precincts of the counties and municipalities in which they respectively

reside. But no person who has not been registered as a voter as required by law, or who is a minor, or of unsound mind, or who is under conviction of treason, felony or bribery in an election, or who is not a bona fide resident of the state, county or municipality in which he offers to vote, shall be permitted to vote at such election while such disability continues. Subject to the qualifications otherwise prescribed in this section, however, a minor shall be permitted to vote only in a primary election if he will have reached the age of eighteen years on the date of the general election next to be held after such primary election.

Acts 1941, c. 43; Acts 1963, c. 64; Acts 1965, c. 69; Acts 1971, c. 55; Acts 1972, Ex. Sess., c. 1; Acts 1979, c. 46; Acts 1986, c. 69.

§ 3-1-3a. Persons entitled to vote under federal Voting Rights Act Amendments of 1970; authority of secretary of state

(1) Any citizen of the United States who is a resident of the state and who applies, not later than thirty days immediately prior to any presidential election for registration or qualification to vote for the choice of electors for president and vice-president, or for president and vice-president, in such election, and who is otherwise qualified to vote, may register to vote, and vote, for the choice of electors for president and vice-president, or for president and vice-president, in such election, as provided by the federal Voting Rights Act Amendments of 1970.[1]

(2) Any citizen of the United States who has moved his residence from this state within thirty days next preceding any election for president and vice-president, and who was otherwise qualified to vote in this state as of the date of his change of residence and who has not satisfied the registration requirements of the state to which he has moved, may vote for the choice of electors for president and vice-president, or for president and vice-president, in such election, as provided by the federal Voting Rights Act Amendments of 1970.

(3) Any citizen of the United States who has attained the age of eighteen years but who has not attained the age of twenty-one years by the time of the next ensuing primary or election in which he may vote under section 302 of the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court, and who is otherwise qualified to vote, may vote in any primary or election for those candidates for whom he is entitled to vote under said section 302 of the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court.

(4) The secretary of state shall have authority to make, amend and rescind such rules, regulations, orders and instructions, and prescribe such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records, as may be necessary in order for this state to fully implement, and comply with, the federal Voting Rights Act Amendments of 1970, as interpreted and limited by the United States supreme court, and it shall be the duty of all public officers, election officers, boards and commissioners having any authority or responsibility in connection with any election, to comply with all such rules, regulations, orders and instructions, and use, make, follow or comply with all such registration and voting procedures, forms (including registration, ballot and ballot label forms), lists and records as

have been prescribed by the secretary of state under the foregoing authority vested in that office.

Acts 1971, c. 56.

[1] 42 U.S.C.A. § 1973aa et seq.

§ 3-1-4. Manner of voting

In all elections the mode of voting shall be by ballot, but the voter shall be left free to vote by either open, sealed, or secret ballot, as he may elect. Voting by ballot may be accomplished as provided in articles three, four, five and six of this chapter.

Acts 1863, c. 100, § 20; Acts 1872-3, c. 118, § 21; Acts 1882, c. 155, § 10; Acts 1891, c. 89, § 17; Acts 1963, c. 64.

§ 3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map

(a) The precinct shall be the basic territorial election unit. The county commission shall divide each magisterial district of the county into election precincts, shall number the precincts, shall determine and establish the boundaries thereof, and shall designate one voting place in each precinct, which place shall be established as nearly as possible at the point most convenient for the voters of the precinct. Each magisterial district shall contain at least one voting precinct and each precinct shall have but one voting place therein.

Each precinct within any urban center shall contain not less than three hundred nor more than one thousand five hundred registered voters. Each precinct in a rural or less thickly settled area shall contain not less than two hundred nor more than seven hundred registered voters, unless upon a written finding by the county commission that establishment of or retention of a precinct of less than two hundred voters would prevent undue hardship to the voters, the secretary of state determines that such precinct be exempt from the two hundred voter minimum limit. If, at any time the number of registered voters exceeds the maximum number specified, the county commission shall rearrange the precincts within the political division so that the new precincts each contain a number of registered voters within the designated limits. If a county commission fails to rearrange the precincts as required, any qualified voter of the county may apply for a writ of mandamus to compel the performance of this duty: *Provided*, That when in the discretion of the county commission, there is only one place convenient to vote within the precinct and when there are more than seven hundred registered voters within the existing precinct, the county commission may designate two or more precincts with the same geographic boundaries and which have voting places located within the same building. The county commission shall designate alphabetically the voters who will be eligible to vote in each precinct so created. Each such precinct shall be operated separately and independently with separate voting booths, ballot boxes, election commissioners and clerks, and whenever possible, in separate rooms. No two of such precincts may use the same counting board.

(b) In order to facilitate the conduct of local and special elections and the

use of election registration records therein, precinct boundaries shall be established to coincide with the boundaries of any municipality of the county and with the wards or other geographical districts of the municipality except in instances where found by the county commission to be wholly impracticable so to do. Governing bodies of all municipalities shall provide accurate and current maps of their boundaries to the clerk of any county commission of a county in which any portion of the municipality is located.

(c) To facilitate the federal and state redistricting process, precinct boundaries must be comprised of intersecting geographic physical features or municipal boundaries recognized by the U.S. Census Bureau. For purposes of this subsection, geographic physical features include streets, roads, streams, creeks, rivers, railroad tracks and mountain ridge lines. The county commission of every county must modify precinct boundaries to follow geographic physical features or municipal boundaries and submit changes to the West Virginia office of legislative services by June 30, 2007 and by the thirtieth day of June, every ten calendar years thereafter. The county commission must also submit precinct boundary details to the U.S. Census Bureau upon request.

The West Virginia office of legislative services shall be available for consultation with the county commission regarding the precinct modification process: *Provided*, That nothing in this subsection removes or limits the ultimate responsibility of the county commission to modify precinct boundaries to follow geographic physical features.

(d) The provisions of this section are subject to the provisions of section twenty-eight, article four of this chapter relating to the number of voters in precincts in which voting machines are used.

(e) The county commission shall keep available at all times during business hours in the courthouse at a place convenient for public inspection a map or maps of the county and municipalities with the current boundaries of all precincts.

Acts 1863, c. 78; Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89; Acts 1893, c. 25, § 5; Acts 1923, c. 25, § 5; Acts 1963, c. 64; Acts 1969, c. 52; Acts 1985, c. 72; Acts 1986, c. 70; Acts 1987, c. 48; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2003, c. 99, eff. 90 days after March 8, 2003.

§ 3-1-6. Municipal voting precincts

The governing bodies of all municipalities shall, for the purpose of municipal elections, provide by ordinance for making the voting precincts in the respective municipalities coincide, as nearly as possible, to the boundaries of the voting precincts fixed by the county court for all state and county elections.

Acts 1941, c. 43; Acts 1963, c. 64.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 3-1-7. Precinct changes; procedure; precinct record

(a) Subject to the provisions and limitations of section five of this article, the county commission of any county may change the boundaries of any precinct within the county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change the location of any polling place whenever the public convenience may require it.

(b) No order effecting the change, division or consolidation shall be made by the county commission within ninety days prior to an election nor without giving notice at least one month before the change, division or consolidation by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county in which the precinct or precincts are located. The county commission shall also, within fifteen days after the date of the order, publish the order in the manner required for publication of the notice.

(c) The county commission shall also, before the next succeeding election, cause the voters in the several precincts affected by the order to be duly registered in the proper precinct or precincts and shall mail written notification to all registered voters affected by the change.

(d) The county commission shall keep in a well-bound book, marked "election precinct record", a complete record of all their proceedings hereunder and of every order made creating a precinct or precincts or establishing a place of voting therein. The "election precinct record" shall be kept by the county commission clerk in his or her office and shall, at all reasonable hours, when not actually in use by the county commission, be open to inspection by any citizen of the county.

(e) When the county commission establishes a polling place at a location other than the location used for holding the preceding primary, general or special election in that precinct, the commission shall cause a notice to be posted on election day on the door of the previous polling place describing the location of the newly established polling place and shall mail written notification to all registered voters affected by the change.

(f) If for any reason the election cannot be held at the designated polling place in a precinct and no provision has been made by the county commission for holding the election at another place, the commissioners of election for that precinct may hold the election at the nearest place which they can secure for the purpose. They shall make known by proclamation to voters present at the time for opening the polls, and by posting a notice at or near the entrance of the first named polling place, the location at which the election will be held. The county commission shall establish another place of voting for that precinct as soon thereafter as practicable.

(g) Notwithstanding any provision herein to the contrary, in the case of an emergency, the county commission may make the precinct change no later than sixty days prior to an election in accordance with the requirements herein with the approval of the secretary of state. A change, if made however, shall not cause any voter to be moved to a different district.

Acts 1891, c. 89, § 4; Acts 1893, c. 25, § 5; Acts 1895, c. 3, § 6; Acts 1963, c. 64; Acts 1967, c. 105; Acts 1986, c. 71; Acts 2003, c. 100, eff. 90

days after March 7, 2003.

§ 3-1-8. Political party defined; parties or groups that may participate in municipal primary elections

Any affiliation of voters representing any principle or organization which, at the last preceding general election, polled for its candidate for governor at least one percent of the total number of votes cast for all candidates for that office in the state, shall be a political party, within the meaning and for the purpose of this chapter: Provided, That notwithstanding the foregoing provisions of this section, the governing body of any municipality may, by ordinance adopted by the affirmative vote of at least three fourths of the members of such governing body by recorded vote, provide that municipal political parties or groups within such municipality that do not meet the requirements of this section for classification as a political party may participate in the primary elections of any such municipality. Any such ordinance shall contain provisions implementing the foregoing proviso, which implementing provisions shall conform as nearly as practicable to any general provisions of law relating to municipal primary elections.

Acts 1915, c. 26, § 1; Acts 1916, 3rd Ex. Sess., c. 5, § 1; Acts 1963, c. 64; Acts 1965, c. 70.

§ 3-1-9. Political party committees; how composed; organization

(a) Every fourth year at the primary election, the voters of each political party in each state senatorial district shall elect four members consisting of two male members and two female members of the state executive committee of the party. In state senatorial districts containing two or more counties, not more than two elected committee members shall be residents of the same county: *Provided,* That at each election the votes shall be tallied from highest to lowest without regard to gender or county of residence. The two candidates with the highest votes shall be elected first and the other candidates shall be qualified based on vote tallies, gender and county of residence. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of each state executive committee and certificates of announcement, if any, to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to such committee and the vacancies, if any. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large which shall constitute the entire voting membership of the state executive committee: *Provided, however,* That if it chooses to do so, the committee may by motion or resolution and in accordance with party rules, may expand the voting membership of the committee. When senatorial districts are realigned following a decennial census, members of the state executive committee previously elected or appointed shall continue in office until the expiration of their terms. Appointments made to fill vacancies on the committee until the next election of executive committee members shall be selected from the previously established districts. At the first election of executive committee members following the realignment of senatorial districts, members shall be elected from the newly established districts.

(b) At the primary election, the voters of each political party in each county

shall elect one male and one female member of the party's executive committee of the congressional district, of the state senatorial district and of the delegate district in which the county is situated, if the county is situated in a multicounty state senatorial or delegate district. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of each congressional district, state senatorial district and delegate district executive committee of each party to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to each congressional district, state senatorial district and delegate district executive committee and the vacancies, if any. Upon receipt, the state executive committee shall make known any vacancies to the applicable county executive committee for the purpose of filling said vacancies as provided in subsection (f) of this section. When districts are realigned following a decennial census, members of an executive committee previously elected in a county to represent that county in a congressional or multicounty senatorial or delegate district executive committee shall continue to represent that county in the appropriate newly constituted multicounty district until the expiration of their terms: *Provided,* That the county executive committee of the political party shall determine which previously elected members will represent the county if the number of multicounty state senatorial or delegate districts in the county is decreased; and shall appoint members to complete the remainder of the term if the number of districts is increased.

(c) At the same time the voters of the county in each magisterial district or executive committee district, as the case may be, shall elect one male and one female member of the party's county executive committee except that in counties having three executive committee districts, there shall be elected two male and two female members of the party's executive committee from each magisterial or executive committee district. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of the county executive committee of each party along with the certificates of announcement to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to the county committee and the vacancies, if any. Upon receipt, the state executive committee shall make known any vacancies to the applicable county executive committee for the purpose of filling said vacancies as provided in subsection (f) of this section.

(d) For the purpose of complying with the provisions of this section, the county commission shall create the executive committee districts. The districts shall not be fewer than the number of magisterial districts in the county, nor shall they exceed in number the following: Forty for counties having a population of one hundred thousand persons or more; thirty for counties having a population of fifty thousand to one hundred thousand; twenty for counties having a population of twenty thousand to fifty thousand; and the districts in counties having a population of less than twenty thousand persons shall be coextensive with the magisterial districts.

(e) The executive committee districts shall be as nearly equal in population as practicable and shall each be composed of compact, contiguous territory. The county commissions shall change the territorial boundaries of the districts as required by the increase or decrease in the population of the districts as

determined by a decennial census. The changes must be made within two years following the census.

(f) All members of executive committees, selected for each political division as herein provided, shall reside within the county or district from which chosen. The term of office of all members of executive committees elected at the primary election in the year two thousand ten will begin on the first day of July, following the primary election and continue for four years thereafter, except as provided in subsection (g) of this section. Vacancies in the state executive committee shall be filled by the members of the committee for the unexpired term. Vacancies in the party's executive committee of a congressional district, state senatorial district, delegate district or county shall be filled by the party's executive committee of the county in which the vacancy exists for the unexpired term.

(g) As soon as possible after the certification of the election of the new executive committees, as herein provided, the newly elected executive committee shall convene an organizational meeting within their respective political divisions, on the call of the chair of the corresponding outgoing executive committee or by any member of the new executive committee in the event there is no corresponding outgoing executive committee. During the first meeting the new executive committee shall select a chair, a treasurer and a secretary and other officers as they may desire. Each of the officers shall, for their respective committees, perform the duties that usually appertain to his or her office. The organizational meeting may be conducted prior to the first day of July, but must occur after the certification of the election of the new executive committees. If the organizational meeting is conducted prior to the first day of July, the new committee shall serve out the remainder of the outgoing committee's term and is authorized to conduct official business. A current listing of all executive committees' members shall be filed with the Secretary of State by the end of July of each year. Vacancies in any executive committee shall be filled by the appropriate executive committee as provided in subsection (f) of this section no later than sixty days after the vacancy occurs. The chair of each executive committee shall submit an updated committee list to the Secretary of State within ten days of a change occurring. Executive committee membership lists shall include at least the member's name, full address, employer, telephone number and term information. An appointment to fill a vacancy does not take effect if the executive committee does not submit the updated list to the Secretary of State within the allotted time period. If the executive committee fails to submit the updated list within the allotted time period, it must make another appointment pursuant to the provisions of this section and resubmit the updated list in a timely manner. If a vacancy on an executive committee is not filled within the sixty-day period prescribed by this section, the chair of the appropriate executive committee, as provided in subsection (f) of this section, shall name someone to fill the vacancy. If the chair of a county executive committee fails to fill a vacancy in a congressional district, state senatorial district or delegate district executive committee, and the failure to fill such vacancy prohibits said committee from conducting official business, the chair of the party's state executive committee shall fill such vacancy.

(h) Any meeting of any political party executive committee shall be held only after public notice and notice to each member is given according to party rules and shall be open to all members affiliated with the party. Meetings shall be

conducted according to party rules, all official actions shall be made by voice vote and minutes shall be maintained and shall be open to inspection by members affiliated with the party.

Acts 1915, c. 26, § 3; Acts 1916, 3rd Ex. Sess., c. 5; Acts 1919, c. 78, § 3; Acts 1923, c. 23; Acts 1963, c. 64; Acts 1964, 1st Ex. Sess., c. 2; Acts 1971, c. 57; Acts 1978, c. 43; Acts 1980, c. 49; Acts 1985, c. 73; Acts 1991, c. 68; Acts 2002, c. 131, eff. 90 days after April 9, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2007, c. 98, eff. June 4, 2007.

§ 3-1-10. Party committees in office

The members of all state, congressional, senatorial, and county executive committees for political parties in office at the time this section becomes effective, and the various officers of such committees, shall hold their several offices and discharge the duties thereof until their successors are chosen and installed in accordance with the provisions of section nine of this article effective simultaneously herewith and other applicable provisions of this article, the prior provisions of section nine having become effective after the election of such members and officers for terms ending in the year one thousand nine hundred eighty-two. The Legislature finds and declares that the prior provisions of section nine of this article should not operate to limit the terms of such members and officers before the expiration thereof as contemplated by law effective at the time of the primary election held May, one thousand nine hundred seventy-eight.

Acts 1915, c. 26, § 3; Acts 1916, 3rd Ex. Sess., c. 5; Acts 1919, c. 78, § 3; Acts 1923, c. 23; Acts 1963, c. 64; Acts 1980, c. 49.

§ 3-1-11. Powers of state executive committee; central or subcommittees; party emblems

The state executive committee of each party may make such rules for the government of such party, not inconsistent with law, as may be deemed expedient; and it may also revoke, alter, or amend, in any manner not inconsistent with law, any present or future rules of such party. All acts of such state or other committees may be reviewable by the courts.

Any party executive committee may create and appoint subcommittees, campaign, or central committees, and delegate to them such powers and authority in the executive and administrative work of the committee as they shall deem advisable; but no power or authority shall be delegated to such subcommittee, campaign committee, or central committee, in contravention of any law of the state.

The state executive committee shall adopt a party emblem or device for the party to distinguish and identify the party ticket, and shall certify the same to the ballot commissioners, and it shall be printed on the party ticket. The device or emblem of no two parties shall be similar or of such a nature as to mislead or confuse the voter. If two or more parties seek the same device, or similar devices, preference shall be given to the party polling the largest number of votes for the candidate for governor at the last election for such office.

Acts 1907, c. 71, § 34; Acts 1908, c. 21; Acts 1915, c. 26, § 3; Acts 1916, 3rd Ex. Sess., c. 5, § 27; Acts 1963, c. 64.

§ 3-1-12. Members of national party committee

The members of the national party executive committee of any political party, to which the state is entitled under the national organization and the rules and regulations of the national committee of the party, shall be elected by the state executive committee of such party, unless the rules of the national party otherwise provide, in which latter event they shall be selected in all respects as provided for the selection thereof by the rules and regulations of the national organization of the political party and the resolutions of the delegated representatives of the political party passed and adopted by any national convention of such political party. A vacancy in the membership of a national party executive committee shall be filled by the state committee of the party unless the rules of the national party otherwise provide.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 27; Acts 1963, c. 64.

§ 3-1-13. Other party or group committees

The members of any political party which, at the last preceding general election, polled, for its candidate for governor, fewer than ten percent of the total number of votes cast for all candidates for that office in the state, and groups of citizens, not constituting a political party, which nominate candidates for offices to be voted for at any election, may select members of committees and officers thereof, for such political parties and such groups of citizens, in such manner as they may devise and adopt.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 3; Acts 1919, c. 78, § 3; Acts 1923, c. 23; Acts 1963, c. 64.

§ 3-1-14. Presidential electors; how chosen; duties; vacancies; compensation

Electors of president and vice president of the United States shall be nominated as provided in section twenty-one of article five of this chapter but their names shall be omitted from the general election ballot, as provided in section two of article six of this chapter, to be voted on the Tuesday next after the first Monday in November in the year nineteen hundred and sixty-four and every fourth year thereafter.

The presidential electors shall meet in the office of the governor at the capital of this state, on the day now appointed, or which shall hereafter be appointed, by the Congress of the United States and vote for the president and for the vice president of the United States in the manner prescribed by the Constitution and the laws of the United States. If any of the electors so chosen fail to attend at the time appointed, the electors present shall appoint an elector in place of each one so failing to attend, and every elector so appointed shall be entitled to vote in the same manner as if he had been originally chosen by the people.

Each presidential elector shall receive as compensation the sum of ten dollars a day for attending such meeting, including the time spent in traveling to and

from the place of meeting and in addition thereto the sum of ten cents for every mile necessarily traveled in going to and returning from the place of meeting, by the most direct route.

Acts 1863, c. 100; Acts 1872-3, c. 118, § 3; Acts 1875, c. 66, § 3; Acts 1882, c. 155, § 3; Acts 1891, c. 89, § 3; Acts 1917, c. 61, § 3; Acts 1949, c. 55; Acts 1963, c. 64.

§ 3-1-15. Election of United States senators and congressmen

At the general election in the year nineteen hundred and sixty-four and at each general election in every sixth year thereafter, and at the general election in the year nineteen hundred and sixty-six, and in each sixth year thereafter, there shall be elected a member of the United States Senate, and at the general election in the year nineteen hundred and sixty-four, and in every second year thereafter, there shall be elected a member of the House of Representatives in the Congress of the United States for each congressional district of the state, each for the next ensuing term.

Acts 1872-3, c. 118, § 3; Acts 1875, c. 66, § 3; Acts 1882, c. 155, § 3; Acts 1891, c. 89, § 3; Acts 1917, c. 61, § 3; Acts 1963, c. 64.

§ 3-1-16. Election of state officers

At the general election to be held in the year one thousand nine hundred sixty-eight, and in every fourth year thereafter, there shall be elected a governor, secretary of state, treasurer, auditor, attorney general, and commissioner of agriculture. At the general election in the year one thousand nine hundred sixty-eight, and in every second year thereafter, there shall be elected a member of the state Senate for each senatorial district, and a member or members of the House of Delegates of the state from each county or each delegate district. At the general election to be held in the year one thousand nine hundred sixty-eight, and in every twelfth year thereafter, there shall be elected one judge of the supreme court of appeals, and at the general election to be held in the year one thousand nine hundred seventy-two, and in every twelfth year thereafter, two judges of the supreme court of appeals, and at the general election to be held in the year one thousand nine hundred seventy-six, and in every twelfth year thereafter, two judges of the supreme court of appeals.

Acts 1872-3, c. 118, §§ 1, 2; Acts 1875, c. 66, § 2; Acts 1882, c. 155, § 2; Acts 1883, c. 1; Acts 1891, c. 89, § 2; Acts 1903, c. 21, § 2; Acts 1963, c. 64; Acts 1968, c. 20.

§ 3-1-17. Election of circuit judges; county and district officers; magistrates

There shall be elected, at the general election to be held in the year one thousand nine hundred ninety-two, and in every eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to but one judge, and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to two or more circuit judges; and at the general election to be held in the year one thousand nine hundred ninety-two, and in every fourth year thereafter, a sheriff, prosecuting attorney, surveyor of

lands, and the number of assessors prescribed by law for the county, and the number of magistrates prescribed by law for the county; and at the general election to be held in the year one thousand nine hundred ninety, and in every second year thereafter, a commissioner of the county commission for each county; and at the general election to be held in the year one thousand nine hundred ninety-two, and in every sixth year thereafter, a clerk of the county commission and a clerk of the circuit court for each county.

Acts 1872-3, c. 118, § 2; Acts 1875, c. 66, § 2; Acts 1882, c. 155, § 2; Acts 1883, c. 1; Acts 1891, c. 89, § 2; Acts 1903, c. 21; Acts 1919, c. 2, §§ 31, 41; Acts 1921, c. 5; Acts 1955, c. 60; Acts 1963, c. 64; Acts 1990, c. 79.

§ 3-1-18. Election to fill other offices

If the Legislature shall hereafter create any elective office, or make any office now filled by appointment an elective office, in the state or in any subdivision thereof, the person to fill the same shall be elected at the general election last preceding the beginning of the term of such office.

The provisions of this section shall not apply to the office of member or to the election of members of a constitutional convention.

Acts 1963, c. 64; Acts 1965, c. 69.

§ 3-1-19. Ballot commissioners; selection; duties generally; vacancies

In each county in the state, the clerk of the county commission while holding office, and two persons appointed by him or her, one from each of the two political parties which cast the largest and second largest number of votes in the state at the last preceding general election, shall constitute a board of ballot commissioners. The clerk shall be chairman. It shall be the duty of the clerk to notify the chairman of the respective county executive committees of the two parties, at least five days before making appointments, the time and place of making the appointments. If at any time after notice is given, and before or on the day so fixed for making appointments, the chairman of each of the committees shall designate, in writing, a member of such party as ballot commissioner. Each designee shall be appointed if he or she meets the qualifications of a voter. Ballot commissioners shall be appointed between the fifteenth and thirtieth days of January in each year in which a general election is to be held, for a term of two years beginning on the first day of February next ensuing. They shall perform the duties of ballot commissioners at all general, special and primary elections held in the county or any magisterial district thereof during their term of office. A vacancy shall be filled in the same manner as an original appointment, but immediate notice of a vacancy shall, where necessary, be deemed compliance with the five-day notice provision.

Acts 1891, c. 89, § 32; Acts 1951, c. 90; Acts 1963, c. 64; Acts 1968, c. 21; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 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 provisional ballot notice shall include a notification to voters of their rights as a provisional voter to inquire as to the correct precinct to cast a ballot and notification that if a ballot is cast in the incorrect precinct the ballot may not be counted at the canvass for that election. 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. The instructions regarding a provisional ballot shall be posted in the precinct in a highly visible location for voters to review.

(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.

Acts 1891, c. 89, § 44; Acts 1963, c. 64; Acts 1975, c. 130; Acts 1986, c. 72; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2005, c. 101, eff. 90 days after April 9, 2005; Acts 2007, c. 101, eff. June 8, 2007; Acts 2008, c. 93, eff. March 5, 2008.

§ 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 ballot.

Acts 1891, c. 89, §§ 33, 36; Acts 1943, c. 49; Acts 1961, c. 53; Acts 1963, c. 64; Acts 1978, c. 43; Acts 1981, c. 103; Acts 1985, c. 72; Acts 1991, c. 68; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2005, c. 101, eff. 90 days after April 9, 2005; Acts 2007, c. 101, eff. June 8, 2007.

§ 3-1-21a. Vendors authorized to print ballots; eligibility; application and certification; denial, suspension and revocation of authorization; appeal

(a) The printing of ballots for any election to be held pursuant to the provisions of this chapter shall be contracted for with a vendor authorized in accordance with the provisions of this section.

(b) Any vendor authorized to do business in West Virginia and in good standing may apply for a certificate of authorization to print ballots for elections in this state: *Provided,* That any individual, partnership, association or corporation who does not qualify as a resident vendor pursuant to the provisions of section thirty-seven-a, article three, chapter five-a of this code or who prints the ballots in a state which prohibits that state or any of its political subdivisions from contracting with West Virginia resident vendors for the printing of ballots or which prohibits the printing of ballots outside of such state, is not eligible to obtain a certificate of authorization.

(c)(1) Every vendor desiring to print ballots for elections held pursuant to the provisions of this chapter shall, prior to the execution of any contract for the printing of ballots with any state, county, or municipal government, obtain a certificate of authorization to print ballots.

(2) A certificate of authorization may be obtained by application to the Secretary of State, upon a form prescribed by the Secretary of State. The form shall include a statement that all printing, packaging and delivery specifications for ballots set forth in this chapter will be substantially met, and that the vendor applying for certification is eligible in accordance with the provisions of this section.

(3) Upon receipt of the completed application, the Secretary of State shall issue a certificate of authorization to print ballots, which shall remain in effect for two years from the date of issuance and may be renewed upon application therefor: *Provided,* That the Secretary of State may deny the application to issue or renew the certificate of authorization, or may suspend or revoke the certificate of authorization upon a determination that the vendor has not substantially complied with the printing, packaging and delivery specifications in the printing of ballots for any state, county or municipal election, or that the vendor is not eligible or is no longer eligible to print ballots pursuant to the provisions of this section. The Secretary of State shall give written notice of any such determination by certified mail, return receipt requested, to the vendor setting forth the reason for the suspension, revocation or the denial of the application or the denial of the renewal thereof. The applicant may, within sixty days of the receipt of such denial, file a written appeal with the State Election Commission. The State Election Commission shall promulgate rules establishing a hearing process for such appeals.

(d) On or before the second Monday of January of each year, the Secretary of State shall provide a list of all vendors authorized to print ballots for state, county and municipal elections to the clerk of each county commission of this state.

Acts 1991, c. 67; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 3-1-22. County court clerks to provide election supplies; requirements for poll books and ballot boxes

The clerk of the county court of each county shall provide poll books, a list of all precincts within the county, tally sheets, ballot boxes, voting booths, registration records and forms, strong and durable envelopes upon which to make returns, blank forms for certifying returns and whatever further supplies are needed for holding the elections and making the returns thereof. The poll books shall bear upon each page the following heading: "Names of persons voting at precinct No..... in the District of ..... in the county of ..... on this (the) ..... day of ..... in the year ....." Such poll books shall have columns headed respectively: "Number of Voters," "Signature of Voter" and "Challenge of Voter", and shall have under the heading "Number of Voters" numbers in consecutive order to the bottom of each page. Forms for oaths of commissioners of election and poll clerks shall be written or printed on the poll books. Each ballot box shall be provided with two locks with different keys so that the key for one lock will not open the other and shall be so constructed as to be safely and securely closed and locked, with an opening in the lid of the box sufficient only for the passage of a single ballot.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89, §§ 9, 10, 12, 13; Acts 1941, c. 44; Acts 1963, c. 64; Acts 2008, c. 93, eff. March 5, 2008.

§ 3-1-23. County commission to arrange polling places and equipment; requirements

The county commission in each county, before each election, shall secure, for each voting precinct in the county, a suitable room or building in which to hold the election, and shall cause the same to be suitably provided with heat, drinking water and light and a sufficient number of booths or compartments, each containing a table, counter or shelf, and furnished with proper supplies for preparing ballots, at or in which voters may conveniently prepare their ballots, so that in the preparation thereof they may be secure from the observation of others. The number of such booths or compartments shall not be less than two. Such room or building shall be located in such precinct: Provided, That upon a determination of the county commission that a suitable room or building in which to hold the election is not reasonably available in such precinct then the county commission may secure a suitable room or building in which to hold the election for such precinct in an adjacent precinct in said county, in a location as near as may be to the territory of the precinct for which such room or building is provided. At any polling place for which parking spaces are available nearby, at least one parking space shall be reserved for handicapped voters and clearly designated as such.

Acts 1891, c. 89, § 45; Acts 1963, c. 64; Acts 1968, c. 22; Acts 1973, c.

46; Acts 1985, c. 72.

§ 3-1-24. Obtaining and delivering election supplies

(a) It shall be the duty of the clerk of the county commission to appoint one or more of the commissioners of election or poll clerks at each precinct of the county to attend at the office of the clerk of the county commission at least one day before each election to receive the ballots, ballot boxes, poll books, registration records and forms and all other supplies and materials for conducting the election at the respective precincts. The clerk shall take a receipt for the respective materials delivered to the commissioners of election or poll clerks and shall file the receipt in his or her office. It shall be the duty of the commissioners or poll clerks to receive the supplies and materials from the clerk and to deliver them with the seal of all sealed packages unbroken at the election precinct in time to open the election.

(b) The commissioners or poll clerks, if they perform the messenger services, shall receive the per diem and mileage rate prescribed by law for this service.

(c) Ballots shall be delivered in sealed packages with seals unbroken. For general and special elections the delivered ballots shall not be in excess of one and one-twentieth times the number of registered voters in the precinct. For primary elections the ballots for each party shall be in a separately sealed package containing not more than one and one-twentieth times the number of registered voters of each party in the election precinct.

(d) For primary elections one copy of the poll books, including the written or printed forms for oaths of commissioners of election and poll clerks, shall be supplied at each voting precinct for each political party appearing on the primary ballot.

(e) There shall be two ballot boxes for each election precinct for which a receiving and a counting board of election commissioners have been appointed.

Acts 1891, c. 89, § 37; Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 15; Acts 1917, c. 37, § 5; Acts 1941, c. 44; Acts 1961, c. 52; Acts 1963, c. 64; Acts 1985, c. 72; Acts 1985, c. 74; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 3-1-25. Supplies by special messenger

In case any commissioner of election or poll clerk fails to appear at the offices of the clerk of the county commission by the close of the clerk's office on the day prior to any election, the board of ballot commissioners, the chairman or the clerk of the county commission shall forthwith dispatch a special messenger to the commissioners of election of each respective precinct with the ballots, registration records, ballot boxes, poll books and other supplies for the precinct. The messenger, if not a county employee, shall be allowed five dollars for this service. The messenger shall also receive mileage up to the rate of reimbursement authorized by the travel management rule of the Department of Administration for each mile necessarily traveled in the performance of his or her services. The messenger shall promptly report to the clerk of county commission and file with the clerk the receipts of the person to whom he or she delivered the ballots and other supplies and his or

her affidavit stating when and to whom he or she delivered them.

Acts 1891, c. 89, § 40; Acts 1963, c. 64; Acts 1982, c. 59; Acts 1985, c. 72; Acts 1985, c. 74; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 3-1-26. Election supplies in emergencies

If, by any accident or casualty, the ballots or ballot box or boxes delivered to a commissioner of election, or to any messenger, shall be lost or destroyed, it shall be the duty of such commissioner or messenger to report the loss forthwith to the board of ballot commissioners and clerk of the county court from whom the same were, or was, obtained, and make affidavit of the circumstances of the loss; whereupon such board and clerk shall at once send a new supply by special messenger, as provided in other cases. If, for any reason, there should be found no ballots, or ballot box, or other necessary means or contrivances for voting, at the opening of the polls, it shall be the duty of the commissioners of election to secure the same as speedily as possible and, if necessary, the ballot commissioners may have ballots printed or written, and the election commissioners may have a ballot box or boxes made.

Acts 1891, c. 89, § 42; Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 16; Acts 1963, c. 64.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 3-1-27. Municipal precinct registration records

At least one day prior to every municipal election, it shall be the duty of the appropriate officer designated by the municipality to procure from the municipal precinct file in the office of the clerk of the county commission the registration records necessary for the conduct of such election.

Such records shall, within ten days after the date of the municipal election, be returned to the office of the clerk of the county commission by the appropriate officer or officers designated by the municipality.

In case of a contested municipal election, the registration record of any challenged voter shall be made available by the clerk of the county commission to the officer or tribunal empowered to determine the contest. Such record shall be returned to the office of the clerk of the county commission within a reasonable time after the contest shall have been finally decided.

The clerk of the county commission shall acknowledge the release and return of the registration records under this section by the issuance of appropriate receipts.

In the event any municipal registration record is lost, destroyed, defaced or worn in any way as to warrant replacement, it shall be the duty of the clerk of the county commission to prepare a duplicate of such record and it shall be the duty of the municipality to pay for such replacement.

Acts 1941, c. 44; Acts 1963, c. 64; Acts 1985, c. 72; Acts 1985, c. 74.

§ 3-1-28. Election officials; eligibility, suspension of eligibility

(a) To be eligible to be appointed or serve as an election official in any state, county or municipal election held in West Virginia, a person:

(1) Must be a registered voter of the county for elections held throughout the county and a registered voter of the municipality for elections held within the municipality: *Provided,* That if the required number of persons eligible to serve as election officials for a municipal election are not available or are not willing to serve as election officials for a municipal election, a registered voter of the county in which the municipality is located may serve as an election official for elections held within the municipality;

(2) Must be able to read and write the English language;

(3) May not be a candidate on the ballot or an official write-in candidate in the election;

(4) May not be the parent, child, sibling or spouse of a candidate on the ballot or an official write-in candidate in the precinct where the official serves;

(5) May not be a person prohibited from serving as an election official pursuant to any other federal or state statute; and

(6) May not have been previously convicted of a violation of any election law.

(b) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for four years for the following reasons:

(1) Failure to appear at the polling place at the designated time without proper notice and just cause;

(2) Failure to perform the duties of an election official as required by law;

(3) Improper interference with a voter casting a ballot or violating the secrecy of the voter's ballot;

(4) Being under the influence of alcohol or drugs while serving as an election official; or

(5) Having anything wagered or bet on an election.

(c) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for two years upon petition of twenty-five registered voters of the precinct where the official last served and upon presentation of evidence of any of the grounds set forth in subsection (b) of this section: *Provided,* That the petition requesting the suspension of the election official is filed with the county commission at least ninety days prior to an election date. The names of those persons signing the petition must be kept confidential.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89, §§ 7, 8; Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 4; Acts 1917, c. 37, §§ 1, 2; Acts 1923, c. 25, § 26a(33); Acts 1945, c. 59; Acts 1945, c. 60; Acts 1951, c. 85; Acts 1955, c. 62; Acts 1963, c. 64; Acts 1965, c. 69; Acts 1967, c. 74; Acts 1993, c. 50; Acts 2001, c. 118, eff. 90 days after April 14, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type

(a) For the purpose of this article:

(1) The term "standard receiving board" means those election officials charged with conducting the process of voting within a precinct and consists of five persons, including one team of poll clerks, one team of election commissioners for the ballot box and one additional election commissioner: *Provided,* That if a municipal election is held at a time when there is no county or state election, the standard receiving board is to consist of four persons, including one team of poll clerks and one team of election commissioners for the ballot box;

(2) The term "expanded receiving board" means a standard receiving board as defined in subdivision (1) of this subsection and one additional team of poll clerks;

(3) The term "counting board" means those election officials charged with counting the ballots at the precinct in counties using paper ballots and includes one team of poll clerks, one team of election commissioners and one additional commissioner;

(4) The term "team of poll clerks" or "team of election commissioners" means two persons appointed by opposite political parties to perform the specific functions of the office: *Provided,* That no team of poll clerks or team of election commissioners may consist of two persons with the same registered political party affiliation or two persons registered with no political party affiliation; and

(5) The term "election official trainee" means an individual who is sixteen or seventeen years of age who meets the requirements of subdivisions (2), (3), (4), (5) and (6), subsection (a), section twenty-eight of this article.

(b) The composition of boards of election officials shall be as follows:

(1) In any primary, general or special election other than a presidential primary or presidential general election, each election precinct is to have one standard receiving board;

(2) In presidential primary and presidential general elections, each election precinct is to have one receiving board as follows:

(A) For precincts of less than five hundred registered voters, one standard receiving board; and

(B) For precincts of more than five hundred registered voters, one standard

receiving board or, at the discretion of the county commission, one expanded receiving board.

(3) In any election conducted using paper ballots, counting boards may be allowed or required as follows:

(A) For any state, county or municipal special election, a counting board may be allowed at the discretion of the county commission;

(B) In a statewide primary or general election, one counting board is required for any precinct of more than four hundred registered voters and one counting board may be allowed, at the discretion of the county commission, for any precinct of at least two hundred but no more than four hundred registered voters; and

(C) In a municipal primary or general election, one counting board may be allowed, at the discretion of the municipal governing body, for any precinct of more than two hundred registered voters.

(c) For each primary and general election in the county, the county commission shall designate the number and type of election boards for the various precincts according to the provisions of this section. At least eighty-four days before each primary and general election the county commission shall notify the county executive committees of the two major political parties in writing of the number of nominations which may be made for poll clerks and election commissioners.

(d) For each municipal election, the governing body of the municipality shall perform the duties of the county commission as provided in this section.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89, §§ 7, 8; Acts 1933, 2nd Ex. Sess., c. 73; Acts 1963, c. 64; Acts 1968, c. 23; Acts 1993, c. 50; Acts 2001, c. 118, eff. 90 days after April 14, 2001, Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2008, c. 93, eff. March 5, 2008.

§ 3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee shall also nominate qualified persons as alternates for at least ten percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be

called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chairman or secretary on its behalf, shall file in writing with the appointing body, no later than the seventieth day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) The board of education for any special election ordered by the board of education conducted apart from any other election;

(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder of the municipality for a municipal election.

(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the forty-ninth day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed;

(2) The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting the governing body shall appoint persons as alternates.

However, no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day. Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive committees shall be appointed;

(2) The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within fourteen days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If an appointed election official fails to appear at the polling place by forty-five minutes past five o'clock a. m. on election day, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in section twenty-nine of this article, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(k) In a municipal election, the recorder or other official designated by

charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

Acts 1863, c. 100; Acts 1866, c. 126; Acts 1871, c. 144; Acts 1872-3, c. 118; Acts 1879, c. 75; Acts 1882, c. 155; Acts 1891, c. 89, § 11; Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 7; Acts 1963, c. 64; Acts 1993, c. 50; Acts 2001, c. 118, eff. 90 days after April 14, 2001; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2009, c. 89, eff. July 6, 2009.

§ 3-1-30a. Oaths of election commissioners and poll clerks, substitution of persons

(a) Each commissioner of election and poll clerk, as defined in this article, before entering upon his or her duties, shall take orally and subscribe to the appropriate oath, as prescribed herein. Such oath may be taken before and administered by one of the election commissioners or poll clerks, who in turn may take the same before another election commissioner or poll clerk. For the purposes of this article, all election commissioners and poll clerks, having first been sworn, are authorized to administer oaths.

(1) The oath for members of the receiving board shall be as follows:

State of West Virginia

_____ County

I, _____, a qualified and registered voter of the county affiliated with the _____ Party, do solemnly swear that I will faithfully and honestly discharge my duties as _____ (poll clerk or election commissioner) of the receiving board according to the requirements of law in this election; that I will not knowingly permit any person to vote an unchallenged ballot who is not a resident of the precinct and a properly registered voter qualified to vote the ballot provided; that I will not challenge a ballot without just cause; that I will not cause any unnecessary delay in voting; that I will not disclose to any person how any voter has voted, nor how any ballot has been folded, marked, printed or stamped; that I do not have any agreement, understanding or arrangement that I will receive any money, position or other benefit for service in the election apart from my official pay; that I do not have any agreement, understanding or arrangement that I will perform any act for the benefit of any candidate in the election; and that I have nothing wagered or bet on the result of this election.

Subscribed and sworn to before me this _____ day of _____, 19 ___

_____

Signature and official title of

person before whom sworn

(2) The oath for the members of the counting board shall be as follows:

State of West Virginia

_____ County

I, _____, a qualified and registered voter of the county affiliated with the _____ Party, do solemnly swear that I will faithfully and honestly discharge my duties as _____ (poll clerk or election commissioner) of the counting board according to the requirements of law in this election; that I will carefully and accurately read and record the votes cast on each ballot voted in the election which contains the signatures of both poll clerks; that I will not disclose to any person how any voter has voted, nor how any ballot has been folded, marked, printed or stamped; that I will not disclose the votes cast for any candidate or any other information about the result of the election prior to the posting of the precinct returns on the door of the polling place; that I do not have any agreement, understanding or arrangement that I will receive any money, position or other benefit for service in the election apart from my official pay; that I do not have any agreement, understanding or arrangement that I will perform any act for the benefit of any candidate in the election; and that I have nothing wagered or bet on the result of this election.

Subscribed and sworn to before me this _____ day of _____, 19 ___

_____

Signature and official title of

person before whom sworn

(3) The secretary of state may prescribe the form of such oaths.

(b) When any election official is unable to perform the duties for which he or she was appointed, a substitution may be made, as follows:

(1) An eligible person of the same political party shall assume the duties after taking the oath. One of the election commissioners shall make an entry in the space provided on the oath form, indicating the name of the official being replaced, the reason for the change, the name of the person assuming the duties, the time at which the change occurred and the poll slip number of the last voter who signed a poll slip before the change occurred;

(2) If it is necessary for a poll clerk of one political party to exchange duties with an election commissioner of the same political party, the change of duties for each person shall be recorded in the same manner;

(3) If an election commissioner or poll clerk is unable or fails to perform the duties of the office adequately and according to the requirements of law to the extent such failure interferes with the conduct of the election, the clerk of the county commission may order the exchange of duties with another official of the same party, or if necessary, remove the official. The fact of that order shall be entered on the record, along with the information required in subdivision (1) of this subsection.

(c) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the

duties of the clerk of the county commission specified in this section.

Acts 1993, c. 50.

§ 3-1-31. Days and hours of elections

General elections shall be held in the several election precincts of the state on the Tuesday next after the first Monday in November of each even year. Primary and special elections shall be held on the days provided by law therefor.

At every primary, general or special election the polls shall be opened in each precinct on the day of such election at six-thirty o'clock in the forenoon and be closed at seven-thirty o'clock in the evening.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1885, c. 2, § 1; Acts 1891, c. 89, §§ 1, 13, 14, 15, 55; Acts 1925, c. 85, § 14; Acts 1941, c. 44; Acts 1963, c. 64.

§ 3-1-32. Opening and closing polls; procedure

At the time of opening the polls in all precincts wherein voting machines are not to be used, the election commissioners shall examine the ballot box and ascertain that there are no ballots in the same, and they shall thereupon securely lock the box and give one key to one of the commissioners and one to a commissioner of the opposite political party, who shall hold the same, and such boxes shall not be again opened until the time to begin counting the votes arrives and for that purpose. At or before opening the polls, the commissioners of election shall open the package containing the ballots in such manner as to preserve the seals intact and thereupon deliver all of the ballots to the poll clerk. Before any voter is permitted to vote, the commissioners of election shall proclaim that such election is opened. When the polls are closed, proclamation must be made of the fact by one of the commissioners of election to the people outside, in a loud and audible tone of voice, and a minute of such proclamation and of the time when it was made must be entered on the pollbooks by the clerks. The election commissioner shall permit those electors to vote who are present at the polling place prior to the hour specified for the closing of the polls: Provided, That at that time they are in a line awaiting their turn to vote within the voting room itself or, if the line extends outside of the voting room itself, within that line. In that event an election commissioner from each party shall immediately after the closing proclamation begin with the last voter in line and together supply the voters within the line with waiting-voter permits which shall be prescribed by the secretary of state. Each voter shall sign his permit in the presence of both commissioners who shall then likewise affix their signatures to the permit in the presence of the voter and each other. After each such voter in line has received and signed his permit and the election commissioners have affixed their signatures thereto, voting shall be resumed. Each voter shall present his permit to one of the poll clerks so that the signature thereon may be compared to the voter's signature when he signs the pollbook. Each permit so presented shall be attached to the page in the pollbook on which the voter affixed his signature. In no case shall any person who arrives at the polling place after the closing hour be given a waiting-voter permit or be allowed to vote. After the final voter presents his waiting-voter permit and casts his

ballot no more ballots shall be cast or received.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89, §§ 13, 14, 15, 55; Acts 1925, c. 85, § 14; Acts 1941, c. 44; Acts 1963, c. 64; Acts 1978, c. 43.

§ 3-1-33. How elections conducted by double boards

In all precincts wherein two election boards shall have been appointed, the receiving board shall attend at the opening of the polls, shall open the polls, and shall proceed with the election. The counting board shall attend at the voting place not later than three hours after the opening of the polls, and shall take charge of the ballot box containing the ballots theretofore cast in that precinct. They shall retire to a partitioned room or space in the voting place and there proceed to count and tabulate the ballots cast, as they shall find them deposited in the ballot box. The receiving board shall continue to receive the vote of electors in the other box, until such time as the counting board shall have finished counting and tabulating the ballots cast in the first ballot box. The county board shall, before exchanging the ballot boxes as herein provided, seal the ballots counted by it in envelopes to be provided for the purpose, which shall not be opened until the two boards shall together proceed with counting, tabulating and summarizing the votes as by this chapter provided. The two boards shall then exchange the first box for the second box, and so continue until the hour of closing the polls arrives.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89, §§ 13, 14, 15, 55; Acts 1917, c. 37, § 3; Acts 1925, c. 85, § 14; Acts 1941, c. 44; Acts 1963, c. 64.

§ 3-1-34. Voting procedures generally; assistance to voters; voting records; penalties

(a) Any person desiring to vote in an election shall, upon entering the election room, clearly state his or her name and residence to one of the poll clerks who shall thereupon announce the same in a clear and distinct tone of voice. If that person is found to be duly registered as a voter at that precinct, he or she shall sign his or her name in the designated location provided at the precinct. If that person is physically or otherwise unable to sign his or her name, his or her mark shall be affixed by one of the poll clerks in the presence of the other and the name of the poll clerk affixing the voter's mark shall be indicated immediately under the affixation. No ballot may be given to the person until he or she signs his or her name on the designated location or his or her signature is affixed thereon.

(b) The clerk of the county commission is authorized, upon verification that the precinct at which a handicapped person is registered to vote is not handicap accessible, to transfer that person's registration to the nearest polling place in the county which is handicap accessible. A request by a handicapped person for a transfer of registration must be received by the county clerk no later than thirty days prior to the date of the election. Any handicapped person who has not made a request for a transfer of registration at least thirty days prior to the date of the election may vote a provisional ballot at a handicap accessible polling place in the county of his or her registration. If during the canvass the county commission determines that the

person had been registered in a precinct that is not handicap accessible, the voted ballot, if otherwise valid, shall be counted. The handicapped person may vote in the precinct to which the registration was transferred only as long as the disability exists or the precinct from which the handicapped person was transferred remains inaccessible to the handicapped. To ensure confidentiality of the transferred ballot, the county clerk processing the ballot shall provide the voter with an unmarked envelope and an outer envelope designated "provisional ballot/handicapped voter". After validation of the ballot at the canvass, the outer envelope shall be destroyed and the handicapped voter's ballot shall be placed with other approved provisional ballots prior to removal of the ballot from the unmarked envelope.

(c) When the voter's signature is properly marked, the two poll clerks shall sign their names in the places indicated on the back of the official ballot and deliver the ballot to the voter to be voted by him or her without leaving the election room. If he or she returns the ballot spoiled to the clerks, they shall immediately mark the ballot "spoiled" and it shall be preserved and placed in a spoiled ballot envelope together with other spoiled ballots to be delivered to the board of canvassers and deliver to the voter another official ballot, signed by the clerks on the reverse side. The voter shall thereupon retire alone to the booth or compartment prepared within the election room for voting purposes and there prepare his or her ballot. In voting for candidates in general and special elections, the voter shall comply with the rules and procedures prescribed in section five, article six of this chapter.

(d) It is the duty of a poll clerk, in the presence of the other poll clerk, to indicate by a check mark, or by other means, inserted in the appropriate place on the registration record of each voter the fact that the voter voted in the election. In primary elections the clerk shall also insert thereon a distinguishing initial or initials of the political party for whose candidates the voter voted. If a person is challenged at the polls, the challenge shall be indicated by the poll clerks on the registration record, together with the name of the challenger. The subsequent removal of the challenge shall be recorded on the registration record by the clerk of the county commission.

(e)(1) No voter may receive any assistance in voting unless, by reason of blindness, disability, advanced age or inability to read and write, that voter is unable to vote without assistance. Any voter qualified to receive assistance in voting under the provisions of this section may:

(A) Declare his or her choice of candidates to an election commissioner of each political party who, in the presence of the voter and in the presence of each other, shall prepare the ballot for voting in the manner hereinbefore provided and, on request, shall read to the voter the names of the candidates selected on the ballot;

(B) Require the election commissioners to indicate to him or her the relative position of the names of the candidates on the ballot, whereupon the voter shall retire to one of the booths or compartments to prepare his or her ballot in the manner hereinbefore provided;

(C) Be assisted by any person of the voter's choice, other than the voter's present or former employer or agent of that employer, the officer or agent of a labor union of which the voter is a past or present member or a candidate on

the ballot or an official write-in candidate; or

(D) If he or she is handicapped, vote from an automobile outside the polling place or precinct by the absentee balloting method provided in subsection (e), section five, article three of this chapter in the presence of an election commissioner of each political party if all of the following conditions are met:

(i) The polling place is not handicap accessible; and

(ii) No voters are voting or waiting to vote inside the polling place.

(2) The voted ballot shall then be returned to the precinct officials and secured in a sealed envelope to be returned to the clerk of the county commission with all other election materials. The ballot shall then be tabulated using the appropriate method provided in section eight of this chapter as it relates to the specific voting system in use.

(3) Any voter who requests assistance in voting but who is believed not to be qualified for assistance under the provisions of this section shall nevertheless be permitted to vote a provisional ballot with the assistance of any person herein authorized to render assistance.

(4) Any one or more of the election commissioners or poll clerks in the precinct may challenge the ballot on the ground that the voter thereof received assistance in voting it when in his, her or their opinion the person who received assistance in voting is not so illiterate, blind, disabled or of such advanced age as to have been unable to vote without assistance. The election commissioner or poll clerk or commissioners or poll clerks making the challenge shall enter the challenge and reason therefor on the form and in the manner prescribed or authorized by article three of this chapter.

(5) An election commissioner or other person who assists a voter in voting:

(A) May not in any manner request or seek to persuade or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question and must not keep or make any memorandum or entry of anything occurring within the voting booth or compartment and must not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter or which ticket he or she had voted or how he or she had voted on any public question or anything occurring within the voting booth or compartment or voting machine booth except when required pursuant to law to give testimony as to the matter in a judicial proceeding; and

(B) Shall sign a written oath or affirmation before assisting the voter on a form prescribed by the Secretary of State stating that he or she will not override the actual preference of the voter being assisted, attempt to influence the voter's choice or mislead the voter into voting for someone other than the candidate of voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation: *Provided,* That no person providing assistance to a voter is required to sign an oath or affirmation where the reason for requesting assistance is the voter's inability to vote without assistance because of blindness as defined in section three, article fifteen, chapter five

of this code and the inability to vote without assistance because of blindness is certified in writing by a physician of the voter's choice and is on file in the office of the clerk of the county commission.

(6) In accordance with instructions issued by the Secretary of State, the clerk of the county commission shall provide a form entitled "list of assisted voters", the form of which list shall likewise be prescribed by the Secretary of State. The commissioners shall enter the name of each voter receiving assistance in voting the ballot, together with the poll slip number of that voter and the signature of the person or the commissioner from each party who assisted the voter. If no voter has been assisted in voting, the commissioners shall likewise make and subscribe to an oath of that fact on the list.

(f) After preparing the ballot, the voter shall fold the ballot so that the face is not exposed and so that the names of the poll clerks thereon are seen. The voter shall announce his or her name and present his or her ballot to one of the commissioners who shall hand the same to another commissioner, of a different political party, who shall deposit it in the ballot box if the ballot is the official one and properly signed. The commissioner of election may inspect every ballot before it is deposited in the ballot box to ascertain whether it is single, but without unfolding or unrolling it so as to disclose its content. When the voter has voted, he or she shall retire immediately from the election room and beyond the sixty-foot limit thereof and may not return except by permission of the commissioners.

(g) Following the election, the oaths or affirmations required by this section from those assisting voters, together with the "list of assisted voters", shall be returned by the election commissioners to the clerk of the county commission along with the election supplies, records and returns. The clerk of the county commission shall make the oaths, affirmations and list available for public inspection and shall preserve them for a period of twenty-two months or until disposition is authorized or directed by the Secretary of State or court of record: *Provided,* That the clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter.

(h) Any person making an oath or affirmation required under the provisions of this section who knowingly swears falsely or any person who counsels, advises, aids or abets another in the commission of false swearing under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in jail for a period of not more than one year, or both fined and confined.

(i) Any election commissioner or poll clerk who authorizes or provides unchallenged assistance to a voter when the voter is known to the election commissioner or poll clerk not to require assistance in voting is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars or imprisoned in a state correctional facility for a period of not less than one year nor more than five years, or both fined and imprisoned.

Acts 1981, c. 89, § 56, 57, 60, 61; Acts 1893, c. 25; Acts 1907, c. 71; Acts 1908, c. 21, § 34; Acts 1941, c. 44; Acts 1943, c. 51; Acts 1961, c. 54; Acts 1963, c. 64; Acts 1978, c. 43; Acts 1985, c. 72; Acts 1988, c. 52; Acts 1994, c. 57; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts

2000, c. 116, eff. 90 days after March 11, 2000; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2007, c. 99, eff. June 5, 2007; Acts 2008, c. 93, eff. March 5, 2008.

§ 3-1-35. Ballots to be furnished voters

In general and special elections the ballots for all voters of an election precinct shall be the same. In primary elections the ballot of the voter's political party at that election in that precinct shall be furnished to the voter together with separate ballots, if any, on any nonpartisan candidates and any public questions submitted to the voters generally at such primary election. In the event the voter is lawfully registered as "independent" or as an adherent of a political party not appearing on any primary election ballot to be voted in his precinct, he shall not, in a primary election, be given or entitled to vote any party ballot but shall be furnished any separate ballots to be voted thereat on nonpartisan candidates and public questions.

Acts 1963, c. 64.

§ 3-1-36. Report on and disposition of ballots spoiled or not used

Any voter who shall spoil, deface or mutilate the ballot delivered to him, on returning the same to the poll clerks, shall receive another in place thereof. Every person who does not vote any ballot delivered to him shall, before leaving the election room, return such ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the pollbooks, at the time, and the word "spoiled" shall be written across the face of the ballot and such ballot shall be placed in an envelope for spoiled ballots.

Immediately on closing the polls, the commissioners of election shall ascertain the number of ballots spoiled during the election and the number of ballots remaining not voted. The commissioners of election shall also ascertain from the pollbooks the number of persons who voted and shall report, over their signatures, to the clerk of the county commission, the number of votes cast, the number of ballots spoiled during the election and the number of ballots not voted. All unused ballots shall at the same time be returned to the clerk of the county commission, who shall separately package the unused ballots from each precinct, mark the name and number of the precinct on the package and retain them securely along with other election materials.

Each commissioner who is a member of an election board which fails to account for every ballot delivered to it is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both fined and imprisoned.

The board of ballot commissioners of each county, or the chairman thereof, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until twenty-two months after the election.

Acts 1891, c. 89, §§ 43, 59, 64; Acts 1941, c. 44; Acts 1943, c. 50; Acts 1963, c. 64; Acts 1985, c. 72.

§ 3-1-37. Restrictions on presence and conduct at polls

(a) Except as otherwise provided in this section, no person, other than the election officers and voters going to the election room to vote and returning therefrom, may be or remain within three hundred feet of the outside entrance to the building housing the polling place while the polls are open. This subsection does not apply to persons who reside or conduct business within such distance of the entrance to the building housing the polling place, while in the discharge of their legitimate business, or to persons whose business requires them to pass and repass within three hundred feet of such entrance.

(b) A person who is delivering a voter to a polling place by motor vehicle may drive such vehicle to a convenient and accessible location to discharge the voter, notwithstanding that the location is within three hundred feet of the outside entrance to the building housing the polling place. Upon discharging such voter from the vehicle, the person shall remove the vehicle from within three hundred feet of the entrance until such time as the voter is to be transported from the polling place or another voter delivered: Provided, That vehicles delivering voters who require assistance by reason of blindness, disability or advanced age may remain within three hundred feet of the entrance until such time as the voter is to be transported from the polling place.

(c) The election commissions shall limit the number of voters in the election room so as to preserve order. No person may approach nearer than five feet to any booth or compartment while the election is being held, except the voters to prepare their ballots, or the poll clerks when called on by a voter to assist in the preparation of his ballot, and no person, other than election officers and voters engaged in receiving, preparing and depositing their ballots, may be permitted to be within five feet of any ballot box, except by authority of the board of election commissioners, and then only for the purpose of keeping order and enforcing the law.

(d) Not more than one person may be permitted to occupy any booth or compartment at one time. No person may remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot, and in no event longer than five minutes, except that any person who claims a disability pursuant to section thirty-four of this article shall have additional time up to ten additional minutes to prepare his ballot. No voter, or person offering to vote, may hold any conversation or communication with any person other than the poll clerks or commissioners of election, while in the election room.

(e) The provisions of this section do not apply to persons rendering assistance to blind voters as provided in section thirty-four of this article or to any child fourteen years of age or younger who accompanies a parent, grandparent or legal guardian who is voting. Any dispute concerning the age of a child accompanying a parent, grandparent or legal guardian who is voting shall be determined by the election commissioners.

Acts 1891, c. 89, §§ 45, 53, 54, 58; Acts 1961, c. 54; Acts 1963, c. 64; Acts 1984, c. 72; Acts 1986, c. 73; Acts 1999, c. 118, eff. 90 days after March 13, 1999.

§ 3-1-38. Disorder at polls; procedure

The commissioners of election shall preserve order at, and in the vicinity of, the polls, and keep the way to the polls open and free from obstruction, and may direct disorderly persons to be removed therefrom, and, if necessary and proper, to be taken and held in custody until sunrise of the next day, or for any shorter time, which may be done by any sheriff or constable or other person or persons designated by the commissioners of election. For such purpose no warrant or authority in writing shall be necessary. The jail of the county or other place designated by the commissioners of election may be used as the place of custody. But any person so arrested shall have an opportunity to vote, if he be entitled to do so, before he shall be committed to jail, if he so desires and shall be prepared to do so promptly.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89, § 46; Acts 1963, c. 64.

Acts 1976, c. 33, abolished the office of the constable and transferred all duties and powers of the constables to deputy sheriffs. See § 50-1-17.

§ 3-1-39. Illegal voting; affidavit; procedure

(a) If at any time during the election any qualified voter shall appear at the polls for the purpose of stating that any person who has voted is an illegal voter in the precinct, that person shall be admitted to the election room and shall appear before a commissioner of election to make an affidavit explaining why he or she believes the accused to be an illegal voter.

(b) All affidavits alleging illegal voting shall be placed in a strong and durable envelope by the commissioners of election. The envelope shall be securely sealed and each of the commissioners shall endorse his or her name on the back of the envelope. At the close of the count the envelope shall be delivered to the clerk of the circuit court in accordance with section sixteen, article five of this chapter and section eight, article six of this chapter. The clerk of the circuit court shall carefully preserve the envelope containing the affidavits and deliver it, with the seal unbroken, to the prosecuting attorney in the county. The prosecuting attorney shall proceed as if it had been made before him or her.

Acts 1891, c. 89, § 50; Acts 1963, c. 64; Acts 1976, c. 33; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-1-40. Repealed by Acts 2003, c. 100, eff. 90 days after March 7, 2003

§ 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) Before an individual casts a provisional ballot, the poll clerk shall provide the individual written instructions, supplied by the board of ballot commissioners, stating that if the voter is casting a ballot in the incorrect precinct, the ballot cast may not be counted for that election: *Provided,* That if the voter is found to be in the incorrect precinct, then the poll worker shall attempt to ascertain the appropriate precinct for the voter to cast a ballot and immediately give the voter the information if ascertainable.

(e) 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.

(f) 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.

(g) 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.

Acts 1891, c. 89, § 49; Acts 1941, c. 44; Acts 1963, c. 64; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2007, c. 101, eff. June 8, 2007; Acts 2008, c. 93, eff. March 5, 2008.

§ 3-1-42. Time off for voting

Every person entitled to vote at any election who may be employed by any person, company, or corporation on the day on which such election shall be held in this state, shall, on written demand of such employee, made at least three days prior thereto, be given a period of not more than three hours, if necessary, between the opening and the closing of the polls on such day, for the purpose of enabling such person to repair to the place of voting to cast his vote and return, without liability to any penalty or deduction from his usual salary or wages on account of such absence, except that any employee, who has three or more hours of his own time away from his work or place of employment at any time between the hours of the opening and the closing of the polls on election day and who fails or neglects to vote or elects not to vote during such free time away from his work or employment, may be subject to wage or salary deductions for the time actually absent from his work or employment for voting in such election.

In essential government, health, hospital, transportation and communication services and in production, manufacturing and processing works requiring continuity in operation, the employer may, upon receipt of such written demand for voting time off, arrange and schedule a calendar of time off for any and all of his employees for voting so as to avoid impairment or disruption of essential services and operations, but every such schedule or calendar of time off for voting so arranged shall provide ample and convenient time and opportunity for each employee of such services or works to cast his vote as herein provided.

Acts 1891, c. 89, § 52; Acts 1939, c. 59; Acts 1963, c. 64.

§ 3-1-43. Disposition of miscellaneous election papers

At the expiration of twenty-two months after any election, the affidavits taken and returned by any registrar or any election officer, applications for absent voters' ballots, rejected absent voters' ballots, certificates of nominations of candidates, and the written designations of election officers and of ballot commissioners shall be destroyed. If the further preservation of any of the documents mentioned in this section shall be required by the order of the court, the same shall be destroyed at the expiration of the time fixed for the further preservation thereof by such order.

Acts 1891, c. 89; Acts 1908, c. 19; Acts 1911, c. 45; Acts 1916, 3rd Ex. Sess., c. 6; Acts 1941, c. 44; Acts 1963, c. 64; Acts 1985, c. 72.

§ 3-1-44. Compensation of election officials; expenses

(a) Each ballot commissioner is to be paid a sum, to be fixed by the county

commission, not exceeding one hundred twenty-five dollars for each day he or she serves as ballot commissioner, but in no case may a ballot commissioner receive allowance for more than ten days' services for any one primary, general or special election.

(b) Each commissioner of election and poll clerk is to be paid a sum, to be fixed by the county commission, not exceeding one hundred twenty-five dollars for one day's services for attending the school of instruction for election officials if the commissioner or poll clerk provides at least one day's service during an election and a sum not exceeding one hundred seventy-five dollars for his or her services at any one election: *Provided,* That each commissioner of election and poll clerk is to be paid a sum not exceeding one hundred seventy-five dollars for his or her services at any of the three special elections described in subsection (f) of this section.

(c) Each alternate commissioner of election and poll clerk may be paid a sum, to be fixed by the county commission, not exceeding fifty dollars for one day's services for attending the school of instruction for election officials: *Provided*, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day.

(d) The commissioners of election or poll clerks obtaining and delivering the election supplies, as provided in section twenty-four of this article, and returning them, as provided in articles five and six of this chapter, are to be paid an additional sum, fixed by the county commission, not exceeding one hundred twenty-five dollars for his or her services pursuant to this subsection at any one election. In addition, he or she is to be paid mileage up to the rate of reimbursement authorized by the travel management rule of the department of administration for each mile necessarily traveled in the performance of his or her services.

(e) The compensation of election officers, cost of printing ballots and all other expenses incurred in holding and making the return of elections, other than the three special elections described in subsection (f) of this section, are to be audited by the county commission and paid out of the county treasury.

(f) The compensation of election officers, cost of printing ballots and all other reasonable and necessary expenses in holding and making the return of a special election for the purpose of taking the sense of the voters on the question of calling a constitutional convention, of a special election to elect members of a constitutional convention and of a special election to ratify or reject the proposals, acts and ordinances of a constitutional convention are obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of these special elections are to be audited by the secretary of state. The secretary of state shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of these special elections to the secretary of state. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the secretary of state shall requisition the necessary warrants from the auditor of the state to be drawn on the state treasurer and shall mail the warrants directly to the

vendors of the special election services, supplies and facilities.

Acts 1863, c. 100; Acts 1864, c. 16; Acts 1872-3, c. 118; Acts 1881, c. 10; Acts 1882, c. 155; Acts 1891, c. 89, § 87; Acts 1911, c. 61; Acts 1917, c. 37; Acts 1920, 2nd Ex. Sess., c. 2, § 6; Acts 1923, c. 24, § 6; Acts 1951, c. 88; Acts 1963, c. 64; Acts 1965, c. 69; Acts 1972, c. 49; Acts 1980, c. 49; Acts 1982, c. 59; Acts 1991, c. 68; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2001, c. 118, eff. 90 days after April 14, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-1-45. Court proceedings to compel performance of duties, etc.

Any officer or person upon whom any duty is imposed by this chapter may be compelled to perform his or her duty by writ of mandamus. The circuit courts, or the judges thereof in vacation, shall have jurisdiction by writ and shall, upon affidavit filed showing a proper case, issue a writ to be returned, heard and determined within fifteen days from the commencement of the proceedings. If a circuit court, or a judge thereof in vacation, shall proceed against any board of canvassers by mandamus, or otherwise, to control, in any manner, the action of the board in the performance of its duties, under the provisions of this article, in any case concerning the election of a member of the House of Delegates, or a state senator, and shall fail to enter a final order in the proceedings, settling all questions presented therein within fifteen days from the commencement of the proceedings, unless delayed by proceedings in the supreme court of appeals, or a judge thereof in vacation, the writ shall be dismissed. The board shall convene within not less than five days thereafter and proceed forthwith to the performance of its duties under the provisions of this article. A mandamus shall lie from the supreme court of appeals, or any one of the judges thereof in vacation, returnable before court, to compel any officer herein to do and perform legally any duty required of him or her. In an election of a member of the House of Delegates and state senator, a writ of certiorari, mandamus or prohibition shall lie from the supreme court of appeals, or a judge thereof in vacation, returnable before the court, to correct any error of law and review and correct the proceedings of any circuit court, or the judge thereof in vacation, or any board of canvassers. When any rule to show cause why a writ of mandamus, prohibition or certiorari is issued by the court, or a judge thereof in vacation, it shall be the duty of the court to convene in special session at the state capital, not later than ten days from the date of the writ, to hear and determine all matters arising upon the writ. The issues raised in the petition for a writ of mandamus, prohibition or certiorari shall have precedence over all other business pending before the court. The issues before the court shall be determined within five days from the assembling of the court and, in any case, in ample time for the case to be remanded and final action taken by the circuit court and the board of canvassers in order that the board may perform its duty and issue the certificate of election before the second Wednesday in January, then next following. Mandamus and prohibition proceedings under this section may be upon affidavit alone.

Acts 1891, c. 89; Acts 1893, c. 25, § 89; Acts 1911, c. 45, § 16; Acts 1916, c. 6; Acts 1963, c. 64; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

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

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

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

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

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

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

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

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

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

Acts 1972, c. 50; Acts 1985, c. 75; Acts 1993, c. 50; Acts 2006, c. 89, eff. March 10, 2006; Acts 2008, c. 94, eff. March 4, 2008.

§ 3-1-47. Repealed by Acts 1991, c. 68

§ 3-1-48. Legislative findings; state election fund; loans to counties; availability of funds; repayment of loans

(a) *Legislative findings*. — The "Help America Vote Act of 2002", PL 107-252, 42 U.S.C. § 15301, *et seq.*, provides funding so that all states will be able to implement some form of electronic voting system to replace punch card and lever machines by two thousand six. The new voting systems must meet several requirements including notifying the voter of over votes and permitting each voter to review his or her ballot and correct errors before casting the vote. The limited, finite funding available to the state will not be sufficient to meet current and future needs for equipment and services as equipment needs to be obtained, repaired or replaced as technology changes. It is the intent of the Legislature to maximize the available funds by establishing a no-interest loan program to assist any county, regardless of its current voting system, in purchasing necessary electronic voting equipment and services. As the loans are repaid funds will continue to be available to meet future needs. It is not the intent of the Legislature to mandate any technology for voting systems to be utilized in this state and this section is intended only to establish terms and conditions for providing loan assistance to counties in accordance with the provisions of this section.

(b) *State election fund*. — The special revenue account created in the state treasury and known as the "State Election Fund" account is continued. Expenditures from the account shall be used by the secretary of state for the administration of this chapter in accordance with the provisions of 42 U.S.C. § 15301, *et seq.*, the Help America Vote Act of 2002, PL 107-252, in accordance with the provisions of article eleven, chapter four of this code.

(c) *Establishment of special revenue account.* — There is created in the state treasury a special revenue revolving fund account known as the "county assistance voting equipment fund" which shall be an interest-bearing account. The fund shall consist of an initial transfer not to exceed eight million five hundred thousand dollars from the state election fund established under subsection (b) of this section pursuant to legislative appropriation; any future funds received from the federal government under the "Help America Vote Act of 2002", PL 107-252, 42 U.S.C. § 15301, *et seq.*, or subsequent acts providing funds to states to obtain, modify or improve voting equipment and obtain necessary related services including voting systems, technology and methods for casting and counting votes; any funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal or state law; and any accrued interest or other return on the moneys in the fund. The balance remaining in the fund at the end of each fiscal year shall remain in the fund and not revert to the state general revenue fund.

(d) *Use of funds.* — The money in the fund shall be used only in the manner and for the purposes prescribed in this section. Notwithstanding any provision of law to the contrary, funds in the county assistance voting equipment fund may not be designated or transferred for any purpose other than those set forth in this section.

(e) *Administration of the fund.* — The secretary of state shall administer the fund with the approval of the state election commission.

(f) *Investment of fund.* — The moneys of the fund shall be invested pursuant to article six, chapter twelve of this code and in such a manner that sufficient moneys are available as needed for loans authorized under this section.

(g) *Loans to counties.* — The county assistance voting equipment fund shall be used to make no-interest loans to counties to obtain, modify or replace voting equipment, software and necessary related services including voting systems, technology and methods for casting and counting votes: *Provided*, That any county commission that purchased an electronic voting system prior to the thirteenth day of November, two thousand four, is eligible to apply for matching funds under this section to upgrade the system: *Provided, however,* That matching funds available for an upgrade shall not exceed the amount available under subdivision (1) of this subsection for the purchase of a new electronic voting system under the secretary of state's authorized contract. The loans shall be made under the following terms and conditions:

(1) The state election commission shall, subject to availability of funds, loan no more than fifty percent of the cost of the voting equipment or services to any county commission: *Provided,* That a portion or all of the county matching requirement may be waived in limited circumstances as determined by the state election commission pursuant to this section.

(2) The county commission shall provide sufficient documentation to establish to the satisfaction of the state election commission that the county commission has at least fifty percent of the money necessary to obtain the voting equipment, software or services for which the loan is sought.

(3) The county commission shall enter into a contract with the state election commission for the repayment of the loan over a period not to exceed five years or the length of the contract to obtain the equipment, software or services, whichever is less.

(4) The county commission shall use the loan for voting equipment and services certified by the state election commission pursuant to the provisions of article four-a of this chapter and authorized for use by the secretary of state.

(5) A county commission may apply for a loan on a form provided by the secretary of state. The form shall, in addition to requesting information necessary for processing the application, state the deadline for submitting the application and the eligibility requirements for obtaining a loan.

(6) The state election commission may waive a portion or all of the matching money required by this subsection for a county commission that can establish that it has exercised due diligence in raising its share of the costs but has been unable to do so. On forms provided by the secretary of state the county commission shall request a waiver and shall make a full financial disclosure of its assets and liabilities as well as potential for future income when applying for a waiver. The county commission shall demonstrate, to the satisfaction of the state election commission, its inability to meet the matching requirements of this subsection and its ability to repay the loan in a timely manner.

Notwithstanding the provisions of subdivision (3) of this subsection, the state election commission may extend the repayment period on a year-to-year basis for a repayment period not to exceed five additional years.

(h) *Application.* — An application for a loan shall be approved by the state election commission if the requirements of this section have been met.

(i) *Rulemaking.* — The secretary of state shall propose for promulgation in accordance with article three, chapter twenty-nine-a of this code emergency and legislative rules necessary to effectuate the purposes of this section.

(j) *Availability of loans.* — The state election commission may not approve a loan under this section until final standards for electronic voting equipment with a voter verified paper ballot have been established by the secretary of state or the national institute for standards and technology. The state election commission may not approve a loan for the purchase, lease, rental or other similar transaction to obtain electronic voting equipment, software or necessary related services unless obtained under a contract authorized by the secretary of state pursuant to rules promulgated under this section.

(k) *Repayment of loans.* — The secretary of state may, by civil action, mandamus or other judicial or administrative proceeding, compel performance by a county commission of all the terms and conditions of the loan agreement between the state and that county commission including periodic reduction of any moneys due the county from the state.

Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2004, 3rd Ex. Sess., c. 11, eff. Nov. 16, 2004.

§ 3-1-49. Voting system standards

(a) In accordance with 42 U.S.C. § 1530, *et seq.*, the Help America Vote Act of 2002, Public Law 107-252, each voting system used in an election for federal office shall:

(1) Permit the voter to verify, in a private and independent manner, the votes selected by the voter on the ballot before the ballot is cast and counted;

(2) Provide the voter with the opportunity, in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error; and

(3) If the voter selects votes for more than one candidate for a single office: (A) Notify the voter that the voter has selected more than one candidate for a single office on the ballot; (B) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (C) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted: *Provided*, That a county that uses a paper ballot voting system, a punch card voting system or an optical scan voting system may meet the requirements of this paragraph by establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and providing the voter with instructions

on how to correct the ballot before it is cast and counted, including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.

(4) Ensure that any notification required under this section preserves the privacy of the voter and the confidentiality of the ballot.

(b) Each voting system used in an election for federal office shall produce a record with an audit capacity for the system which shall meet the following requirements:

(1) Produce a permanent paper record with a manual audit capacity for the system; and

(2) Provide the voter with an opportunity to change the ballot or correct any error before the ballot is cast and counted and before the permanent paper record is produced.

(c) Each voting system used in an election for federal office shall be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters: *Provided*, That the provisions of this subsection may be satisfied through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place.

Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-1-50. Establishment of state-based administrative complaint procedures

The secretary of state shall establish and maintain a state-based administrative complaint procedure for complaints received concerning election violations which shall meet the following requirements:

(1) The procedures shall be uniform and nondiscriminatory.

(2) Under the procedures, any person who believes that there is a violation of any provision of this chapter, including a violation which has occurred, is occurring or is about to occur, may file a complaint.

(3) Any complaint filed under the procedures shall be in writing, notarized and signed and sworn by the person filing the complaint.

(4) The secretary of state may consolidate complaints filed under this section.

(5) At the request of the complainant, there shall be a hearing on the record.

(6) Violations of any provision of this chapter shall be punishable in accordance with the provisions of article nine of this chapter.

(7) If, under the procedures, the secretary of state determines that there is no violation, the secretary of state shall dismiss the complaint and publish

the results of the procedures.

(8) The secretary of state shall make a final determination with respect to a complaint prior to the expiration of the ninety-day period which begins on the date the complaint is filed unless the complainant consents to a longer period for making a determination.

(9) If the secretary of state fails to meet the deadline applicable under subdivision (8) of this section, the complaint shall be resolved within sixty days under alternative dispute resolution procedures established for purposes of this section. The record and other materials from any proceedings conducted under the complaint procedures established under this section shall be made available for use under the alternative dispute resolution procedures.

Acts 2003, c. 100, eff. 90 days after March 7, 2003.

ARTICLE 1A

STATE ELECTION COMMISSION AND SECRETARY OF STATE

Section

3-1A-1. Election commission continued; composition; chairperson; per diem; traveling expense.

3-1A-2. Qualifications of members of commission.

3-1A-3. Terms of office of commission members; filling vacancies.

3-1A-4. Office and meetings of commission.

3-1A-5. Powers and duties of commission; legislative rules.

3-1A-6. Powers and duties of Secretary of State; exercise of powers by appointees.

3-1A-7. Candidate's financial disclosure statement.

3-1A-8. Investigators for the secretary of state.

§ 3-1A-1. Election commission continued; composition; chairperson; per diem; traveling expense

The "State Election Commission," heretofore created, is continued and is composed of the Secretary of State, and four persons appointed by the Governor, by and with the advice and consent of the Senate. The commission shall from this membership elect a chairman for a term of two years. Each member of the commission shall be reimbursed for all reasonable and necessary expenses actually paid the per diem and expense reimbursement established for the Legislature in section seven, article two-a, chapter four of this code in the performance of his or her duties as a member of the commission.

Acts 1941, c. 43; Acts 1963, c. 64; Acts 1966, c. 27; Acts 1974, c. 38; Acts 2010, c. 72, eff. June 11, 2010.

§ 3-1A-2. Qualifications of members of commission

No member of the commission appointed by the governor shall be a candidate for or hold any public office other than that of membership on the commission; nor shall such appointed member be a member of any committee of a political party. Any person who, directly or indirectly, (1) designs, owns, manufactures, distributes or sells any voting machine, or (2) owns any patent rights or contract rights thereto, or (3) has any interest in any joint venture, partnership, firm, corporation or association designing, owning, manufacturing, distributing or selling any voting machine, or owning any patent rights or contract rights thereto, shall be disqualified from serving as a member of the commission. At least one member appointed by the governor shall be selected with special reference to his expert knowledge as a student of the problems of public elections. Not more than two members appointed by the governor shall be members of the same political party. In case a member appointed by the governor becomes a candidate for or is appointed to any other public office or political committee, his office as member of the commission shall be deemed immediately vacated.

Acts 1941, c. 43; Acts 1963, c. 64; Acts 1966, c. 27; Acts 1974, c. 38.

§ 3-1A-3. Terms of office of commission members; filling vacancies

The terms of office of the members of the commission shall be six years. Members in office shall continue as members until their respective terms expire on the fourth day of June, one thousand nine hundred sixty-nine and one thousand nine hundred seventy-two. On the expiration of these terms and every three years thereafter appointments shall be made for six-year terms. Appointments to fill vacancies shall be for the unexpired term.

Acts 1941, c. 43; Acts 1963, c. 64; Acts 1966, c. 27; Acts 1974, c. 38.

§ 3-1A-4. Office and meetings of commission

(a) The office and place of meeting of the commission is the office of the Secretary of State in the State Capitol. The commission may also conduct meetings via video, telephone or Internet conferencing.

(b) The commission shall hold such meetings as may be called by the chairman, the Governor or the Secretary of State.

Acts 1941, c. 43; Acts 1949, c. 56; Acts 1963, c. 64; Acts 1974, c. 38; Acts 2010, c. 72, eff. June 11, 2010.

§ 3-1A-5. Powers and duties of commission; legislative rules

(a) The commission has the power and duty to approve or disapprove applications for approval of any voting machine as provided in section seven, article four of this chapter.

(b) The commission also shall serve as a body advisory to the Secretary of State, and, as such, shall have the following powers and duties:

(1) To recommend policies and practices pertaining to the registration of voters and the conduct of elections generally;

(2) To review the work of the office of Secretary of State pertaining to the duties of that office with respect to elections, and for this purpose to have access at reasonable times to pertinent records, books, papers and documents;

(3) To consider and study the election practices of other jurisdictions, with a view to determining the techniques used in eliminating fraud in elections and in simplifying election procedures;

(4) To advise or make recommendations to the Governor relative to election practices and policy in the state;

(5) To advise the Secretary of State on carrying out the duties to which he or she is assigned pursuant to the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program, established in article twelve of this chapter;

(6) To carry out the duties assigned to the commission by the West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program, established in article twelve of this chapter; and

(7) To keep minutes of the transactions of each meeting of the commission, which shall be public records and filed with the Secretary of State.

(c) It is the commission's further duty to prepare and distribute in its name, within available appropriations and upon the recommendation of the Secretary of State, nonpartisan educational material to inform voters of the importance of voting, to encourage voters to vote, to inform voters of election laws and procedures, and to inform voters of the effect of any public question, Constitutional amendment or bond issue that is to be voted upon by all the voters of the state and that has been authorized to be placed upon the ballot by the Legislature, and manuals to assist county commissions, ballot commissioners, circuit and county clerks and other election officials in the proper performance of their duties in the conduct of elections.

(d) The commission shall propose for promulgation emergency and legislative rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, as may be necessary to standardize and make effective the administration of the provisions of article eight of this chapter, and may propose for promulgation other rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, relating to the conduct and administration of elections as the commission determines to be advisable.

(e) Meetings of the commission conducted for the purpose of confirming the initial eligibility of individual candidates to receive public campaign financing under the West Virginia Supreme Court of Appeals Public Campaign Financing Fund; the authorization of supplemental distributions from the fund; and the candidate's ability to receive supplemental distributions pursuant to the provisions of chapter twelve of this article are expressly exempted from the public notice and public meeting requirements of article nine-a, chapter six of this code.

Acts 1941, c. 43; Acts 1963, c. 64; Acts 1966, c. 27; Acts 1974, c. 38; Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 2010, c. 72, eff. June 11, 2010.

§ 3-1A-6. Powers and duties of Secretary of State; exercise of powers by appointees

(a) The Secretary of State shall be the chief election official of the state. Except for those rules required by the provisions of section five of this article to be promulgated by the commission, the Secretary of State shall have the authority, after consultation with the State Election Commission, of which he or she is a member, to make, amend and rescind such orders and to promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, as may be necessary to standardize and make effective the provisions of this chapter. All election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks shall abide by any orders that may be issued and any legislative rules that may be promulgated by the Secretary of State and the commission.

(b) The Secretary of State also shall have authority to require collection and report of statistical information and to require other reports by county commissions, clerks of county commissions and clerks of circuit courts.

(c) The Secretary of State shall also advise with election officials; furnish to the election officials a sufficient number of indexed copies of the current election laws of West Virginia and the administrative orders and rules issued or promulgated thereunder; investigate the administration of election laws, frauds and irregularities in any registration or election; report violations of election laws to the appropriate prosecuting officials; and prepare an annual report.

(d) The Secretary of State shall also have the power to administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoena duces tecum to compel the production of books, papers, records, registration records and other evidence and fix the time and place for hearing any matters relating to the administration and enforcement of this chapter, or the rules promulgated by the State Election Commission or by the Secretary of State as the chief election official of the state. In case of disobedience to a subpoena or subpoena duces tecum, he or she may invoke the aid of any circuit court in requiring the attendance, evidence and testimony of witnesses and the production of papers, books, records, registration records and other evidence.

(e)(1) The Secretary of State shall also have the power, after consultation with the Secretary of the Department of Military Affairs and Public Safety, to implement emergency procedures and rules to ensure that all eligible voters have the opportunity to cast a valid ballot and to uphold the integrity of an election in the event of natural disaster as declared by the Governor of this state, terrorist attack, war or general emergency, if any of which occur during or immediately preceding an election.

(2) For purposes of this subsection, a "general emergency" means circumstances preventing the casting of ballots in one or more voting precincts. The chief

judge of the circuit court of the county where the casting of ballots is being prevented must declare by order that a general emergency exists.

(f) All powers and duties vested in the Secretary of State pursuant to this article may be exercised by appointees of the Secretary of State at his or her discretion, but the Secretary of State shall be responsible for their acts.

Acts 1941, c. 43; Acts 1963, c. 64; Acts 1966, c. 27; Acts 1968, c. 24; Acts 1974, c. 38; Acts 1989, 1st Ex. Sess., c. 1; Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 2008, c. 95, eff. March 5, 2008.

§ 3-1A-7. Candidate's financial disclosure statement

Candidates for election to any state, county or municipal office, county school board, district school board, or to the position of county or district school board superintendent, shall file a financial disclosure statement with the ethics commission as may be required under subsection (a), section six, article two, chapter six-b of this code.

Acts 1989, 1st Ex. Sess., c. 1.

§ 3-1A-8. Investigators for the secretary of state

An employee of the secretary of state, who has attended a course of instruction at the state police academy or its equivalent, has all the lawful powers delegated to members of the department of public safety to enforce the provisions of this chapter and the criminal laws of the state in any county or municipality of this state. An employee shall, before entering upon the discharge of his or her duties, execute a bond with security in the sum of three thousand five hundred dollars, payable to the state of West Virginia, conditioned for the faithful performance of his or her duties, as such, and such bond shall be approved as to form by the attorney general, and the bond shall be filed with the secretary of state and preserved in his or her office. The department of public safety, and any county sheriff or deputy sheriff or any municipal police officer, upon request by the secretary of state or his or her appointee, is authorized to assist the secretary of state or his or her appointee in enforcing the provisions of this chapter and the criminal laws of the state.

Acts 1993, c. 50.

Acts 2000, c. 229, redesignated the department of public safety as the West Virginia state police. See § 15-2-2.

ARTICLE 1B

FAIR CAMPAIGN PRACTICES

Section

3-1B-1. Legislative findings, purpose, declaration and intent.

3-1B-2. Definitions.

3-1B-3. Powers and duties of the commission.

3-1B-4. Hearing; disposition; sanctions.

3-1B-5. Code of fair campaign practices.

3-1B-6. Forms.

3-1B-7. Retention of forms; public inspection.

3-1B-8. Voluntary subscription to the code.

3-1B-9. Release from subscription to the code.

3-1B-10. Adjustment of spending limitations.

§ 3-1B-1. Legislative findings, purpose, declaration and intent

The Legislature hereby finds and declares that every candidate for public office in this state should follow the basic principles of decency, honesty and fairness in the course of their campaign practices.

The Legislature hereby further declares that the code of fair campaign practices, as contained in this article, is a standard to which all candidates for public office should aspire and is a guideline for voters to determine fair play in the conduct of campaigns for public office.

It is the further goal of the Legislature that every candidate for public office in this state will voluntarily subscribe and adhere to the code of campaign practices.

Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-1B-2. Definitions

For purposes of this article:

(a) "Campaign advertising or communication" means a communication authorized by a candidate or a candidate's committee for the purpose of advocating the nomination, election or defeat of a candidate;

(b) "Candidate for public office" means an individual who has filed a pre-candidacy statement pursuant to the provisions of section five-e, article eight of this chapter, has qualified to have his or her name listed on the ballot of any election, or who has declared his or her intention to seek nomination or election through a petition or write-in procedure for any state, regional, county, municipal or district office which is to be filled at an election;

(c) "Code" means the code of fair campaign practices as set forth in this article;

(d) "Commission" means the state election commission created pursuant to the provisions of article one-a of this chapter; and

(e) "Political committee" means all of those persons and entities required to keep accounts and file financial statements pursuant to the provisions of section five, article eight of this chapter.

Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-1B-3. Powers and duties of the commission

In addition to the powers and duties of the commission as prescribed in section five, article one-a of this chapter, the commission has:

(a) The power to issue advisory opinions on whether an action or proposed action of a subscribing candidate violates the code of fair campaign practices;

(b) The duty to prepare and distribute copies of the code of fair campaign practices to voters, circuit clerks, county clerks and other election officials;

(c) The duty to receive, investigate and act on complaints or other information concerning noncompliance with the code by candidates for public office who subscribe to the code; and

(d) The duty to make public the name and identity of candidates subscribing to the code and the findings of compliance or noncompliance with the code upon the conclusion of a hearing conducted pursuant to section four of this article.

Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-1B-4. Hearing; disposition; sanctions

If a majority of the commission determines that there is a reasonable likelihood that a candidate for public office who subscribes to the code of fair campaign practices has violated a provision of the code, then the commission shall inform the candidate in writing and notify the candidate in writing that the candidate has ten days from receipt of the notice to request a hearing. If the candidate requests a hearing, then one shall be scheduled within ten days after such request. Said hearing may be continued only for good cause shown. If a majority of the commission determines, based upon clear and convincing evidence, after a hearing or after a candidate has declined to request a hearing, that such candidate has violated a provision of the code, the commission may issue a public opinion stating the candidate has committed a violation of the code. If the commission does not find by clear and convincing evidence that a subscribing candidate has violated a provision of the code, then the commission shall issue a public statement that the candidate has not violated the code. Said statement shall be issued on the same day of the hearing.

Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-1B-5. Code of fair campaign practices

At the time an individual files his or her pre-candidacy statement, certificate of announcement, nominating petition, and other paper evidencing an intention

to be a candidate for public office, or when an individual files the statement of organization of a political committee, the circuit clerk, county clerk or secretary of state receiving such filing shall furnish the individual with a form containing the text of the code of fair campaign practices which shall read as follows:

CODE OF FAIR CAMPAIGN PRACTICES

I SHALL CONDUCT this campaign openly and publicly, discussing the issues as I see them, presenting positions and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of candidates or political parties which merit such criticism.

I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander or scurrilous attacks on any candidate or his or her personal family life.

I SHALL CONDEMN the use of campaign advertising or communication of any sort which misrepresents, distorts, or otherwise falsifies the facts regarding any candidate or issue raised in my campaign.

I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on race, sex, religion, national origin, physical disability or age.

I SHALL NOT USE OR PERMIT any dishonest or unethical practice which tends to corrupt or undermine our system of free elections, or which hampers or prevents the full and free expression of the will of the voters including acts intended to hinder, prevent, or discourage any eligible person from registering to vote, or from voting, or which is intended to affect voting through the buying of influence or votes.

I SHALL NOT COERCE election help or campaign contributions for myself or my committee or for any other candidate or any ballot issue from my employees or from any person under my authority, influence or control.

I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE support on behalf of or in opposition to any candidacy deriving from any individual or group which resorts to the methods and tactics which I condemn. I shall accept responsibility to take firm action against any subordinate or associate who violates any provisions of this code or the laws governing elections.

I PERSONALLY SUPPORT a limit on campaign expenditures that when reasonable, sufficient and fairly applied, does not limit or restrict the expression of ideas of the candidate or others on behalf of the candidate, but instead challenges individuals to engage in open dialogue on the issues rather than merely to purchase the excessive repetition of images and slogans.

ACCORDINGLY, IF I AM A CANDIDATE for one of the offices listed below, I will, in conjunction with the committee or committees organized on my behalf, adhere to the following limitations on campaign spending specified for the office I seek:

	PRIMARY	GENERAL

Governor	1,000,000	1,000,000
Constitutional Officers	150,000	150,000
Supreme Court of Appeals	150,000	150,000
State Senate	50,000	50,000
House of Delegates	25,000	25,000
Circuit Judge	50,000	50,000

Expenditures which do not exceed the limits designated for the primary election may not be added to the limits for the general election.

I SHALL DEFEND AND UPHOLD the right of every qualified voter to full and equal participation in the electoral process.

I, the undersigned, a candidate for election to public office in the State of West Virginia, or the chairperson of a political committee supporting one or more candidates for election, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct this campaign in accordance with the above principles and practices. I understand that subscription and adherence to the code is voluntary.

_____ _____

Date Signature

_____ _____

Candidate for/Committee Name Address and City

Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-1B-6. Forms

The secretary of state in consultation with the election commission, shall prescribe the forms containing the text of the code and shall furnish the forms to the circuit clerks, county clerks and municipal clerks or recorders in quantities and at times requested by the clerks.

Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-1B-7. Retention of forms; public inspection

The officer receiving the filing shall accept, at all times prior to the election, all completed forms evidencing subscription to the code.

Forms filed with the circuit clerk shall be immediately forwarded to the county clerk. The county clerk, secretary of state, and municipal recorder or clerk shall retain such forms filed with them for public inspection until one hundred

eighty days after the general election.

Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-1B-8. Voluntary subscription to the code

Subscription to and adherence to the provisions of the code set forth in this article is voluntary and in no event may any person be required to subscribe to, adhere to or endorse the code.

Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-1B-9. Release from subscription to the code

In the event that an opponent to a subscribing candidate exceeds the voluntary campaign spending limitations set forth in section five of this article, the subscribing candidate who has not exceeded the spending limitations shall be automatically released from that portion of the code establishing the campaign spending limitations, and the commission shall make public the fact of such release.

Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-1B-10. Adjustment of spending limitations

The commission may from time to time increase the voluntary campaign spending limitations established in this article pursuant to legislative rule promulgated pursuant to the provisions of chapter twenty-nine-a of this code.

Acts 1995, c. 101, eff. 90 days after March 10, 1995.

ARTICLE 1C

ACCESSIBLE VOTING TECHNOLOGY ACT

Section

3-1C-1. Short title.

3-1C-2. Findings.

3-1C-3. Definitions.

3-1C-4. Requirements for accessible voting technology and systems.

§ 3-1C-1. Short title

This article may be cited as "The Accessible Voting Technology Act".

Acts 2002, c. 133, eff. 90 days after March 9, 2002.

§ 3-1C-2. Findings

The Legislature makes the following findings:

(1) Microchip and digital technologies are increasingly changing the way Americans vote;

(2) State and political subdivisions are replacing antiquated voting methods and machines with computer- and electronic-based voting systems, but nonvisual access, whether by speech, Braille or other appropriate means is often overlooked in certifying and purchasing the latest voting technology;

(3) Voting technology and systems which allow the voter to access and select information solely through visual means are a barrier to access by individuals who are blind or visually impaired, thereby discouraging them from exercising the right to vote, the most fundamental right of citizenship in a free and democratic society;

(4) Software and hardware adaptations have been created so that voters can interact with voting technology and systems through both visual and nonvisual means allowing blind and visually impaired people to cast a secret ballot and independently verify their vote; and

(5) In promoting full participation in the electoral process, the goals of the state and its political subdivisions must recognize the right of all citizens regardless of blindness or visual impairment to vote and to cast and verify their ballots independently.

Acts 2002, c. 133, eff. 90 days after March 9, 2002.

§ 3-1C-3. Definitions

As used in this article, unless the context otherwise requires a different meaning, the term:

(1) "Access" means the ability to receive, use, select and manipulate data and operate controls included in voting technology and systems;

(2) "Nonvisual" means synthesized speech, Braille and other output methods not requiring sight.

Acts 2002, c. 133, eff. 90 days after March 9, 2002.

§ 3-1C-4. Requirements for accessible voting technology and systems

(a) If any county upgrades or replaces existing voting equipment or an existing voting system and the upgraded or new equipment or system is certified by the secretary of state to have the capability to provide or the capability to be upgraded to provide blind and visually impaired individuals with nonvisual access which is equivalent to that access provided to individuals who are not blind or visually impaired, then the county must purchase or lease at least one voting mechanism which provides such nonvisual access to be used during the period of voting regular absentee ballots in person. The voting mechanism must also be used in a precinct, as designated by the county commission, on election day.

(b) The county commission of any county may place voting mechanisms that

provide nonvisual access to blind or visually impaired persons in as many other precincts of the county as the county commission determines is feasible for use on election day, if the type of voting mechanism to be used has been certified by the secretary of state.

Acts 2002, c. 133, eff. 90 days after March 9, 2002.

ARTICLE 2

REGISTRATION OF VOTERS

Section

3-2-1. Permanent voter registration law; uniform system of voter registration.

3-2-2. Eligibility to register to vote.

3-2-3. State authority relating to voter registration; chief election official.

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§ 3-2-1. Permanent voter registration law; uniform system of voter registration

(a) This article, providing a permanent and uniform system for the registration of the voters of the state of West Virginia, may be cited as the "Permanent Voter Registration Law".

(b) A permanent voter registration system is hereby established which shall be uniform in its requirements throughout the state and all of its subdivisions. No voter so registered shall be required to register again for any election while continuing to reside within the same county, unless the voter's registration is canceled as provided in this article.

(c) A person who is not eligible or not duly registered to vote shall not be permitted to vote at any election in any subdivision of the state, except that such a voter may cast a "provisional" or "challenged" ballot as provided in this chapter if the voter's eligibility or registration is in question, and such "provisional" or "challenged" ballot may be counted only if a positive determination of the voter's eligibility and proper registration can be ascertained.

Acts 1994, c. 58.

§ 3-2-2. Eligibility to register to vote

(a) Any person who possesses the constitutional qualifications for voting may register to vote. To be qualified, a person must be a citizen of the United States and a legal resident of West Virginia and of the county where he or she is applying to register, shall be at least eighteen years of age, except that a person who is at least seventeen years of age and who will be eighteen years of age by the time of the next ensuing general election may also be permitted to register, and shall not be otherwise legally disqualified: *Provided*, That a registered voter who has not reached eighteen years of age may vote both partisan and nonpartisan ballots in a state or county primary election, but may only vote in a municipal primary election if he or she will be eighteen years of age by the time of the next municipal general election, but is not eligible to vote in a special election.

(b) Any person who has been convicted of a felony, treason or bribery in an election, under either state or federal law, is disqualified and is not eligible to register or to continue to be registered to vote while serving his or her sentence, including any period of incarceration, probation or parole related thereto. Any person who has been determined to be mentally incompetent

by a court of competent jurisdiction is disqualified and shall not be eligible to register or to continue to be registered to vote for as long as that determination remains in effect.

Acts 1994, c. 58; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-2-3. State authority relating to voter registration; chief election official

(a) The secretary of state, as chief election official of the state as provided in section six, article one-a of this chapter, shall have general supervision of the voter registration procedures and practices and the maintenance of voter registration records in the state and shall have authority to require reports and investigate violations to ensure the proper conduct of voter registration throughout the state and all of its subdivisions.

(b) The secretary of state, as chief election official of the state, is responsible for implementing, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state.

(c) The secretary of state is hereby designated as the chief election official responsible for the coordination of this state's responsibilities under 42 U.S.C. § 1973gg, *et seq.*, the "National Voter Registration Act of 1993". The secretary of state shall have general supervision of voter registration procedures and practices at agencies and locations providing services as required by the provisions of this article and shall have the authority to propose procedural, interpretive and legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code for application for registration, transmission of applications, reporting and maintenance of records required by the provisions of this article and for the development, implementation and application of other provisions of this article.

Acts 1994, c. 58; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-2-4. Authority and responsibility of the clerk of the county commission and of the county commission relating to voter registration

(a) Subject to the authority of the secretary of state, the clerk of the county commission shall be the chief registration authority in each respective county and all subdivisions therein, and shall supervise their deputies, employees and registrars in the performance of their respective duties.

(b) The county commission of each county shall allocate sufficient resources for the proper and efficient performance of duties relating to voter registration as required by law, and shall provide for temporary clerical assistance necessary for systematic purging procedures or other duties of short duration required by the provisions of this article.

(c) The county commission shall have authority on its own motion to summon and

examine any person concerning the registration of voters, to investigate any irregularities in registration, to summon and examine witnesses, to require the production of any relevant books and papers and to conduct hearings on any matters relating to the registration of voters.

(d) The clerk of the county commission shall be responsible for the administration of voter registration within the county and shall establish procedures and practices which ensure the full implementation of the requirements of federal and state laws and rules relating to voter registration, and which ensure nondiscriminatory practices.

Acts 1994, c. 58.

§ 3-2-4a. Statewide voter registration list

(a) The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration list of every legally registered voter in the state, which shall include the following:

(1) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(2) The computerized list shall contain the name, registration information and voter history of every legally registered voter in the state.

(3) Under the computerized list, the Secretary of State shall assign a unique identifier to each legally registered voter in the state.

(4) The computerized list shall be coordinated with other agency databases within the state; including, but not limited to, the vital statistics database maintained by the Department of Health and Human Resources. The Department of Health and Human Resources by January 31st of each calendar year shall provide to each county clerk a list from this database of all decedents in that county in the preceding year and shall provide to the Secretary of State the list of all decedents in the state in the preceding year.

(5) The Secretary of State and any clerk of the county commission may obtain immediate electronic access to the information contained in the computerized list.

(6) The clerk of the county commission shall electronically enter voter registration information into the computerized list on an expedited basis at the time the information is provided to the clerk.

(7) The Secretary of State shall provide necessary support to enable every clerk of the county commission in the state to enter information as described in subdivision (6) of this subsection.

(8) The computerized list shall serve as the official voter registration list for conducting all elections in the state.

(b) The Secretary of State or any clerk of a county commission shall perform maintenance with respect to the computerized list on a regular basis as follows:

(1) If an individual is to be removed from the computerized list, he or she shall be removed in accordance with the provisions of 42 U.S.C. § 1973gg, *et seq.*, the National Voter Registration Act of 1993.

(2) The Secretary of State shall coordinate the computerized list with state agency records and remove the names of individuals who are not qualified to vote because of felony status or death*:* *Provided,* That no state agency may withhold information regarding a voter's status as deceased or as a felon unless ordered by a court of law: *Provided further,* the Secretary of State shall, in each calendar year, certify that the removal of individuals who are not qualified to vote because of a felony conviction as provided in section two of this article or death is completed at least 30 days preceding the date of any primary election.

(c) The list maintenance performed under subsection (b) of this section shall be conducted in a manner that ensures that:

(1) The name of each registered voter appears in the computerized list;

(2) Only voters who are not registered or who are not eligible to vote are removed from the computerized list;

(3) Duplicate names are eliminated from the computerized list;

(4) Deceased individuals names are eliminated from the computerized list.

(d) The Secretary of State and the clerks of all county commissions shall provide adequate technological security measures to prevent the unauthorized access to the computerized list established under this section.

(e) The Secretary of State shall ensure that voter registration records in the state are accurate and updated regularly, including the following:

(1) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under the system, consistent with 42 U.S.C. § 1973gg, *et seq.*, registrants who have not responded to a notice sent pursuant to section twenty six, article two of this chapter and who have not voted in two consecutive general elections for federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote; and

(2) Safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(f) Applications for voter registration may only be accepted when the following information is provided:

(1) Except as provided in subdivision (2) of this subsection and notwithstanding any other provision of law to the contrary, an application for voter registration may not be accepted or processed unless the application includes:

(A) In the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number;

(B) In the case of an applicant who has been issued an identification card by the Division of Motor Vehicles, the applicant's identification number; or

(C) In the case of any other applicant, the last four digits of the applicant's social security number; and

(2) If an applicant for voter registration has not been issued a current and valid driver's license, Division of Motor Vehicles' identification card or a social security number, the Secretary of State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. To the extent that the state has a computerized list in effect under this section and the list assigns unique identifying numbers to registrants, the number assigned under this section shall be the unique identifying number assigned under the list.

(g) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement to match and transfer applicable information in the database of the statewide voter registration system with information in the database of the Division of Motor Vehicles to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(h) The Commissioner of the Division of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under 42 U.S.C. § 301, *et seq.*, the Social Security Act. All fees associated with this agreement shall be paid for from moneys in the fund created under section twelve, article two of this chapter.

Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2007, c. 100, eff. June 4, 2007; Acts 2010, c. 73, eff. June 7, 2010.

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

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

(2) Notwithstanding any provisions of subdivision (1) of this subsection to the contrary, the federal postcard application for voter registration issued pursuant to 42 U.S.C. § 1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, and the mail voter registration application form

prescribed by the Federal Election Commission pursuant to 42 U.S.C. § 1973gg, *et seq.*, the National Voter Registration Act of 1993, shall be accepted as a valid form of application for registration pursuant to the provisions of this article.

(b) Each application form for registration shall include:

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

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

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

(4) The applicant's driver's license number or an identification number issued by the Division of Motor Vehicles. If the applicant does not have a driver's license or an identification card issued by the Division of Motor Vehicles, then the last four digits of the applicant's social security number; and

(5) Any other instructions or information essential to complete the application process.

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

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

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

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

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

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

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

(d) The applicant shall be requested to provide the following information, but no application shall be rejected for lack of this information:

(1) An indication whether the application is for a new registration, change of address, change of name or change of party affiliation;

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

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

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

(5) The applicant's telephone number;

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

(7) The applicant's gender.

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

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

(g) No later than the first day of July of each odd-numbered year, the Secretary of State shall submit the specifications of the voter registration application by mail for statewide bidding for a contract period beginning the first day of September of each odd-numbered year and continuing for two calendar years. The successful bidder shall produce and supply the required mail voter registration forms at the contract price to all purchasers of the form for the period of the contract.

Acts 1994, c. 58; Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2006, c. 89, eff. March 10, 2006; Acts 2007, c. 100, eff. June 4, 2007.

§ 3-2-6. Time of registration application before an election

(a) Voter registration before an election shall close on the twenty-first day before the election, or on the first day thereafter which is not a Saturday, Sunday or legal holiday.

(b) An application for voter registration, transfer of registration, change of name or change of political party affiliation submitted by an eligible voter by the close of voter registration shall be effective for any subsequent primary,

general or special election if the following conditions are met:

(1) The application contains the information required by subsection (c), section five of this article: *Provided,* That incomplete applications for registration containing information which are submitted within the required time may be corrected within four business days after the close of registration if the applicant provides the required information; and

(2) The application is received by the appropriate clerk of the county commission no later than the hour of the close of registration or is otherwise submitted by the following deadlines:

(A) If mailed, the application shall be addressed to the appropriate clerk of the county commission and is postmarked by the postal service no later than the date of the close of registration: *Provided,* That if the postmark is missing or illegible, the application shall be presumed to have been mailed no later than the close of registration if it is received by the appropriate clerk of the county commission no later than the third day following the close of registration;

(B) If accepted by a designated agency or motor vehicle licensing office, the application is received by that agency or office no later than the close of registration;

(C) If accepted through a registration outreach program, the application is received by the clerk, deputy clerk or registrar no later than the close of registration; and

(3) The verification notice by the provisions of section sixteen of this article mailed to the voter at the residence indicated on the application is not returned as undeliverable.

Acts 1994, c. 58; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2005, c. 102, eff. 90 days after April 9, 2005; Acts 2007, c. 100, eff. June 4, 2007.

§ 3-2-7. Hours and days of registration in the office of the clerk of the county commission; in-person application for voter registration; identification required

(a) The clerk of the county commission shall provide voter registration services at all times when the office of the clerk is open for regular business.

(b) Any eligible voter who desires to apply for voter registration in person at the office of the clerk of the county commission shall complete a voter registration application on the prescribed form and shall sign the oath required on that application in the presence of the clerk of the county commission or his or her deputy. The applicant shall present valid identification and proof of age, except that the clerk may waive the proof of age requirement if the applicant is clearly over the age of eighteen.

(c) The clerk shall attempt to establish whether the residence address given is within the boundaries of an incorporated municipality and, if so, make the proper entry required for municipal residents to be properly identified for

municipal voter registration purposes.

(d) Upon receipt of the completed registration application, the clerk shall either:

(1) Provide a notice of procedure for verification and notice of disposition of the application and immediately begin the verification process prescribed by the provisions of section sixteen of this article; or

(2) Upon presentation of a current driver's license or state-issued identification card containing the residence address as it appears on the voter registration application, issue the receipt of registration.

Acts 1994, c. 58; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-2-8. Registration outreach services by the clerk of the county commission; challenge of voter's registration

(a) Registration outreach services, including application for registration, change of address, name or party affiliation and correction or cancellation of registration, may be provided at locations outside the office of said clerk of the county commission by the clerk, one or more of his or her deputy clerks, or by temporary registrars or volunteer registrars appointed in accordance with the provisions of section nine of this article.

(b) (1) The clerk of the county commission may establish temporary registration offices to provide voter registration services to residents of the county. The clerk shall file a list of the scheduled times and locations of any temporary registration offices with the county commission at least fourteen days prior to opening the temporary office and shall solicit public service advertising of the location and times for any temporary registration office on radio, television and newspapers serving that county.

(2) The clerk of the county commission shall establish an approved program of voter registration services for eligible high school students at each high school within the county and shall conduct that program of voter registration at an appropriate time during each school year, but no later than forty-five days before a statewide primary election held during a school year. The secretary of state shall issue guidelines for approval of programs of voter registration for eligible students, and all such programs shall include opportunities for students to register in person and present identification at the high school where the student is enrolled. Official school records shall be accepted as identification and proof of age for eligible students.

(c) When the boundaries of precincts are altered requiring the transfer of a portion of the voters of one precinct to another precinct, the clerk of the county commission or temporary registrars appointed for the purpose may conduct door-to-door registration services in the areas affected by the boundary changes and may register, alter or transfer the registration of voters found to reside in those areas. Upon a determination that a voter who previously registered in the area canvassed no longer resides at that address, except for those persons who are qualified to maintain a legal residence at the address, the clerk of the county commission shall challenge the registration of the

voter in accordance with the provisions of section twenty-eight of this article.

(d) The procedures required upon receipt of an application for registration as prescribed in subsection (b), section seven of this article shall also be performed by the authorized persons conducting the registration outreach services.

Acts 1994, c. 58.

§ 3-2-9. Appointment of temporary and volunteer registrars for registration outreach services

(a) Temporary registrars and volunteer registrars may be appointed to perform registration outreach services as provided in section eight of this article. Whenever registration outreach services are conducted by temporary registrars or volunteer registrars, two persons of opposite political parties shall serve together. All temporary registrars and volunteer registrars shall be trained by the clerk of the county commission before beginning their duties and shall thereafter be supervised by said clerk.

(b) Temporary registrars and volunteer registrars shall have the same eligibility qualifications as required of election officials and shall be subject to suspension by the same procedures as prescribed for election officials as provided in section twenty-eight, article one of this chapter. Eligibility may be suspended for the following reasons:

(1) Failure to appear at the required time and place or to perform the duties of a registrar as required by law;

(2) Alteration or destruction of a voter registration application;

(3) Improper influence of the choice of party affiliation of a voter, or other improper interference or intimidation relating to the voter's decision to register or not to register to vote; or

(4) Being under the influence of alcohol or drugs, or having anything wagered or bet on an election.

(c) Each temporary or volunteer registrar, before beginning the duties of the office, shall take an oath to perform the duties of the office according to law and the oath shall be filed with the clerk of the county commission.

(d) (1) The county commission may appoint temporary registrars to conduct registration as provided in section eight of this article. An equal number of such registrars shall be selected from the two major political parties. The county commission shall notify each county executive committee, in writing, specifying the number of registrars to be appointed, the general schedule of registration activities to be performed, and the date by which the nominations must be received, which date shall be not less than twenty-eight days following the date of the notice. Each executive committee, by majority vote of the committee, may nominate the number of persons needed to serve as registrars and shall submit the nominations in writing to the county commission by the date specified in the notice. The clerk of the county commission shall notify those

persons so nominated and appointed. If any person declines to serve or fails to appear, the clerk of the county commission shall fill the vacancy with a qualified person of the same political party.

(2) Temporary registrars shall be compensated at a rate not less than the federal minimum wage and may be reimbursed for mileage traveled between the county courthouse and any temporary registration site.

(e) The clerk of the county commission may appoint volunteer registrars to conduct registration outreach services as provided in section eight of this article. Volunteer registrars shall serve without compensation. At least fourteen days before beginning any registration outreach service to be conducted by volunteer registrars, the clerk shall notify the county commission in writing listing the proposed schedule for all registration outreach activities and the name and party affiliation of each volunteer registrar appointed.

Acts 1994, c. 58.

§ 3-2-10. Application for registration by mail

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Acts 1994, c. 58; Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2004, c. 112, eff. Feb. 23, 2004; Acts 2006, c. 89, eff. March 10, 2006.

§ 3-2-11. Registration in conjunction with driver licensing

(a) The Division of Motor Vehicles or any other division or department that may be established by law to perform motor vehicle driver licensing services shall provide each qualified registrant, as an integral and simultaneous part of every process of application for the issuance, renewal or change of address of any motor vehicle driver's license or official identification card, pursuant to the provisions of article two, chapter seventeen-b of this code, a voter registration application as prescribed in section five of this article.

(b) Any person who fails to sign the voter registration application or who

fails to return the voter registration application to a driver licensing facility or to an appropriate voter registration office shall be considered to have declined to register. Information regarding any person's failure to sign the voter registration application is confidential and may not be used for any purpose other than to determine voter registration.

(c) Any qualified voter who submits the application for registration pursuant to the provisions of subsection (a) of this section in person at a driver licensing facility at the time of applying for, obtaining, renewing or transferring his or her driver's license or official identification card and who presents identification and proof of age at that time shall not be required to make his or her first vote in person or to again present identification in order to make that registration valid.

(d) Any qualified voter who submits by mail or by delivery by a third party an application for registration on the form used in conjunction with driver licensing shall be required to make his or her first vote in person and present identification as required for other mail registration in accordance with the provisions of subsection (g), section ten of this article: *Provided,* That if the applicant has been previously registered in the jurisdiction and the application is for a change of address, change of name, change of political party affiliation or other correction, the presentation of identification and first vote in person is not required.

(e) Any application for voter registration submitted pursuant to the provisions of this section shall be considered as updating any previous voter registration by the applicant and shall authorize the cancellation of registration in any other county or state in which the applicant was previously registered.

(f) Any change of address from one residence to another within the same county which is submitted for driver licensing purposes in accordance with applicable law shall also serve as a notice of change of address for voter registration purposes unless the individual indicates on the form that the change of address is not for voter registration purposes.

(g) Completed applications for voter registration or change of address for voting purposes received by any office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt, unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(h) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected and maintained for two years according to procedural rules promulgated by the Secretary of State.

Acts 1994, c. 58; Acts 2007, c. 100, eff. June 4, 2007.

§ 3-2-12. Combined voter registration and driver licensing fund

(a) Fifty cents of each license fee collected pursuant to the provisions of section one, article three, chapter seventeen of this code shall be paid into

the state treasury to the credit of a special revenue fund to be known as the "Combined Voter Registration and Driver Licensing Fund". The moneys so credited to such fund may be used by the secretary of state for the following purposes:

(1) Printing and distribution of combined driver licensing or other agency applications and voter registration forms, or for the printing of voter registration forms to be used in conjunction with driver licensing or other agency applications;

(2) Printing and distribution of mail voter registration forms for purposes of this article;

(3) Supplies, postage and mailing costs for correspondence relating to voter registration for agency registration sites and for the return of completed voter registration forms to the appropriate state or county election official;

(4) Reimbursement of postage and mailing costs incurred by clerks of the county commissions for sending a verification mailing, confirmation of registration or other mailings directly resulting from an application to register, change or update a voter's registration through a driver licensing or other agency;

(5) Reimbursement to state funded agencies designated to provide voter registration services under this chapter for personnel costs associated with the time apportioned to voter registration services and assistance;

(6) The purchase, printing and distribution of public information and other necessary materials or equipment to be used in conjunction with voter registration services provided by state funded agencies designated pursuant to the provisions of this article;

(7) The development of a statewide program of uniform voter registration computerization for use by each county registration office and the secretary of state, purchase of uniform voter registration software, payment of software installation costs and reimbursement to the county commissions of not more than fifty percent of the cost per voter for data entry or data conversion from a previous voter registration software program;

(8) Payment of up to fifty percent of the costs of conducting a joint program with participating counties to identify ineligible voters by using the United States postal service information as provided in section twenty-five of this article: Provided, That such assistance shall be available only to counties which maintain voter registration lists on the statewide uniform voter data system; and

(9) Payment or reimbursement of other costs associated with implementation of the requirements of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg): Provided, That revenue received by the fund in any fiscal year shall first be allocated to the purposes set forth in subdivisions (1) through (8) of this subsection.

(b) The secretary of state shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code to provide for the administration of the fund established in subsection (a) of this section.

Acts 1994, c. 58.

§ 3-2-13. Agencies to provide voter registration services; designation of responsible employees; forms; prohibitions; confidentiality

(a) For the purposes of this article, "agency" means a department, division or office of state or local government, or a program supported by state funds, which is designated under this section to provide voter registration services, but does not include departments, divisions or offices required by other sections of this article to provide voter registration services.

(b) The following agencies shall provide voter registration services pursuant to the provisions of this article:

(1) Those state agencies which administer or provide services under the food stamp program, the Aid to Families with Dependent Children (AFDC) program, the Women, Infants and Children (WIC) program and the Medicaid program;

(2) Those state-funded agencies primarily engaged in providing services to persons with disabilities;

(3) County marriage license offices;

(4) Armed services recruitment offices, as required by federal law; and

(5) The Department of Revenue, if it provides a check box on any form provided to the general public authorizing the Department of Revenue to request a voter registration application by mail from the Secretary of State on behalf of the applicant.

(c) No later than the first day of October, one thousand nine hundred ninety-four, the Secretary of State shall, in conjunction with a designated representative of each of the appropriate state agencies, review those programs and offices established and operating with state funds which administer or provide public assistance or services to persons with disabilities and shall promulgate an emergency rule pursuant to the provisions of chapter twenty-nine-a of this code designating the specific programs and offices required to provide voter registration services in order to comply with the requirements of this section and the requirements of the National Voter Registration Act of 1993 (42 U.S.C. § 1973gg, *et seq.*). The offices and programs so designated shall begin providing voter registration services on the first day of January, one thousand nine hundred ninety-five.

(d) In each even-numbered year, the Secretary of State shall, in conjunction with the designated representatives of the appropriate state agencies, perform the review as required by the provisions of subsection (c) of this section. The Secretary of State shall periodically review and revise, if necessary, the legislative rule designating the specific agencies required to provide voter registration services.

(e) Each state agency required to provide services pursuant to the provisions of this article shall designate a current employee of that agency to serve as a state supervisor to administer voter registration services required in all

programs under the agency's jurisdiction. Each state supervisor is responsible for coordination with the Secretary of State, overall operation of the program in conjunction with services within the agency, designation and supervision of local coordinators and for the review of any complaints filed against employees relating to voter registration as provided in this chapter.

(f) The state supervisor shall designate a current employee as a local coordinator for voter registration services for each office or program delivery center who shall be responsible for the proper conduct of voter registration services, timely return of completed voter registration applications, proper handling of declinations and reporting requirements. Notice of the designation of these persons shall be made upon request of the Secretary of State and within five days following any change of designation. Each local coordinator shall receive biannual training provided by the Secretary of State.

(g) The registration application forms used for agency registration shall be issued pursuant to the provisions of section five of this article.

(h) The Secretary of State, in conjunction with those agencies designated to provide voter registration services pursuant to the provisions of this section, shall prescribe the form or portion of the appropriate agency form required by the provisions of 42 U.S.C. § 1973gg, *et seq.*, section 7(a)(6)(B) of the National Voter Registration Act of 1993, containing the required notices and providing boxes for the applicant to check to indicate whether the applicant would like to register or decline to register to vote. The form or portion of the form is designated the "declination form".

(i) A person who provides voter registration services may not:

(1) Seek to influence an applicant's political preference or party registration;

(2) Display to any applicant any political preference or party allegiance;

(3) Make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(4) Make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(j) No information relating to the identity of a voter registration agency through which any particular voter is registered or to a declination to register to vote in connection with an application made at any designated agency may be used for any purpose other than voter registration.

Acts 1994, c. 58; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2007, c. 100, eff. June 4, 2007.

§ 3-2-14. Registration procedures at agencies

(a) For the purpose of this section, "applicant" means a person who applies in person, whether at an agency office or other site of direct contact with an agency employee responsible for accepting applications, seeking services or

assistance for himself or herself or for a member of his or her immediate family.

(b) No later than the first day of December, one thousand nine hundred ninety-four, the secretary of state shall promulgate procedural rules governing the duties and training of agency employees responsible for providing voter registration services, including the distribution, handling, transmittal and retention of voter registration applications and other forms used in conjunction with agency registration, and any reporting necessary to comply with the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg).

(c) Beginning on the first day of January, one thousand nine hundred ninety-five, or on the first day of July of any subsequent odd-numbered year after which an agency has been designated, each agency designated under the provisions of section thirteen of this article shall:

(1) Distribute with each application for service or assistance, and with each recertification, renewal or change of address form relating to that service or assistance, the declination form prescribed in subsection (h), section thirteen of this article, and a voter registration application issued for the purposes of agency registration pursuant to the provisions of section five of this article;

(2) Provide to each applicant who does not decline to register to vote the same degree of assistance in voter registration as is provided for the completion of the agency's other forms, unless the applicant refuses assistance;

(3) Accept completed voter registration applications and forward those applications to the secretary of state within five days of receipt;

(4) Accept declination forms and retain or forward those forms in a manner prescribed by procedural rules promulgated by the secretary of state;

(5) Provide, on the request of an applicant or person assisting an applicant, a reasonable number of mail application forms for use by other eligible persons residing with the applicant; and

(6) Make any reports as may be required.

(d) Any applicant who checks "no" or fails to check "yes" or "no" on the declination form shall be deemed to have declined to register; and any applicant who checks "yes" on the declination form, but fails or refuses to sign the voter registration application or fails to return the voter registration application to an agency or to an appropriate voter registration office shall be deemed to have declined to register.

(e) Upon receipt of registration forms from an agency, the secretary of state shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(f) Any qualified voter who submits the application for registration pursuant to the provisions of this section in person at an agency or to an agency employee providing services at another location, and who presents

identification and proof of age at that time or has previously presented identification and proof of age to the same agency, shall not be required to make his or her first vote in person or to again present identification in order to make that registration valid.

(g) Any qualified voter who submits by mail or by delivery by a third party an application for registration on the form used in conjunction with agency registration shall be required to make his or her first vote in person and to present identification as required for other mail registration in accordance with the provisions of subsection (g), section ten of this article.

(h) Voter registration application forms which are returned to an agency unmarked shall be collected for reuse according to procedures prescribed by the secretary of state.

Acts 1994, c. 58.

§ 3-2-15. Special procedures relating to agency registration at marriage license offices

When a qualified voter appears in person to apply for a marriage license, the applicant shall be presented a voter registration application. If the applicant does not intend to change his or her legal name or residence address upon marriage, the applicant may immediately apply to register or to update a previous registration, in accordance with the procedures prescribed in section fourteen of this article, except that the completed applications shall be forwarded directly to the registration office of the clerk of the county commission if the residence given is within the same county. If the applicant does intend to change his or her legal name or residence address upon marriage, and desires to register to vote, the applicant shall instead be given a mail registration card for use after the change of name or address has occurred.

Acts 1994, c. 58.

§ 3-2-16. Procedures upon receipt of application for registration by the clerk of the county commission; verification procedure and notice of disposition of application for registration

(a) Upon receipt of an application for voter registration, the clerk of the county commission shall determine whether the application is complete, whether the applicant appears to be eligible to register to vote within the county and whether the applicant is currently registered within the county. If the application is incomplete or the applicant appears not to be eligible, the clerk shall take the appropriate action as prescribed in section seventeen of this article.

(b) If the application received is complete and appears to be from an eligible person who has not previously been registered within the county, or has not been included within the active voter registration files as defined in section eighteen of this article within the preceding calendar year and does not present a driver's license containing the residence address pursuant to the provisions of subdivision (2), subsection (d), section seven of this article, the clerk of the county commission shall conduct the following verification procedure:

(1) The clerk shall issue or mail, by first-class nonforwardable return requested, a verification notice addressed to the applicant at the residence and mailing address given on the application, except that the mailing address shall not be included on the notice if it appears to identify a distinctly different location from the residence address, such as a business address, another residence or a different city or town, unless the voter has registered as a uniformed services, overseas or homeless voter and provided a local residence address pursuant to the provisions of subdivision (4), subsection (c), section five of this article.

(2) The verification notice shall state the purpose of the procedure, the fact that no further action is required of the applicant, and the fact that a notice of the disposition of the registration application will be mailed after the ten day return period has expired.

(3) If the verification notice is not returned as undeliverable within ten days, the application for registration shall be accepted and entered into the active voter registration files and a registration receipt mailed designating the voter's assigned precinct.

(4) If the verification notice is returned undeliverable within ten days, the clerk shall compare the address given on the voter registration application with the address used on the envelope and, if there is any discrepancy, shall send a second verification notice to the correct address. If there is no discrepancy, the application for registration shall be denied and the notice of denial prescribed in section seventeen of this article shall be mailed.

(5) If the verification notice is returned undeliverable after the registration has been accepted, the clerk shall initiate the confirmation procedure prescribed in section twenty-six of this article.

(c) If the application received is complete and appears to be from an eligible person who is currently registered within the county, or has been included within the active voter registration files as defined in section eighteen of this article within the preceding calendar year, the clerk of the county commission shall send, by first-class nonforwardable return requested mail, a registration receipt or other notice of the disposition of the application; and

(1) If the application is for a change of name, change of address, change of political party affiliation, reinstatement or other correction of the previous voter registration, the clerk shall include a new voter registration receipt;

(2) If the application does not make any change in the previous voter registration, the clerk shall notify the registrant that the voter is not required to reregister or update the registration as long as he or she lives at the same address and has the same legal name; or

(3) If the notice of disposition is returned undeliverable after the registration has been accepted, the clerk shall initiate the confirmation procedure prescribed in section twenty-six of this article.

(d) If the application contains information indicating the address at which the

applicant was previously registered to vote in another county or state, the clerk of the county commission shall give notice to the clerk or registrar of that jurisdiction for the purpose of canceling the previous registration.

Acts 1994, c. 58.

§ 3-2-17. Denial of registration application; notice; appeal to clerk of the county commission, decision; appeal to county commission, hearing, decision; appeal to circuit court

(a) If the clerk of the county commission finds that any of the following is true, based on the application or official documentation of ineligibility, the clerk shall deny the application for voter registration:

(1) The applicant, at the time the application is received, is not eligible to register in the county and state pursuant to the provisions of section two of this article;

(2) The applicant has submitted an application which is incomplete, pursuant to the provisions of subsection (c), section five of this article; or

(3) The verification notice as required in section sixteen of this article is returned as undeliverable at the address given by the voter.

(b) When the clerk of the county commission determines that the application must be denied, the clerk shall send, by first class forwardable return requested mail, a notice that the application for registration was denied and the reasons therefor.

(1) If the reason for denial is an incomplete application, the clerk shall inform the voter of the right to reapply and shall enclose a mail voter registration form for the purpose.

(2) If the reason for denial is return of the verification notice as undeliverable at the address given, the clerk shall inform the voter of the right to present proof of residence in order to validate the registration.

(3) If the reason for denial is ineligibility, the notice shall include a statement of eligibility requirements for voter registration and of the applicant's right to appeal the denial.

(c) An applicant whose application for registration is denied by the clerk of the county commission because of ineligibility or for failure to submit proof of residence may make a written request for a reconsideration by the clerk, and may present information relating to his or her eligibility. The clerk shall review the request for consideration and shall issue a decision in writing within fourteen days of the receipt of the request.

(d) If the application is denied upon reconsideration pursuant to the provisions of subsection (c) of this section, the applicant may make a written request for a hearing before the county commission. The county commission shall schedule and conduct the hearing within thirty days of receipt of the request and shall issue a decision, in writing, within fifteen days of the hearing.

(e) An applicant may appeal the decision of the county commission to the circuit court. The circuit court shall only consider the record before the county commission, as authenticated by the clerk of the county commission. The circuit court may affirm the order of the county commission, whether the order be affirmative or negative; but if it deems such order not to be reasonably justified by the evidence considered, it may reverse such orders of the county commission in whole or in part as it deems just and right; and if it deems the evidence considered by the county commission in reaching its decision insufficient, it may remand the proceedings to the county commission for further hearing. Any such order or orders of the circuit court shall be certified to the county commission.

(f) Any party to such appeal may, within thirty days after the date of a final order by the circuit court, apply for an appeal to the supreme court of appeals which may grant or refuse such appeal at its discretion. The supreme court of appeals shall have jurisdiction to hear and determine the appeal upon the record before the circuit court and to enter such order as it may find that the circuit court should have entered.

(g) It shall be the duty of the circuit court and the supreme court of appeals, in order to expedite registration and election procedures, to hold such sessions as may be necessary to determine any cases involving the registration of voters. Judges of the circuit court and the supreme court of appeals in vacation shall have the same power as that prescribed in this section for their respective courts.

Acts 1994, c. 58.

§ 3-2-18. Registration records; active, inactive, canceled, pending and rejected registration files; procedure; voting records

(a) For the purposes of this article:

(1) "Original voter registration record" means all records submitted or entered in writing for voter registration purposes, including:

(A) Any original application or notice submitted by any person for registration or reinstatement, change of address, change of name, change of party affiliation, correction of records, cancellation, confirmation of voter information or other request or notice for voter registration purposes; and

(B) Any original entry made on any voter's registration record at the polling place, or made or received by the clerk of the county commission relating to any voter's registration, such as records of voting, presentation of identification and proof of age, challenge of registration, notice of death or obituary notice, notice of disqualifying conviction or ruling of mental incompetence or other original document which may affect the status of any person's voter registration.

(2) "Active voter registration files" means the files of registration records, whether maintained on paper forms or in digitized data format, containing the names, addresses, birth dates and other required information for all persons within a county who are registered to vote and whose registration has not been

designated as "inactive" or "canceled" pursuant to the provisions of this article.

(3) "Inactive voter registration files" means the files of registration records, whether maintained on paper forms or in digitized data format, containing the names, addresses, birth dates and other required information for all persons designated "inactive" pursuant to the provisions of section twenty-seven of this article following the return of the prescribed notices as undeliverable at the address entered on the voter registration. For the purposes of this chapter or of any other provisions of this code relating to elections conducted under the provisions of this chapter, whenever a requirement is based on the number of registered voters, including, but not limited to, the number of ballots to be printed, the limitations on the size of a precinct, or the number of petition signatures required for election purposes, only those registrations included on the active voter registration files shall be counted and voter registrations included on the inactive voter registration files, as defined in this subdivision, shall not be counted.

(4) "Canceled voter registration files" means the files containing all required information for all persons who have been removed from the active and inactive voter registration files and who are no longer registered to vote within the county.

(5) "Pending application files" means the temporary files containing all information submitted on a voter registration application, pending the expiration of the verification period.

(6) "Rejected application files" means the files containing all information submitted on a voter registration application which was rejected for reasons as described in this article.

(b) Active voter registration files and inactive voter registration files may be maintained in the same physical location or database, providing the records are coded, marked or arranged in such a way as to make the status of the registration immediately obvious. Canceled voter registration files, pending application files, and rejected application files shall each be maintained in separate physical locations or databases.

(c) The effective date of any action affecting any voter's registration status shall be entered on the voter record in the appropriate file, including the effective date of registration, change of name, address or party affiliation or correction of the record, effective date of transfer to inactive status, return to active status or cancellation. When any registration is designated inactive or is canceled, the reason for the designation or cancellation and any reference notation necessary to locate the original documentation related to the change shall be entered on the voter record.

(d) Within one hundred twenty days after each primary, general, municipal or special election, the clerk of the county commission shall, as evidenced by the presence or absence of signatures on the pollbooks for such election, correct any errors or omissions on the voter registration records resulting from the poll clerks erroneously checking or failing to check the registration records as required by the provisions of section thirty-four, article one of this chapter, or shall enter the voting records into the state uniform data system

if the precinct books have been replaced with printed registration books as provided in section twenty-one of this article.

Acts 1994, c. 58.

§ 3-2-19. Maintenance of active and inactive registration files in precinct record books and county alphabetical registration file

(a) Each county shall continue to maintain a record of each active and inactive voter registration in precinct registration books until the statewide voter registration system is adopted pursuant to the provisions of section four-a of this article, fully implemented and given final approval by the secretary of state. The precinct registration books shall be maintained as follows:

(1) Each active voter registration shall be entered in the precinct book or books for the county precinct in which the voter's residence is located and shall be filed alphabetically by name, alphabetically within categories, or by numerical street address, as determined by the clerk of the county commission for the effective administration of registration and elections. No active voter registration record shall be removed from the precinct registration books unless the registration is lawfully transferred or canceled pursuant to the provisions of this article.

(2) Each voter registration which is designated "inactive" pursuant to the procedures prescribed in section twenty-seven of this article shall be retained in the precinct book for the county precinct in which the voter's last recorded residence address is located until the time period expires for which a record must remain on the inactive files. Every inactive registration shall be clearly identified by a prominent tag or notation or arranged in a separate section in the precinct book clearly denoting the registration status. No inactive voter registration record shall be removed from the precinct registration books unless the registration is lawfully transferred or canceled pursuant to the provisions of this article.

(b) For municipal elections, the registration records of active and inactive voters shall be maintained as follows:

(1) County precinct books shall be used in municipal elections when the county precinct boundaries and the municipal precinct boundaries are the same and all registrants of the precinct are entitled to vote in state, county and municipal elections within the precinct or when the registration records of municipal voters within a county precinct are separated and maintained in a separate municipal section or book for that county precinct and can be used either alone or in combination with other precinct books to make up a complete set of registration records for the municipal election precinct.

(2) Upon request of the municipality, and if the clerk of the county commission does not object, separate municipal precinct books shall be maintained in cases where municipal or ward boundaries divide county precincts and it is impractical to use county precinct books or separate municipal sections of those precinct books. If the clerk of the county commission objects to the request of a municipality for separate municipal precinct books, the state election commission must determine whether the separate municipal precinct books should be maintained.

(3) No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled pursuant to the provisions of this article in both the county and the municipal registration records.

(c) Within thirty days following the entry of any annexation order or change in street names or numbers, the governing body of an incorporated municipality shall file with the clerk of the county commission a certified current official municipal boundary map and a list of streets and ranges of street numbers within the municipality to assist the clerk in determining whether a voter's address is within the boundaries of the municipality.

(d) Each county, so long as precinct registration books are maintained, shall maintain a duplicate record of every active and inactive voter registration in a county alphabetical file. The alphabetical file may be maintained on individual paper forms or, upon approval of the secretary of state of a qualified data storage program, may be maintained in digitized format. A qualified data storage program shall be required to contain the same information for each voter registration as the precinct books, shall be subject to proper security from unauthorized alteration and shall be regularly duplicated to backup data storage to prevent accidental destruction of the information on file.

Acts 1994, c. 58; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-2-20. Repealed by Acts 2003, c. 100, eff. 90 days after March 7, 2003

§ 3-2-21. Maintenance of records in state uniform voter data system in lieu of precinct record books

(a) The clerk of the county commission of each county, upon installation of the state uniform voter data system, shall prepare a "Voter Registration Data System Record" book into which all required records of appointments of authorized personnel, tests, repairs, program alterations or upgrades and any other action by the clerk of the county commission or by any other person under supervision of the clerk affecting the programming or records contained in the system, other than routine data entry, alteration, use, transfer or transmission of records shall be entered.

(b) The clerk of the county commission shall appoint all personnel authorized to add, change or transfer voter registration information within the state uniform voter data system, and a record of each appointment and the date of authorization shall be entered as provided in subsection (a) of this section. The assignment and confidential record of assigned system identification or authorized user code for each person appointed shall be as prescribed by the secretary of state.

(c) Voter registration records entered into and maintained in the state uniform voter data system shall include the information required for application for voter registration, for maintenance of registration and voting records, for conduct of elections and for statistical purposes, as prescribed by the secretary of state.

(d) No person shall make any entry or alteration of any voter record which is not specifically authorized by law. Each entry or action affecting the status of a voter registration shall be based on information in an original voter registration record, as defined in section eighteen of this article.

(e) The clerk of the county commission shall maintain, within the data system, active and inactive voter registration files, canceled voter registration files, pending application files, and rejected application files, all as defined in section eighteen of this article.

(f) Upon receipt of a completed voter registration application, the clerk shall enter the information provided on the application into the pending application file and initiate the verification or notice of disposition procedure as provided in section sixteen of this article. Upon completion of the verification or notice of disposition, the voter record shall be transferred to the proper file.

(g) Upon receipt of an application or written confirmation from the voter of a change of address within the county, change of name, change of party affiliation or other correction to a registration record in the active voter registration file, the change shall be entered in the record and the required notice of disposition mailed.

(h) Upon receipt of an application or written confirmation from the voter of a change of address within the county, change of name, change of party affiliation or other correction to a registration record in the inactive voter registration file, the change shall be entered in the record, the required notice of disposition mailed and the record transferred to the active registration file or returned to active status, and the date of the transaction shall be recorded.

(i) Upon receipt of a notice of death, a notice of conviction or a notice of a determination of mental incompetence, as provided for in section twenty-three of this article, the date and reason for cancellation shall be entered on the voter's record and the record shall be transferred to the canceled voter registration file.

(j) Upon receipt from the voter of a request for cancellation or notice of change of address to an address outside the county pursuant to the provisions of section twenty-two of this article, or as a result of a determination of ineligibility through a general program of removing ineligible voters as authorized by the provisions of this article, the date and reason for cancellation shall be entered on the voter's record and the record shall be transferred to the canceled voter registration file.

(k) At least once each month during a period prescribed by the secretary of state, the clerk of the county commission of each county utilizing the state uniform voter data system shall transmit to the secretary of state, by electronic transmission or by the mailing of one or more data disks or other approved means, a copy of the active, inactive and pending application files as of the date of transmission, for the purpose of comparison of those records to the voter registration records of other counties in the state and for any other list maintenance procedures authorized by the provisions of this article.

(l) The secretary of state shall promulgate legislative rules pursuant to the provisions of chapter twenty-nine-a of this code establishing procedures for the elimination of separate precinct registration books as the official active and inactive voter registration files and for the use of the state uniform voter data system to maintain all files, to produce voter lists for public inspection and to produce precinct voter records for election day use. Separate precinct registration books shall be maintained pursuant to the provisions of section nineteen of this article until all necessary provisions required for the conduct of elections at the polling place and for the implementation of the provisions of this chapter have been made. When a county is authorized to use the state uniform voter data system exclusively for all prescribed files, the clerk of the county commission shall transfer the original voter records contained in the precinct registration books to alphabetical record storage files which shall be retained in accordance with the provisions of section twenty-nine of this article, and any rules issued pursuant thereto.

Acts 1994, c. 58.

§ 3-2-22. Correction of voter records

(a) Any registered voter who moves from one residence to another within the county may file a request for change of address on the voter registration records by completing and signing, under penalty of perjury, as provided in section thirty-six of this article, and filing:

(1) A change of address form at the office of the clerk of the county commission or through any of the voter registration outreach services established pursuant to the provisions of section eight of this article;

(2) A state or federal mail registration form;

(3) A change of address form for driver licensing purposes;

(4) A change of address form for voter registration purposes at any authorized voter registration agency;

(5) A confirmation of change of address form received pursuant to the provisions of section twenty-four, twenty-five, twenty-six or twenty-seven of this article; or

(6) An affidavit of change of address at the polling place of the precinct in which the new residence is located on election day.

(b) Upon the receipt of any request for change of address as provided in subsection (a) of this section, the clerk shall enter the change, assign the proper county precinct number and, if applicable, assign the proper municipal precinct number, and issue an acknowledgement notice or mail that notice to the voter at the new address.

(c) When the clerk of the county commission receives notice that a voter may have moved from one residence to another within the county from the United States postal service or through state programs to compare voting registration

records with records of other official state or county agencies which receive, update and utilize residence address information, the clerk shall enter the change of address onto the voter registration record and send the confirmation notice as prescribed in section twenty-six of this article.

(d) Any registered voter who changes his or her legal name through marriage or by order of the circuit court may file a request for change of address on the voter registration records by completing and signing, under penalty of perjury, as provided in section thirty-six of this article, and filing:

(1) Any voter registration application form authorized by this article; or

(2) An affidavit of change of legal name at the polling place on election day.

(e) Upon the receipt of any request for change of legal name as provided in subsection (d) of this section, the clerk shall enter the change and issue an acknowledgement notice or mail the notice to the voter.

(f) Any registered voter who desires to change his or her political party affiliation may do so by filing, no later than the close of voter registration for an election, any voter registration application form authorized by the provisions of this article. Upon receipt of a request for change of political party affiliation, the clerk shall enter the change and issue an acknowledgement notice or mail the notice to the voter.

(g) Any registered voter who finds an error in the information on his or her voter registration record may request a correction of the record by completing, signing and filing any voter registration form authorized by the provisions of this article, or an affidavit requesting such correction at the polling place on election day: Provided, That any voter who, in a primary election, alleges the party affiliation entered on the voter registration record at the polling place is incorrect and who desires to vote the ballot of a political party for which he or she does not appear to be eligible, may vote a challenged or provisional ballot of the desired political party: Provided, however, That the ballot may be counted in the canvass only if the original voter registration record contains a designation of such political party which has been filed no later than the close of registration for the primary election in issue.

Acts 1994, c. 58.

§ 3-2-22a. Repealed by Acts 1994, c. 58

§ 3-2-25. Systematic purging program for removal of ineligible voters from active voter registration files for counties with state approved uniform voter data system; modified program for counties using other digitized record storage systems

(a) In any county maintaining active voter registration files in the state uniform voter data system, as defined in section twenty of this article, the systematic purging program provided for in this section shall begin no earlier than the first day of October of each odd-numbered year and shall be completed no later than the first day of February of the following year. The clerk of the county commission shall transmit or mail on data disk to the secretary of state a copy of the digitized records contained in the active voter

registration file as of the first day of October, to be received by the secretary of state no later than the fifteenth day of October.

(b) Upon receipt of the voter records in data format, the secretary of state shall provide for the comparison of data records of all participating counties. The secretary of state shall, based on the comparison, prepare a data file or printed list for each county which shall include the voter registration record for each voter shown on that county's list who appears to have registered or to have updated a voter registration in another county at a subsequent date. The resulting files and/or lists shall be returned to the appropriate county and the clerk of the county commission shall proceed with the confirmation procedure for those voters as prescribed in section twenty-six of this article.

(c) The secretary of state may provide for the comparison of data records of participating counties with the data records of the division of motor vehicles, the registrar of vital statistics and with the data records of any other state agency which maintains records of residents of the state, if the procedure is practical and the agency agrees to participate. Any resulting information regarding potentially ineligible voters shall be returned to the appropriate county and the clerk of the county commission shall proceed with the confirmation procedure as prescribed in section twenty-six of this article.

(d) The records of all of the voters of all participating counties not identified pursuant to the procedures set forth in subsections (b) and (c) of this section shall be combined for comparison with United States postal service change of address information, as described in Section 8(c)(A) of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg). The secretary of state shall contract with an authorized vendor of the United States postal service to perform the comparison. Not less than thirty percent nor more than fifty percent of the cost of the change of address comparison procedure shall be paid for from the combined voter registration and licensing fund established in section twelve of this article and participating counties shall reimburse the fund for the balance of the cost prorated on a per voter basis.

(e) The secretary of state shall return to each county the identified matches of the county voter registration records and the postal service change of address records.

(1) When the change of address information indicates the voter has moved to a new address within the county, the clerk of the county commission shall enter the new address on the voter record in the active registration file and assign the proper precinct.

(2) The clerk of the county commission shall then mail to each voter who appears to have moved from the residence address shown on the registration records a confirmation notice pursuant to section twenty-six of this article and of Section 8(d)(2) of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg). The notice shall be mailed, no later than the thirty-first day of December, to the new address provided by the postal service records or to the old address if a new address is not available.

(f) The clerk of the county commission shall prepare a list containing the name and address of each voter to whom a confirmation notice was mailed and the date on which the notice was mailed. The list shall be titled "Systematic Purging

Program Notices" and shall include the name of the county and the date of the preparation of the list and shall be arranged in alphabetical order within precincts or for the entire county.

(g) Upon receipt of any response or returned mailing sent pursuant to the provisions of subsection (e) of this section, the clerk shall immediately enter the date and type of response received on the list of voters prepared pursuant to the provisions of this section and shall then proceed in accordance with the provisions of section twenty-six of this article.

(h) For purposes of complying with the record keeping and public inspection requirements of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg), and with the provisions of section twenty-seven of this article, the lists shall be maintained either in printed form kept in a binder prepared for such purpose and available for public inspection or in read-only data format available for public inspection on computer terminals set aside and available for regular use by the general public. Information concerning whether or not each person has responded to the notice shall be entered onto the list upon receipt and shall be available for public inspection as of the date the information is received.

(i) Any voter to whom a confirmation notice was mailed pursuant to the provisions of subsection (e) of this section who fails to respond to the notice or to update his or her voter registration by the first day of February immediately following the completion of the program, shall be designated inactive and placed within the inactive voter registration file, as defined in section nineteen of this article. Any voter designated inactive shall be required to affirm his or her current residence address upon appearing at the polls to vote.

(j) A county which uses a digitized data system for voter registration other than the state uniform voter data system shall conduct the systematic purging program for removal of ineligible voters from active voter registration files by contracting directly with an authorized vendor of the United States postal service for change of address information, at county expense, for the identification of potentially ineligible voters, and upon receipt of the list of matches, shall perform the steps required by the provisions of subsections (e) through (i) of this section within the same time limits and procedures required for those counties participating in the state approved system.

(k) In addition to the preceding purging procedures, all counties using the change of address information of the United States postal service shall also, once each four years during the period established for systematic purging in the year following a presidential election year, conduct the same procedure by mailing a confirmation notice to those persons not identified as potentially ineligible through the change of address comparison procedure but who have not updated their voter registration records and have not voted in any election during the preceding four calendar years. The purpose of this additional systematic confirmation procedure shall be to identify those voters who may have moved without filing a forwarding address, moved with a forwarding address under another name, died in a another county or state so that the certificate of death was not returned to the clerk of the county commission, or who otherwise have become ineligible.

Acts 1994, c. 58.

§ 3-2-24. Systematic purging program for removal of ineligible voters from active voter registration files using manual voter registration system

(a) In any county maintaining active voter registration files only in paper records in precinct registration books and alphabetical files, as provided in section nineteen of this article, the systematic purging program provided in this section shall begin with the mailing of the first notice no earlier than the first day of October and no later than the first day of November of each odd-numbered year, and shall be completed no later than the first day of February of the following year.

(b) The clerk of the county commission shall first send to every voter whose registration is designated as active and who has not updated his or her voter registration record since the first day of January of the same year a notice by first class mail, nonforwardable, address correction requested, the form of which shall be prescribed or approved by the secretary of state. The notice shall be addressed to the voter's residence address as it appears on the voter registration card. The clerk shall group the mailings by precinct, alphabetical grouping or zip code, and shall record the date on which each grouping was mailed. Upon the receipt of any such notices returned as undeliverable, the clerk shall arrange them in alphabetical order within the selected grouping.

(c) Not less than fourteen nor more than twenty-eight days following the mailing of the first notice to each group, the clerk shall prepare a list containing the name and address of each voter within the group for whom the first notice was returned as undeliverable. The list shall be titled "Systematic Purging Program Notices" and shall include the name of the county, name of the mailing group and the date of the preparation of the list.

(d) The clerk shall then mail to each voter whose name appears on the lists prepared pursuant to subsection (c) of this section a confirmation notice in accordance with the provisions of section twenty-six of this article and of Section 8(d)(2) of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg). All notices mailed to the voters of a particular mailing group shall be mailed on the same day and the date of the mailing of the notice shall be entered on the list. All such notices shall be mailed no later than the thirty-first day of December.

(e) Upon receipt of any response or returned mailing sent pursuant to the provisions of subsection (d) of this section, the clerk shall immediately enter the date and type of response received on the list of voters prepared pursuant to the provisions of this section and shall then proceed in accordance with the provisions of section twenty-six of this article. For purposes of complying with the record keeping and public inspection requirements of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg), and with the provisions of section twenty-seven of this article, the lists shall be kept in a binder, prepared for such purpose, in the order in which the mailing groups were first given notice, and the binder shall be available for public inspection. Information concerning whether or not each person has responded to the notice shall be available for public inspection as of the date the information is received.

(f) Any voter to whom a confirmation notice was mailed pursuant to the provisions of subsection (d) of this section who fails to respond to the notice or to update his or her voter registration by the first day of February immediately following the completion of the program shall be designated inactive by a clear mark or tag or placed within the inactive voter registration file as defined in section nineteen of this article.

Acts 1994, c. 58.

§ 3-2-23. Cancellation of registration of deceased or ineligible voters

The clerk of the county commission shall cancel the registration of a voter:

(a) Upon the voter's death as verified by:

(1) A death certificate from the registrar of vital statistics or a notice from the secretary of state that a comparison of the records of the registrar with the county voter registration records show the person to be deceased;

(2) The publication of an obituary clearly identifying the deceased person by name, residence and age corresponding to the voter record; or

(3) An affidavit signed by the parent, legal guardian, child, sibling or spouse of the voter giving the name and birth date of the voter, and date and place of death;

(b) Upon receipt of an official notice from a state or federal court that the person has been convicted of a felony, of treason or bribery in an election, in which event, the clerk shall enter a notation on the voter record of the date upon which the term of any sentence for such conviction will cease, unless sooner vacated by court action or pardon;

(c) Upon receipt of a notice from the appropriate court of competent jurisdiction of a determination of a voter's mental incompetence;

(d) Upon receipt from the voter registration of a written request to cancel the voter's registration, upon confirmation by the voter of a change of address to an address outside the county, upon notice from a voter registrar of another jurisdiction outside the county or state of the receipt of an application for voter registration in that jurisdiction, or upon notice from the secretary of state that a voter registration application accepted in another county of the state subsequent to the last registration date in the first county, as determined from a comparison of voter records;

(e) Upon failure to respond and produce evidence of continued eligibility to register following the challenge of the voter's registration pursuant to the provisions of section twenty-eight of this article; or

(f) As required under the provisions of section twenty-seven of this article.

Acts 1994, c. 58.

§ 3-2-26. Confirmation notices for systematic purging program

(a) For purposes of this article, a "confirmation notice" means a specific notice sent to a registered voter when that voter appears to have moved or to have become ineligible to vote, based on:

(1) A mailing returned as undeliverable as provided in sections sixteen, seventeen and twenty of this article; or

(2) Information obtained through a systematic purging program as provided in sections twenty-four and twenty-five of this article.

(b) A confirmation notice shall be sent by first class, forwardable mail and shall include a pre-addressed, postage prepaid or business reply return card on which the registrant may state his or her current address, together with a notice prescribed by the secretary of state to meet the specific requirements of Section 8(d)(2) of the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg).

Acts 1994, c. 58.

§ 3-2-27. Procedure following sending of confirmation notices; correction or cancellation of registrations upon response; designation of inactive when no response; cancellation of inactive voters; records

(a) Upon receipt of a confirmation response card mailed pursuant to the provisions of section twenty-six of this article and returned completed and signed by the voter, the clerk shall either:

(1) Update the voter registration by noting the confirmation of the current address if no other changes are requested or by entering any change of address within the county, change of name or other correction requested by the voter; or

(2) Cancel the voter's registration if the voter confirms that he or she has moved out of the county.

(b) Upon receipt of the confirmation notice returned undeliverable, the clerk may either:

(1) Send a second confirmation notice to the old residence address if the first notice was sent to a new address provided by the postal service; or

(2) Designate the registration as "inactive" or transfer it to the inactive voter registration file, as defined in section nineteen of this article.

(c) If no response to the confirmation notice is received by the first day of February following the mailing of the confirmation notice, the clerk shall designate the registration as "inactive" or transfer it to the inactive voter registration file as provided in section nineteen of this article.

(d) An inactive voter registration shall be returned to active status or transferred to the active voter registration file upon the voter's application to update the registration or to vote in any election while they remain on the inactive list.

(e) The clerk of the county commission shall cancel the records of all voters on the inactive file who have not responded to the confirmation notice, otherwise updated their voter registrations or voted in any state, county or municipal primary, general or special election held within the county during a period beginning on the date of the notice and ending on the day after the date of the second general election for federal office which occurs after the date of the notice.

Acts 1994, c. 58.

§ 3-2-28. Challenges; notice; cancellation of registration

(a) The registration of any registered voter may be challenged by the clerk of the county commission, the secretary of state, any registrar of the county, the chairman of any political party committee or by any voter who shall appear in person at the clerk's office. The person challenging the registration shall complete a form prescribed by the secretary of state giving the name and address of the voter and the reason for challenge. The challenge shall be filed as a matter of record in the office of the clerk of the county commission.

(b) Upon the receipt of a challenge, the clerk of the county commission shall mail a notice of challenge to the registrant, setting forth that the voter's registration will be canceled if the voter does not appear in person during business hours at the clerk's office within a period of thirty days from the mailing of the notice and present evidence of his or her eligibility. The form of the notice of challenge shall be prescribed by the secretary of state and shall be mailed by certified mail, return receipt requested.

(c) If the notice of challenge is returned as undeliverable at the registration address, or if the challenged registrant does not appear and present evidence of continued eligibility within the prescribed time, the voter's registration shall be immediately canceled. Returned mail or failure to appear shall be prima facie evidence of the registrant's ineligibility. If the registrant does timely appear and present evidence of his or her eligibility, the clerk shall determine eligibility to be registered as a voter as in any other case. If the reason for ineligibility is that the voter does not reside at the address on the registration and the voter presents evidence of residence elsewhere in the county, the clerk of the county commission shall accept a request for change of address and remove the challenge.

Acts 1994, c. 58.

§ 3-2-29. Custody of original registration records and voter registration data files

(a) All original registration records and voter registration data files shall remain in the custody of the county commission, by its clerk, and shall not be removed except for use in an election or by the order of a court of record or in compliance with a subpoena duces tecum issued by the secretary of state pursuant to the provisions of section six, article one-a of this chapter.

(b) All original voter registration records shall be retained for a minimum of

five years following the last recorded activity relating to the record, except that any application which duplicates and does not alter an existing registration shall be retained for a minimum of two years following its receipt. The secretary of state shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code for the specific retention times and procedures required for original voter registration records.

(c) Prior to the destruction of original voter registration applications or registration cards of voters whose registration has been canceled at least five years previously, the clerk of the county commission shall notify the secretary of state of the intention to destroy those records. If the secretary of state determines, within ninety days of the receipt of the notice, that those records are of sufficient historical value that microfilm or other permanent data storage is desirable, the secretary of state may require that the records be delivered to a specified location for processing at state expense.

(d) When a county maintains in digitized data format the active, inactive, pending, rejected and canceled registration files, a data format copy of each of the files shall be maintained as a permanent record, as follows:

(1) Individual canceled registration records shall be maintained in a regularly accessible data file for a period of at least three years following cancellation. Upon the expiration of three years, those individual records may be removed from the regularly accessible canceled registration file and stored on tape or disk. The records removed may be added to a single file containing previously canceled registration records for permanent storage, and the tape or disk shall be clearly labeled.

(2) Rejected registration record files shall be maintained in the same manner as provided for canceled registration files.

(3) At least once each calendar year, during the month of February, a data format copy of the active registration file, inactive registration file and pending application file shall be made containing all records maintained in those files as of the date of the copy. The copy shall be stored on tape or disk and shall be clearly labeled with the types of files and the date the copy was made.

Acts 1994, c. 58.

§ 3-2-30. Public inspection of voter registration records in the office of the clerk of the county commission; providing voter lists for noncommercial use; prohibition against resale of voter lists for commercial use or profit

(a) Any person may examine the active, inactive, rejected and canceled voter registration records during office hours of the clerk of the county commission in accordance with the provisions of chapter twenty-nine-b of this code as follows:

(1) When the active and inactive files are maintained on precinct registration books, any person may examine the files under the supervision of the clerk and obtain copies of records except when a precinct book is in temporary use for updating and preparing lists or during the time the books are sealed for use in an election. Other original voter registration records, including canceled

voter records, pending applications, rejected applications, records of change requests, reinstatements and other documents, shall be available for inspection upon specific request; and

(2) When the active, inactive, rejected and canceled voter files are maintained in data format, any person may examine voter record information in printed form or in a read-only data format on a computer terminal set aside for public use, if available. The data files available for examination and copying shall include all registration and voting information maintained in the file, but may not include the registrant's telephone number, social security number or driver's license number or nonoperator's identification number issued by the Division of Motor Vehicles.

(b) Printed lists of registered voters may be purchased for noncommercial use from the clerk of the county commission at a cost of one cent per name.

(c) In counties maintaining active and inactive files in digitized data format, the clerk of the county commission shall, upon request, prepare printed copies of the lists of voters for each precinct. No list prepared under this section may include the registrant's telephone number, social security number or driver's license number or nonoperator's identification number issued by the Division of Motor Vehicles. The clerk shall establish a written policy, posted within public view, listing the options for selection and sorting criteria and available data elements. The data elements shall include, at least:

(1) The name, residence address, political party affiliation and status of the registrant;

(2) The available formats of the lists; and

(3) The times at which lists will be prepared. A copy of the county policy shall be filed with the Secretary of State no later than the first day of January of each even-numbered year.

(d) In counties which maintain voter files in a digitized data format, lists of registered voters may be obtained for noncommercial purposes in data format on disk provided and prepared by the clerk of the county commission at a cost of one cent per name plus ten dollars for each disk required. No data file prepared under this subsection may include the registrant's telephone number, social security number or driver's license number or nonoperator's identification number issued by the Division of Motor Vehicles.

(e) The fees received by the clerk of the county commission shall be kept in a separate fund under the supervision of the clerk for the purpose of defraying the cost of the preparation of the voter lists. Any unexpended balance in the fund shall be transferred to the general fund of the county commission.

(f) The Secretary of State may make voter lists available for sale subject to the limitations as provided in this section for counties. The cost for a partial list shall be one and one-half cents per name plus ten dollars for each disk required; the cost for a complete statewide list shall be one-half cent per name and a flat fee of one thousand dollars. One cent per name for each voter from a particular county on each partial list and one-half cent per name for each voter from a particular county on each statewide list sold shall be

reimbursed to the appropriate county. The disk fee and one-half cent per name associated with a partial list and the flat fee of one thousand dollars associated with a complete statewide list shall be deposited to a special revenue account for purpose of defraying the cost of preparing the lists.

(g) An update to a previously purchased list may be provided by the Secretary of State or the clerk of the county commission at a prorated cost based on the amount of additional information provided. The additional rates charged by the clerk of the county commission shall be specified in the policy established pursuant to subsection (c) of this section.

(h) No voter registration lists or data files containing voter names, addresses or other information derived from voter data files obtained pursuant to the provisions of this article may be used for commercial or charitable solicitations or advertising, sold or reproduced for resale.

Acts 1994, c. 58; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2007, c. 100, eff. June 4, 2007; Acts 2008, c. 96, eff. March 4, 2008.

§ 3-2-31. Rules pertaining to voting after registration or change of address within the county

(a) A voter who designates a political affiliation with a major party on a registration application filed no later than the close of voter registration before the primary may vote the ballot of that political party in the primary election. Political parties, through the official action of their state executive committees, shall be permitted to determine whether unaffiliated voters or voters of other parties shall be allowed to vote that party's primary election ballot upon request.

(b) A voter whose registration record lists one residence address but the voter has since moved to another residence address within the precinct shall be permitted to update the registration at the polling place and vote without challenge for that reason.

(c) A voter whose registration record lists one residence address but the voter has since moved to another residence address in a different precinct in the same county shall be permitted to update the registration at the polling place serving the new precinct and shall be permitted to vote a challenged or provisional ballot at the new polling place. If the voter's registration is found on the registration records within the county during the canvass and no other challenge of eligibility was entered on election day, the challenge shall be removed and the ballot shall be counted.

(d) A voter whose registration record has been placed on an inactive status or transferred to an inactive file and who has not responded to a confirmation notice sent pursuant to the provisions of section twenty-four, twenty-five or twenty-six of this article and who offers to vote at the polling place where he or she is registered to vote shall be required to affirm his or her present residence address under penalty of perjury, as provided in section thirty-six of this article.

Acts 1994, c. 58; Acts 2005, c. 102, eff. 90 days after April 9, 2005.

§ 3-2-32. Unlawful registration or rejection of voter; penalties

(a) Any registrar or clerk of the county commission who knowingly registers or permits to be registered a person not lawfully entitled to be registered, or who knowingly refuses to register a person entitled to be registered, or who knowingly assists in preventing such person from being registered, or who inserts or intentionally permits to be inserted a name or other entry in any registration form or file, knowing or having reason to know that the entry should not be made, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, in the discretion of the court.

(b) Any person who registers or applies to be registered, or persuades or assists another to be registered, or who applies for a change of residence address, knowing or having reason to know that he or she is not entitled to be registered or to have his or her residence address changed on the registration record, or any person who declares an address known not to be his or her legal residence or who impersonates another in an application for registration, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, in the discretion of the court.

Acts 1994, c. 58.

§ 3-2-33. Neglect of duty by registration officers; penalties

Any registrar or clerk of the county commission or his or her authorized deputies or any other persons upon whom a duty is imposed pursuant to the provisions of this article, or the rules, regulations or directions promulgated or issued by the secretary of state as the chief registration official of the state, who shall willfully delay, neglect or refuse to perform such duty, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, in the discretion of the court.

Acts 1994, c. 58.

§ 3-2-34. Alteration or destruction of records; penalties

(a) Any person who wrongfully and intentionally inserts or permits to be wrongfully inserted any name or material entry on any registration form, file or any other record in connection with registration, or who wrongfully alters or destroys an entry which has been duly made, or who wrongfully takes and removes any such registration form, or any other record authorized or required in connection with registration from the custody of any person having lawful charge thereof, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, in the discretion of the court.

(b) Any person, in the absence of specific authority provided under the provisions of this article, who destroys or attempts to destroy any registration document or record, or who removes or attempts to remove such registration document or record, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than one hundred dollars nor more than one

thousand dollars or confined in the county jail for not more than one year, or both, in the discretion of the court.

Acts 1994, c. 58.

§ 3-2-35. Withholding information; penalties

Any person who neglects to or refuses to furnish to the secretary of state, to the county commission, or to the clerk of the county commission any information which he or she is authorized to obtain in connection with registration, or to exhibit any records, papers or documents herein authorized to be inspected by them, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars, or confined in the county jail for not more than one year, or both, at the discretion of the court.

Acts 1994, c. 58.

§ 3-2-36. Crimes and offenses relating to applications for registration or change of registration; penalties

(a) A person who willfully provides false information concerning a material matter or thing on an application for registration or change of registration, under oath, affirmation or attestation, shall be deemed guilty of perjury; one who induces or procures another person to do so shall be deemed guilty of subordination of perjury.

(b) A person who knowingly offers any application for registration or transfer of registration when the applicant therein is not qualified to register or transfer his registration, or any person who knowingly administers an oath or affirmation to an applicant for registration or change of registration when the application contains false information concerning a material matter or thing, or any person who falsely represents that an oath or affirmation was executed by an applicant for registration or change of registration, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than three years, or fined not less than five hundred dollars nor more than five thousand dollars, or both fined and imprisoned, or, in the discretion of the court, be confined in the county jail for not more than one year, or fined not less than five hundred dollars nor more than five thousand dollars, or both fined and imprisoned.

Acts 1994, c. 58.

§ 3-2-37. Effective date

(a) Except as may otherwise be specifically provided in this section, the provisions of this article shall take effect on the first day of January, one thousand nine hundred ninety-five. The provisions of this article relating to the preparation for implementation of voter registration programs and procedures under this article and under the "National Voter Registration Act of 1993" (42 U.S.C. 1973gg), including sections three, five, twelve and thirteen of this article and subsections (a) and (b), section fourteen of this article and subdivision (4), subsection (b), section nineteen of this article and section twenty of this article, shall take effect upon the effective date of this article.

(b) All procedures and requirements established by the previous enactment of this article, except the provisions of subsection (d), section twenty-two of this article, shall continue in effect until the thirty-first day of December, one thousand nine hundred ninety-four inclusive, as if article two of this chapter had not been amended.

Acts 1994, c. 58.

§§ 3-2-38 to 3-2-44. Repealed by Acts 1994, c. 58

ARTICLE 3

VOTING BY ABSENTEES

Section

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3-3-13. Absentee voting in municipal elections.

§ 3-3-1. Persons eligible to vote absentee ballots

(a) All registered and other qualified voters of the county may vote an absentee ballot during the period of early voting in person.

(b) Registered voters and other qualified voters in the county are authorized to vote an absentee ballot by mail in the following circumstances:

(1) Any voter who is confined to a specific location and prevented from voting in person throughout the period of voting in person because of:

(A) Illness, injury or other medical reason;

(B) Physical disability or immobility due to extreme advanced age; or

(C) Incarceration or home detention: *Provided,* That the underlying conviction is not for a crime which is a felony or a violation of section twelve, thirteen or sixteen, article nine of this chapter involving bribery in an election;

(2) Any voter who is absent from the county throughout the period and available hours for voting in person because of:

(A) Personal or business travel;

(B) Attendance at a college, university or other place of education or training; or

(C) Employment which because of hours worked and distance from the county seat make voting in person impossible;

(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. § 1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active duty and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States;

(4) Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because of:

(A) Serving as an elected or appointed federal or state officer; or

(B) Serving in any other documented employment assignment of specific duration of four years or less; and

(5) Any voter for whom the designated area for absentee voting within the county courthouse or annex of the courthouse and the voter's assigned polling place are inaccessible because of his or her physical disability.

(c) Registered voters and other qualified voters in the county may, in the following circumstances, vote an emergency absentee ballot, subject to the availability of the services as provided in this article:

(1) Any voter who is confined or expects to be confined in a hospital or other duly licensed health care facility within the county of residence or other authorized area, as provided in this article, on the day of the election;

(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized the services if the voter has resided in the nursing home for a period of less than thirty days; and

(3) Any voter who is working as a replacement poll worker and is assigned to a precinct out of his or her voting district, if the assignment was made after the period for voting an absentee ballot in person has expired.

Acts 1921, c. 55, § 1; Acts 1951, c. 90; Acts 1953, c. 93; Acts 1959, c. 68; Acts 1959, c. 70; Acts 1963, c. 64; Acts 1966, c. 28; Acts 1970, c. 50; Acts 1993, c. 50; Acts 1998, c. 133, eff. March 14, 1998; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 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.

Acts 1970, c. 50; Acts 1985, c. 76; Acts 1993, c. 50; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2005, c. 101, eff. 90 days after April 9, 2005; Acts 2010, c. 74, eff. June 10, 2010.

§ 3-3-2a. Early voting areas; prohibition against display of campaign material

(a) The county commission shall designate the courthouse or annex to the courthouse as the primary location for early voting and in addition, the commission may designate other locations as provided in subsection (b).

(b) The county commission may, with the approval of the county clerk or other official charged with the administration of elections, designate community voting locations for early voting, other than the county courthouse or courthouse annex by a majority of the members of the county commission voting to adopt the same at a public meeting called for that purpose.

(1) The county commission shall publish a notice of its intent to designate community voting location at least thirty days prior to the designation. Notice shall be by publication as a Class II-0 legal advertisement in compliance with provisions of article three, chapter fifty-nine of this code. The publication area is the county in which the community voting locations are designated;

(2) Community voting locations shall comply with requirements of this article for early in-person voting, criteria prescribed by the Secretary of State and the following criteria:

(A) can be scheduled for use during the early voting period;

(B) has the physical facilities necessary to accommodate early voting requirements;

(C) has adequate space for voting equipment, poll workers, and voters; and

(D) has adequate security, public accessibility, and parking.

(3) The county executive committees of the two major political parties may nominate sites to be used as community voting locations during the early voting period;

(4) Upon the designation of a community voting location, the county clerk shall, not less than thirty days prior to an election, give notice of the dates, times, and place of community voting locations by publication as a Class II-0 legal advertisement in compliance with provisions of article three, chapter fifty-nine of this code;

(5) Voting shall be conducted at each designated community voting site for a period of not less than five consecutive days during early in-person voting authorized by section three of this article, but need not be conducted at each location for the entire period of early in-person voting;

(6) The county commission, with the approval of the county clerk, may authorize community voting locations on a rotating basis, wherein a community voting location may be utilized for less than the full period of early in-person voting; and

(7) If more than one community voting location is designated, each location shall be utilized for an equal number of voting days and permit voting for the same number of hours per day.

(c) The Secretary of State shall propose legislative and emergency rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary to implement the provisions of this section. The rules shall include establishment of criteria to assure neutrality and security in the selection of community voting locations.

(d) Throughout the period of early in-person voting, the official designated to supervise and conduct absentee voting shall make the following provisions for voting:

(1) The official shall provide a sufficient number of voting booths or devices appropriate to the voting system at which voters may prepare their ballots. The booths or devices are to be in an area separate from but within clear view of the public entrance area of the official's office or other area designated by the county commission for absentee voting and are to be arranged to ensure the voter complete privacy in casting the ballot.

(2) The official shall make the voting area secure from interference with the voter and shall ensure that voted and unvoted ballots are at all times secure from tampering. No person, other than a person lawfully assisting the voter according to the provisions of this chapter, may be permitted to come within five feet of the voting booth while the voter is voting. No person, other than the officials or employees of the official designated to supervise and conduct absentee voting or members of the board of ballot commissioners assigned to conduct absentee voting, may enter the area or room set aside for voting.

(3) The official designated to supervise and conduct absentee voting shall request the county commission designate another area within the county courthouse, any annex of the courthouse or any other designated as early in-person voting locations within the county, as a portion of the official's office, for the purpose of absentee in-person voting in the following circumstances:

(A) If the voting area is not accessible to voters with physical disabilities;

(B) If the voting area is not within clear view of the public entrance of the office of the official designated to supervise and conduct absentee voting; or

(C) If there is no suitable area for absentee in-person voting within the office.

Any designated area is subject to the same requirements as the regular absentee voting area.

(4) The official designated to supervise and conduct absentee voting shall have at least two representatives to assist with absentee voting: *Provided,* That the two representatives may not be registered with the same political party affiliation or two persons registered with no political party affiliation. The representatives may be full-time employees, temporary employees hired for the period of absentee voting in person or volunteers.

(5) No person may do any electioneering nor may any person display or distribute in any manner, or authorize the display or distribution of, any literature, posters or material of any kind which tends to influence the voting for or against any candidate or any public question on the property of the county courthouse, any annex facilities, or any other designated early voting locations within the county, during the entire period of regular in-person absentee voting. The official designated to supervise and conduct absentee voting is authorized to remove the material and to direct the sheriff of the county to enforce the prohibition.

Acts 1970, c. 50; Acts 1971, c. 58; Acts 1993, c. 50; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2009, c. 90, eff. July 9, 2009; Acts 2011, c. 58, eff. March 12, 2011.

§ 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.

Acts 1975, c. 131; Acts 1991, c. 68; Acts 1993, c. 50; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2010, c. 74, eff. June 10, 2010.

§ 3-3-3. Early voting in person

(a) The voting period for early in-person voting is to be conducted during regular business hours beginning on the thirteenth day before the election and continuing through the third day before the election. Additionally, early in-person voting is to be available from 9:00 a.m. to 5:00 p.m. on Saturdays during the early voting period.

(b) Any person desiring to vote during the period of early in-person voting shall, upon entering the election room, clearly state his or her name and residence to the official or representative designated to supervise and conduct absentee voting. If that person is found to be duly registered as a voter in the precinct of his or her residence, he or she is required to sign his or her name in the space marked "signature of voter" on the pollbook. If the voter is unable to sign his or her name due to 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. No ballot may be given to the person until he or she signs his or her name on the pollbook.

(c) When the voter's signature or mark is properly on the pollbook, two qualified representatives of the official designated to supervise and conduct absentee voting shall sign their names in the places indicated on the back of the official ballot.

(d) If the official designated to supervise and conduct absentee voting determines that the voter is not properly registered in the precinct where he or she resides, the clerk or his or her representative shall challenge the voter's absentee ballot as provided in this article.

(e) The official designated to supervise and conduct absentee voting shall provide each person voting an absentee ballot in person the following items to be printed as prescribed by the Secretary of State:

(1) In counties using paper ballots, one of each type of official absentee

ballot the voter is eligible to vote, prepared according to law;

(2) In counties using punch card systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a gray secrecy envelope;

(3) In counties using optical scan systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a secrecy sleeve; or

(4) For direct recording election systems, access to the voting equipment in the voting booth.

(f) The voter shall enter the voting booth alone and there mark the ballot: *Provided,* That the voter may have assistance in voting according to the provisions of section four of this article. After the voter has voted the ballot or ballots, the absentee voter shall: Place the ballot or ballots in the gray secrecy envelope and return the ballot or ballots to the official designated to supervise and conduct the absentee voting: *Provided, however,* That in direct recording election systems, once the voter has cast his or her ballot, the voter shall exit the polling place.

(g) Upon receipt of the voted ballot, representatives of the official designated to supervise and conduct the absentee voting shall:

(1) Remove the ballot stub;

(2) Place punch card ballots and paper ballots into one envelope which shall not have any marks except the precinct number and seal the envelope; and

(3) Place ballots for all voting systems 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.

Acts 1921, c. 55, §§ 3, 5, 8; Acts 1943, c. 50; Acts 1953, c. 93; Acts 1959, c. 69; Acts 1963, c. 64; Acts 1966, c. 28; Acts 1969, c. 54; Acts 1970, c. 50; Acts 1985, c. 72; Acts 1993, c. 50; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2011, c. 59, eff. March 12, 2011.

§ 3-3-3a. Voting absent voter's ballot by personal appearance in Saturday elections for religious reasons

(a) In addition to the persons declared eligible to vote absent voters' ballots pursuant to the provisions of section one of this article, duly registered and otherwise qualified voters who are members of a religious denomination with an established history of observing Saturday as the Sabbath may vote absentee by personal appearance in any election to be held on a Saturday.

(b) Application for an absent voter's ballot authorized by the provisions of this section shall be made on a form prescribed by the secretary of state. The procedures for voting by personal appearance set forth in section three of this article, to the extent not in conflict with the provisions of this section, shall otherwise govern the procedures herein.

Acts 1988, c. 54.

§ 3-3-4. Assistance to voter in voting an absent voter's ballot by personal appearance; penalties

(a) Any registered voter who requires assistance to vote by reason of blindness, disability, advanced age or inability to read and write may be given assistance by a person of the voter's choice: Provided, That the assistance may not be given by the voter's present or former employer or agent of that employer, by the officer or agent of a labor union of which the voter is a past or present member or by a candidate on the ballot.

(b) Any voter who requests assistance in voting an absent voter's ballot but who is determined by the official designated to supervise and conduct absentee voting not to be qualified for assistance under the provisions of this section and section thirty-four, article one of this chapter may vote a challenged absent voter's ballot with the assistance of any person authorized to render assistance pursuant to this section. The official designated to supervise and conduct absentee voting shall in this case challenge the absent voter's ballot on the basis of his or her determination that the voter is not qualified for assistance.

(c) Any one or more of the election commissioners or poll clerks in the precinct to which an absent voter's ballot has been sent may challenge the ballot on the ground that the voter received assistance in voting it when in his or their opinion: (1) The person who received the assistance in voting the absent voter's ballot did not require assistance; or (2) the person who provided the assistance in voting did not make an affidavit as required by this section. The election commissioner or poll clerk or commissioners or poll clerks making a challenge shall enter the challenge and reason for the challenge on the form and in the manner prescribed or authorized by this article.

(d) Before entering the voting booth or compartment, the person who intends to provide a voter assistance in voting shall make an affidavit, the form of which is to be prescribed by the secretary of state, that he or she will not in any manner request or seek to persuade or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question and that he or she will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment and that he or she will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter or which ticket he or she had voted or how he or she had voted on any public question or anything occurring within the voting booth or compartment or voting machine booth, except when required pursuant to law to give testimony as to the matter in a judicial proceeding.

(e) In accordance with instructions issued by the secretary of state, the official designated to supervise and conduct absentee voting shall provide a form entitled "List of Assisted Voters", prescribed by the secretary of state, which list is to be divided into two parts. Part A is to be entitled "Unchallenged Assisted Voters" and Part B is to be entitled "Challenged Assisted Voters". Under Part A, the official designated to supervise and conduct absentee voting shall enter the name of each voter receiving

unchallenged assistance in voting an absent voter's ballot, the address of the voter assisted, the nature of the disability which qualified the voter for assistance in voting an absent voter's ballot, the name of the person providing the voter with assistance in voting an absent voter's ballot, the fact that the person rendering the assistance in voting made and subscribed to the oath required by this section and the signature of the official designated to supervise and conduct absentee voting certifying to the fact that he or she had determined that the voter who received assistance in voting an absent voter's ballot was qualified to receive the assistance under the provisions of this section. Under Part B, the official designated to supervise and conduct absentee voting shall enter the name of each voter receiving challenged assistance in voting, the address of the voter receiving challenged assistance, the reason for the challenge and the name of the person providing the challenged voter with assistance in voting. At the close of the period provided for voting an absent voter's ballot by personal appearance, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath on the list that the list is correct in all particulars; if no voter has been assisted in voting an absent voter's ballot as provided in this section, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath of that fact on the list. The "List of Assisted Voters" is to be available for public inspection in the office of the official designated to supervise and conduct absentee voting during regular business hours throughout the period provided for voting an absent voter's ballot by personal appearance and, unless otherwise directed by the secretary of state, the official shall transmit the list, together with the affidavits, applications and absent voters' ballots, to the precincts on election day.

(f) Following the election, the affidavits required by this section from persons providing assistance in voting, together with the "List of Assisted Voters", are to be returned by the election commissioners to the clerk of the county commission, along with the election supplies, records and returns, who shall make the oaths and list available for public inspection and who shall preserve the oaths and list for twenty-two months or, if under order of the court, until their destruction or other disposition is authorized or directed by the court.

(g) Any person making an affidavit required under the provisions of this section who knowingly swears falsely in the affidavit or any person who counsels or advises, aids or abets another in the commission of false swearing under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for a period of not more than one year, or both.

(h) Any person who provides a voter assistance in voting an absent voter's ballot in the office of the official designated to supervise and conduct absentee voting who is not qualified or permitted by this section to provide assistance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county or regional jail for a period of not more than one year, or both.

(i) Any official designated to supervise and conduct absentee voting, election commissioner or poll clerk who authorizes or allows a voter to receive or to have received unchallenged assistance in voting an absent voter's ballot when the voter is known to the official designated to supervise and conduct absentee

voting or election commissioner or poll clerk not to be or have been authorized by the provisions of this section to receive or to have received assistance in voting is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned in the county or regional jail for a period of not more than one year, or both.

(j) The term "physical disability" as used in this section means blindness or a degree of blindness as will prevent the voter from seeing the names on the ballot or amputation of both hands or a disability of both hands that neither can be used to make cross marks on the absent voter's ballot.

Acts 1921, c. 55, § 17; Acts 1963, c. 64; Acts 1970, c. 50; Acts 1985, c. 72; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2002, c. 132, eff. Feb. 5, 2002.

§ 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:

(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.

Acts 1921, c. 55, §§ 2, 3, 4, 5, 6, 7, 8; Acts 1943, c. 50; Acts 1953, c. 93; Acts 1959, c. 69; Acts 1963, c. 64, 1966, c. 28; Acts 1969, c. 54; Acts

1970, c. 50; Acts 1981, c. 104; Acts 1985, c. 72; Acts 1988, c. 54; Acts 1989, c. 71; Acts 1993, c. 50; Acts 1998, c. 134, eff. March 14, 1998; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2007, c. 102, eff. June 8, 2007; Acts 2008, c. 97, eff. March 4, 2008; Acts 2010, c. 74, eff. June 10, 2010.

§ 3-3-5a. Processing federal postcard applications

When a federal postcard registration and absentee ballot request (FPCA), as defined in subdivision (2), subsection (b), section two of this article, is received by the official designated to supervise and conduct absentee voting, the official shall examine the application and take the following steps:

(1) The official shall first enter the name of the applicant in the permanent absentee voter's record for each election for which a ballot is requested, make a photocopy of the application for each election for which a ballot is requested and place the separate copies in secure files to be maintained for use in the various elections.

(2) The official designated to supervise and conduct absentee voting shall determine if the applicant is registered to vote at the residence address listed in the voting residence section of the application. If the applicant is not registered, or not registered at the address given, the official shall deliver the original FPCA to the clerk of the county commission for processing, and the clerk of the county commission shall process the application as an application for registration and, if the application is received after the close of voter registration for the next succeeding election, the official shall challenge the absentee ballot for that election.

(3) Except as provided in subdivision (2) of this section, the federal application for an absentee ballot received from a person qualified to use the application as provided in section two of this article is to be processed as all other applications and the ballot or ballots for each election for which ballots are requested by the applicant is to be mailed to the voter on the first day on which both the application and the ballot are available.

Acts 1978, c. 43; Acts 1993, c. 50; Acts 2001, c. 117, eff. Sept. 1, 2001.

§ 3-3-5b. Procedures for voting a special write-in absentee ballot by qualified persons

(a) Notwithstanding any other provisions of this chapter, a person qualified to vote an absentee ballot in accordance with subdivision (3), subsection (d), section one of this article may apply not earlier than the first day of January of an election year for a special write-in absentee ballot for a primary or general election, in conjunction with the application for a regular absentee ballot or ballots. If the application is received after the forty-ninth day preceding the election, the official designated to supervise and conduct absentee voting shall honor only the application for local, state and federal offices in general, special and primary elections.

(b) The application for a special write-in absentee ballot may be made on the federal postcard application form.

(c) In order to qualify for a special write-in absentee ballot, the voter must state that he or she is unable to vote by regular absentee ballot or in person due to requirements of military service or due to living in isolated areas or extremely remote areas of the world. This statement may be made on the federal postcard application or on a form prepared by the secretary of state and supplied and returned with the special write-in absentee ballot.

(d) Upon receipt of the application within the time required, the official designated to supervise and conduct absentee voting shall issue the special write-in absentee ballot which is to be the same ballot issued under the provisions of 42 U. S. C. § 1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986. The ballot is to permit the elector to vote in a primary election by indicating his or her political party affiliation and the names of the specific candidates for each office, and in a general election by writing in a party preference for each office, the names of specific candidates for each office, or the name of the person whom the voter prefers for each office.

(e) When a special federal write-in ballot is received by the official designated to supervise and conduct absentee voting from a voter: (1) Who mailed the write-in ballot from any location within the United States; (2) who did not apply for a regular absentee ballot; (3) who did not apply for a regular absentee ballot by mail; or (4) whose application for a regular absentee ballot by mail was received less than thirty days before the election, the write-in ballot may not be counted.

(f) Any write-in absentee ballot must be received by the official designated to supervise and conduct absentee voting prior to the close of the polls on election day or it may not be counted.

Acts 1988, c. 54; Acts 1993, c. 50; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2001, c. 117, eff. Sept. 1, 2001.

§ 3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters

(a) Notwithstanding any other provision of this chapter, a person qualified to vote an emergency absentee ballot, as provided in subsection (c), section one of this article may vote an emergency absentee ballot under the procedures established in this section. The county commission may adopt a policy extending the emergency absentee voting procedures to: (1) Hospitals or other duly licensed health care facilities within an adjacent county or within thirty-five miles of the county seat; or (2) nursing homes within the county: *Provided,* That the policy is to be adopted by the county commission at least ninety days prior to the election that will be affected and a copy of the policy is to be filed with the secretary of state.

(b) On or before the fifty-sixth day preceding the date on which any election is to be held the official designated to supervise and conduct absentee voting shall notify the county commission of the number of sets of emergency absentee ballot commissioners which he or she determines necessary to perform the duties and functions pursuant to this section.

(c) A set of emergency absentee ballot commissioners at-large shall consist of

two persons with different political party affiliations appointed by the county commission in accordance with the procedure prescribed for the appointment of election commissioners under the provisions of article one of this chapter. Emergency absentee ballot commissioners have the same qualifications and rights and take the same oath required under the provisions of this chapter for commissioners of elections. Emergency absentee ballot commissioners are to be compensated for services and expenses in the same manner as commissioners of election or poll clerks obtaining and delivering election supplies under the provisions of section forty-four, article one of this chapter.

(d) Upon request of the voter or a member of the voter's immediate family or, when the county commission has adopted a policy to provide emergency absentee voting services to nursing home residents within the county, upon request of a staff member of the nursing home, the official designated to supervise and conduct absentee voting, upon receiving a proper request for voting an emergency absentee ballot no earlier than the seventh day next preceding the election and no later than noon of election day shall supply to the emergency absentee ballot commissioners the application for voting an emergency absentee ballot and the balloting materials. The emergency absentee ballot application is to be prescribed by the secretary of state and is to include the name, residence address and political party affiliation of the voter, the date, location and reason for confinement in the case of an emergency, and the name of the attending physician.

(e) The application for an emergency absentee ballot is to be signed by the person applying. If the person applying for an emergency absentee ballot is unable to sign his or her application because of illiteracy or physical disability, he or she is to make his or her mark on the signature line provided for an illiterate or disabled applicant, the mark is to be witnessed. The person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.

(f) A declaration is to be completed and signed by each of the emergency absentee ballot commissioners, stating their names, the date on which they appeared at the place of confinement of the person applying for an emergency absentee ballot and the particulars of the confinement.

(g) At least one of the emergency absentee ballot commissioners receiving the balloting materials shall sign a receipt which is to be attached to the application form. Each of the emergency absentee ballot commissioners shall deliver the materials to the absent voter, await his or her completion of the application and ballot and return the application and the ballot to the official designated to supervise and conduct absentee voting. Upon delivering the application and the voted ballot to the official, the emergency absentee ballot commissioners shall sign an oath that no person other than the absent voter voted the ballot. The application and the voted ballot are to be returned to the official designated to supervise and conduct absentee voting prior to the close of the polls on election day. Any ballots received by the official after the time that delivery may reasonably be made but before the closing of the polls are to be delivered to the canvassing board along with the absentee ballots challenged in accordance with the provisions of section ten of this article.

(h) Upon receiving the application and emergency absentee ballot, the official

designated to supervise and conduct absentee voting shall ascertain whether the application is complete, whether the voter appears to be eligible to vote an emergency absentee ballot, and whether the voter is properly registered to vote with the office of the clerk of the county commission. If the voter is found to be properly registered in the precinct shown on the application, the ballot is to be delivered to the precinct election commissioner pursuant to section seven of this article. If the voter is found not to be registered or is otherwise ineligible to vote an emergency ballot, the ballot is to be challenged for the appropriate reason provided for in section ten of this article.

(i) If either or both of the emergency absentee ballot commissioners refuse to sign any application for voting an emergency absentee ballot, the voter may vote as an emergency absentee and the ballot will be challenged in accordance with the provisions of section ten of this article, in addition to those absentee ballots subject to challenge as provided in that section.

(j) Any voter who receives assistance in voting an emergency absentee ballot shall comply with the provisions of section six of this article. Any other provisions of this chapter relating to absentee ballots not altered by the provisions of this section are to govern the treatment of emergency absentee ballots.

Acts 1988, c. 54; Acts 1989, c. 71; Acts 1993, c. 50; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-3-6. Assistance to voter in voting an absent voter's ballot by mail

No voter shall receive any assistance in voting an absent voter's ballot by mail unless he or she shall make a declaration at the time he or she makes application for an absent voter's ballot that because of blindness, disability, advanced age or inability to read or write he or she requires assistance in voting an absent voter's ballot.

Upon receipt of an absent voter's ballot by mail, the voter who requires assistance in voting such ballot and who has indicated he or she requires such assistance and the reasons therefor on the application may select any eligible person to assist him or her in voting.

The person providing assistance in voting an absent voter's ballot by mail shall make an affidavit on a form as may be prescribed by the secretary of state, that he will not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and that he will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment, and that he will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he had voted, or how he had voted on any public question, or anything occurring within the voting booth or compartment or voting machine booth, except when required pursuant to law to give testimony as to such matter in a judicial proceeding.

The term "assistance in voting" as used in this section shall mean assistance in physically marking the official absent voter's ballot for a voter, or reading or directing the voter's attention to any part of the official absent voter's ballot.

Acts 1970, c. 50; Acts 1985, c. 72.

§ 3-3-7. Delivery of absentee ballots to polling places

(a) Except as otherwise provided in this article, in counties using paper ballots systems or voting machines, the absentee ballots of each precinct, together with the applications for the absentee ballots, the affidavits made in connection with assistance in voting and any forms, lists and records as may be designated by the secretary of state, are to be delivered in a sealed carrier envelope to the election commissioner of the precinct at the time he or she picks up the official ballots and other election supplies as provided in section twenty-four, article one of this chapter.

(b) Absentee ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct are to be delivered to the election commissioner of the precinct who has been designated pursuant to section twenty-four, article one of this chapter, by the official designated to supervise and conduct absentee voting in person or by messenger before the closing of the polls, provided the ballots are received by the official in time to make the delivery. Any ballots received by the official after the time that delivery may reasonably be made but within the time required as provided in subsection (g), section five of this article are to be delivered to the board of canvassers along with the provisional ballots.

Acts 1921, c. 55, § 9; Acts 1963, c. 64; Acts 1970, c. 50; Acts 1988, c. 54; Acts 1993, c. 50; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

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

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

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

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

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

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

(1) On election day, the ballot boxes containing the absentee ballots shall be delivered to the central counting center and opened in the presence of the

clerk of the county commission and two representatives of opposite political parties; and

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

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

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

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

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

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

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

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

Acts 1921, c. 55, § 10; Acts 1941, c. 44; Acts 1949, c. 58; Acts 1963, c. 64; Acts 1968, c. 26; Acts 1970, c. 50; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2006, c. 89, eff. March 10, 2006.

§ 3-3-9. Voting in person after having received and after having voted an absent voter's ballot

(a) Any person who has applied for and received an absent voter's ballot but has not voted and returned the same to the official designated to supervise and conduct absentee voting may vote in person at the polls on election day provided he or she returns the absent voter's ballot to the election commissioners at the polling place. Upon return of the absent voter's ballot the election commissioners shall destroy the ballot in the presence of the voter, and one of the poll clerks shall make a notation of this fact as directed by instructions issued by the secretary of state. In the event the person does not return the absent voter's ballot, he or she will have his or her vote challenged by one or more of the election commissioners or poll clerks.

(b) No person who has voted an absent voter's ballot may vote in person on the

day of the election.

Acts 1921, c. 55, § 16; Acts 1963, c. 64; Acts 1970, c. 50; Acts 2001, c. 117, eff. Sept. 1, 2001.

§ 3-3-10. Challenging of absent voters' ballots

(a) The official designated to supervise and conduct absentee voting may challenge an absent voter's ballot on any of the following grounds:

(1) That the application for an absent voter's ballot has not been completed as required by law;

(2) That any statement or declaration contained in the application for an absent voter's ballot is not true;

(3) That the applicant for an absent voter's ballot is not registered to vote in the precinct of his or her residence as provided by law;

(4) That the person voting an absent voter's ballot by personal appearance in his or her office had assistance in voting the ballot when the person was not qualified for voting assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she is not so physically disabled as to have been unable to see or mark the absent voter's ballot;

(5) That the person who voted an absent voter's ballot by mail and received assistance in voting the ballot was not qualified under the provisions of this article for assistance; and

(6) That the person has voted absentee by mail as a result of being out of the county more than four consecutive times: *Provided,* That the determination as to whether the person has voted more than four consecutive times does not apply if the person is a citizen residing out of the United States; or a member, spouse or dependent of a member serving in the uniformed services; or a college student living outside of his or her home county.

(b) Any one or more of the election commissioners or poll clerks in a precinct may challenge an absent voter's ballot on any of the following grounds:

(1) That the application for an absent voter's ballot was not completed as required by law;

(2) That any statement or declaration contained in the application for an absent voter's ballot is not true;

(3) That the person voting an absent voter's ballot is not registered to vote in the precinct of his or her residence as provided by law;

(4) That the signatures of the person voting an absent voter's ballot as they appear on his or her registration record, his or her application for an absent

voter's ballot and the absent voter's ballot envelope are not in the same handwriting;

(5) That the person voting an absent voter's ballot by personal appearance had assistance in voting the ballot when the person was not qualified for assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she was not so physically disabled as to have been unable to see or mark the absent voter's ballot;

(6) That the person voted an absent voter's ballot by mail and received assistance in voting the ballot when not qualified under the provisions of this article for assistance;

(7) That the person who voted the absent voter's ballot voted in person at the polls on election day;

(8) That the person voted an absent voter's ballot under authority of subdivision (3), subsection (b), section one of this article and is or was present in the county in which he or she is registered to vote between the opening and closing of the polls on election day; and

(9) On any other ground or for any reason on which or for which the ballot of a voter voting in person at the polls on election day may be challenged.

No challenge may be made to any absent voter ballot if the voter was registered and qualified to vote pursuant to the provisions of subsection (a), section one of this article.

(c) Forms for, and the manner of, challenging an absent voter's ballot under the provisions of this article are to be prescribed by the secretary of state.

(d) Absent voters' ballots challenged by the official designated to supervise and conduct absentee voting under the provisions of this article are to be transmitted by the official directly to the county commission sitting as a board of canvassers. The absent voters' ballots challenged by the election commissioners and poll clerks under the provisions of this article may not be counted by the election officials but are to be transmitted by them to the county commission sitting as a board of canvassers. Action by the board of canvassers on challenged absent voters' ballots is to be governed by the provisions of section forty-one, article one of this chapter.

Acts 1921, c. 55, § 11; Acts 1963, c. 64; Acts 1970, c. 50; Acts 1989, c. 71; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 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.

Acts 1921, c. 55, §§ 5, 17, 18; Acts 1959, c. 69; Acts 1963, c. 64; Acts 1966, c. 28; Acts 1969, c. 54; Acts 1970, c. 50; Acts 1985, c. 72; Acts 1986, c. 70; Acts 1997, c. 90, eff. 90 days after April 12, 1997; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2005, c. 101, eff. 90 days after April 9, 2005; Acts 2010, c. 74, eff. June 10, 2010.

§ 3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting

(a) The secretary of state shall make, amend and rescind rules, regulations, orders and instructions, and prescribe forms, lists and records, and consolidation of forms, lists and records as may be necessary to carry out the policy of the Legislature as contained in this article and as may be necessary to provide for an effective, efficient and orderly administration of the absentee voter law of this state. In the case of West Virginia voters residing outside the continental United States, the secretary of state shall promulgate rules and regulations necessary to implement procedures relating to absentee voters contained in 42 U.S.C. § 1973, et seq., the Uniformed and Overseas Citizens Absentee Voting Act of 1986 and shall forward a copy of the act to all officials designated to supervise and conduct absentee voting before the first day of January of each even-numbered year.

(b) The secretary of state may establish special procedures to allow absentee voting for those categories of registered voters who, because of special circumstances, would otherwise be unable to vote in the election.

(c) It is the duty of all officials designated to supervise and conduct absentee voting, other county officers, and all election commissioners and poll clerks to abide by the rules, regulations, orders and instructions and to use

the forms, lists and records which may include or relate to:

(1) The consolidation of the two application forms provided for in this article into one form;

(2) The size and form of absent voter's ballot envelope nos. 1 and 2, and carrier envelopes;

(3) The information which is to be placed on absent voter's ballot envelope no. 1 and the forms and information which are to be placed on absent voter's ballot envelope no. 2;

(4) The forms and manner of making the challenges to absentee ballots authorized by this article;

(5) The forms of, information to be contained in, and consolidation of lists and records pertaining to applications for, and voting of, absentee ballots and assistance to persons voting absentee ballots;

(6) The supplying of application forms, envelopes, challenge forms, lists, records and other forms; and

(7) The keeping and security of voted absentee ballots in the office of the official designated to supervise and conduct absentee voting.

Acts 1970, c. 50; Acts 1988, c. 54; Acts 1993, c. 50; Acts 2001, c. 117, eff. Sept. 1, 2001.

§ 3-3-13. Absentee voting in municipal elections

The provisions of this article relating to absentee voting shall apply to all municipal elections, except where clearly not adaptable thereto, and the governing bodies of the several municipalities of the state shall by ordinance implement the provisions hereof so as to develop and provide a complete and satisfactory absentee voting system for municipal elections.

Acts 1963, c. 64; Acts 1970, c. 50.

ARTICLE 3A

VOTE BY MAIL PILOT PROGRAM

Section

3-3A-1. Short title.

3-3A-2. Vote by mail pilot program.

3-3A-3. Secretary of State Rulemaking.

3-3A-4. Authority to conduct voting by mail.

3-3A-5. Termination of Pilot Project.

§ 3-3A-1. Short title

This article shall be known as the "West Virginia Vote By Mail Pilot Program".

Acts 2009, c. 91, eff. July 9, 2009.

§ 3-3A-2. Vote by mail pilot program

This article establishes a two phase pilot project that will allow certain municipalities to vote by mail. Phase one authorizes Class IV municipalities to conduct only early voting for municipal elections by mail beginning with the municipal election of 2010. Phase two authorizes five municipalities in the state to conduct all voting by mail beginning with the primary election of 2011. The pilot project will permit registered and other qualified voters of the authorized municipalities to vote a ballot by mail during the pilot program period. The Class IV municipalities that choose to participate in phase one may conduct only the early voting for the municipal elections entirely by mail. The five municipalities selected for participation in phase two may conduct both the primary and general elections entirely by mail.

Acts 2009, c. 91, eff. July 9, 2009.

§ 3-3A-3. Secretary of State Rulemaking

(a) The Secretary of State is hereby directed to propose emergency and legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement phase one of the vote by mail pilot program. In addition to any other provisions the Secretary believes are necessary to provide for the effective, efficient and orderly administration of phase one of the vote by mail pilot program, the rules proposed by the Secretary shall provide for phase one municipal elections the requirements and procedures for conducting an election by mail including:

(1) That a notice of early voting by mail will be mailed to each registered voter in the municipality no more than four weeks nor less than two weeks prior to the start of the early voting period. The notice may be included in any utility or service statement or invoice mailed to every household in the municipality or a postcard sent to all registered voters in the municipality;

(2) That each ballot packet shall consist of the actual ballot, instructions, a secrecy envelope and a ballot return envelope;

(3) That each ballot will be mailed with detailed instructions on how to mark the ballot, place it in the secrecy envelop and the ballot return envelope and how to sign the ballot return envelope, a warning that the ballot return envelope must be signed or the ballot will not be counted, a warning that signing someone else's ballot return envelope is illegal, an alternative procedure for any person who is unable to sign a ballot return envelope and a procedure for returning a spoiled ballot should the voter make a mistake or otherwise need a new ballot; and

(4) That each ballot must be mailed or brought to the municipal precinct by the close of the early voting period.

(b) The Secretary of State is hereby directed to propose legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the phase two vote by mail pilot program. In addition to any other provisions the Secretary believes are necessary to provide for the effective, efficient and orderly administration of phase two of the vote by mail pilot program, the rules proposed by the Secretary shall include:

(1) Criteria for the selection of up to five municipalities to participate in the vote by mail pilot program;

(2) Procedures for conducting voting by mail including those specified in subsection (a) of this section;

(3) Requirements and criteria for the designation of places of deposit for the ballots cast in an election; and

(4) Dates and times the places of deposit must be open and the security requirements for the places of deposit. Places of deposit shall be open on the date of the election for a period of eight or more hours, but must be open until at least eight p.m., at a minimum.

(c) Each municipality wishing to conduct early voting by mail shall adopt an ordinance expressing the municipality's intent and notifying the public of the changes in voting.

(d) It is the duty of all officials designated to supervise and conduct the vote by mail program, other municipal officials, and all election commissioners and poll clerks to abide by the Secretary of State's rules, orders and instructions and to use the forms, lists and records prescribed by the Secretary of State.

Acts 2009, c. 91, eff. July 9, 2009.

§ 3-3A-4. Authority to conduct voting by mail

The voting by mail program is to be supervised and conducted by the municipal recorder or other officer authorized by charter or ordinance provisions to conduct voting for any election held entirely within the municipality. All other provisions of this article for conducting a municipal election shall apply.

Acts 2009, c. 91, eff. July 9, 2009.

§ 3-3A-5. Termination of Pilot Project

The provisions of this article related to phase two of the pilot project shall terminate on January 1, 2014, unless sooner terminated, continued or reestablished.

Acts 2009, c. 91, eff. July 9, 2009.

ARTICLE 3B

UNIFORMED SERVICES AND OVERSEAS VOTER PILOT PROGRAM

Section

3-3B-3. Process for selection by Secretary of State.

§ 3-3B-3. Process for selection by Secretary of State

(a) On or before the close of business on January 8, 2010, for the 2010 primary and general election, and on or before the close of business on July 30, 2010, for the 2010 general election only, any county interested in participating in the pilot program must submit a proposal to the Secretary of State. The proposal shall include:

(1) The name of the vendor or vendors, if any, whose voting system will be implemented for voting by uniformed military and overseas citizen voters;

(2) The anticipated cost to the county of implementing the proposal;

(3) The manner in which the voting system complies with the provisions of section four of this article; and

(4) An option for the voter to choose not to vote using the pilot voting system, but rather by mail, fax or e-mail at the voter's discretion as provided in sections five and five-b, article three, chapter three of this code.

(b) The Secretary of State shall evaluate each proposal and shall approve those proposals which meet the criteria described in section four of this article.

(c) On or before January 29, 2010, for the 2010 primary and general election, and on or before August 13, 2010, for the 2010 general election only, each county that has submitted a proposal shall be notified by the Secretary of State that the application has either been approved or denied.

(d) Any county that applied by January 8, 2010, and was approved by the Secretary of State is considered approved for program participation in both the 2010 primary election and 2010 general election.

(e) Following the primary election, the secretary shall evaluate the functional effectiveness of pilot programs conducted under this article and shall terminate any program that fails to adequately and securely ensure that absent uniformed services voters and overseas voters have their absentee ballots cast and counted in the primary election.

(f) Ninety days following the 2010 primary election and ninety days following the 2010 general election, the secretary shall submit to the Legislature reports on the progress and outcomes of any pilot program conducted under this article, together with recommendations:

(1) For the conduct of additional pilot programs; and

(2) For such other legislation as the secretary determines appropriate.

Acts 2009, 4th Ex. Sess., c. 5, eff. Nov. 19, 2009; Acts 2010, 2nd Ex. Sess.,

c. 9, eff. July 21, 2010.

ARTICLE 4

VOTING MACHINES [REPEALED]

§§ 3-4-1 to 3-4-32. Repealed by Acts 2011, c. 26, eff. June 6, 2011

ARTICLE 4A

ELECTRONIC VOTING SYSTEMS

Section

3-4A-1. Use of electronic voting systems authorized.

3-4A-2. Definitions.

3-4A-3. Procedure for adopting electronic voting systems.

3-4A-4. Procedure for terminating use of electronic voting systems.

3-4A-5. Duty of county commission to acquire vote recording devices, acquire use of automatic tabulating equipment, and provide a central counting center.

3-4A-6. Acquisition of vote recording devices by purchase or lease; acquisition of use of automatic tabulating equipment; counting centers.

3-4A-7. Bids and contracts for vote recording devices; false swearing or failure to disclose facts.

3-4A-8. Approval of electronic voting system by State Election Commission; expenses; compensation of persons examining system.

3-4A-9. Minimum requirements of electronic voting systems.

3-4A-9a. Authorization for ballot-marking voting systems; minimum requirements.

3-4A-9b. Authorization for precinct ballot-scanning device; minimum requirements.

3-4A-10. County clerk to be custodian of vote-recording devices, tabulating equipment and electronic poll books; duties.

3-4A-10a. Proportional distribution of vote-recording devices.

3-4A-11. Repealed.

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

3-4A-12. Repealed.

3-4A-13. Inspection of ballots, electronic poll books and vote-recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote-recording devices; receipt of election materials by ballot commissioners.

3-4A-13a. Repealed.

3-4A-14. Election boards where electronic voting systems used.

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

3-4A-16. Delivery of vote-recording devices and electronic poll books; time, arrangement for voting.

3-4A-17. Check of vote-recording devices and electronic poll books before use; corrections; reserve vote-recording devices.

3-4A-18. Disrepair of vote recording devices in use; reserve vote recording devices.

3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.

3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without signatures.

3-4A-20. Non-affiliated voters in primary elections.

3-4A-21. Repealed.

3-4A-22. Assistance to illiterate and disabled voters.

3-4A-23. Persons prohibited about voting booths; penalties.

3-4A-24. Voting by challenged voter.

3-4A-24a. Voting by challenged voter where touch-screen electronic voting systems are used.

3-4A-25. Closing polls.

3-4A-26. Test of automatic tabulating equipment.

3-4A-27. Proceedings at the central counting center.

3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll books; canvass and recounts.

3-4A-29. Incorrect recordation or tabulation of votes; testing accuracy of vote recording devices and automatic tabulating equipment; procedures and requirements.

3-4A-30. Adjustments in voting precincts where electronic voting system used.

3-4A-31. Use of electronic voting systems in municipal elections.

3-4A-32. Applicability of general laws relating to elections.

3-4A-33. Tampering with vote-recording devices, electronic poll books, ballot labels, ballot or ballot cards, program decks, standard validation test decks or other automatic tabulating equipment; other dishonest practices; attempts; penalty.

3-4A-34. Wilful neglect of duty by officials; penalties.

§ 3-4A-1. Use of electronic voting systems authorized

(a) Electronic voting systems may be used for the purpose of registering or recording and computing votes cast in general, special and primary elections: *Provided,* That the use of the electronic voting systems shall be governed by the terms, conditions, restrictions and limitations imposed by this article.

(b) Each county which is authorized to use electronic voting systems in any statewide election shall establish a written policy for securing the electronic voting equipment. The policy shall outline how the equipment is secured from tampering and under what circumstances county personnel are authorized to have access. The clerk of the county commission shall submit a copy of the policy to the Secretary of State by the first day of February in each even-numbered year. The clerk shall also submit a copy of any change to the policy within thirty days after its adoption.

Acts 1969, c. 55; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2007, c. 103, eff. June 4, 2007.

§ 3-4A-2. Definitions

As used in this article, unless otherwise specified:

(1) "Automatic tabulating equipment" means all apparatus necessary to electronically count votes recorded on ballots and tabulate the results;

(2) "Ballot" means an electronic image or paper on which votes may be recorded by means of perforating or marking with electronically sensible ink or pencil or a screen upon which votes may be recorded by means of a stylus or by means of touch;

(3) "Central counting center" means a facility equipped with suitable and necessary automatic tabulating equipment, selected by the county commission, for the electronic counting of votes recorded on ballots;

(4) "Electronic poll book" means an electronic device containing the same voter registration information maintained by the county clerk in a printed poll book.

(5) "Electronic voting system" is a means of conducting an election whereby votes are recorded on ballots by means of an electronically sensible marking ink, by perforating or are recorded on equipment that registers votes on a computer disk, or by touching a screen with a stylus or by means of touch, and

votes are subsequently counted by automatic tabulating equipment at the central counting center;

(6) "Standard validation test deck" means a group of ballots wherein all voting possibilities which can occur in an election are represented; and

(7) "Vote-recording device" means equipment in which ballots are placed to allow a voter to record his or her vote by electronically sensible ink, or pencil, or a screen upon which votes may be recorded by means of a stylus or by means of touch.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 1988, c. 55; Acts 1990, c. 80; Acts 1998, c. 135, eff. 90 days after March 14, 1998; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2008, c. 98, eff. March 5, 2008; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-3. Procedure for adopting electronic voting systems

An electronic voting system that has been approved in accordance with section eight of this article may be adopted for use in general, primary and special elections in any county by the following procedure and not otherwise:

By a majority of the members of the county commission voting to adopt the same at a public meeting regularly called for that purpose: *Provided,* That the meeting be held not less than six months prior to the next scheduled primary or general election, with notice published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication shall be the county involved.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2004, c. 112, eff. Feb. 23, 2004; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-4. Procedure for terminating use of electronic voting systems

The use of an electronic voting system may be terminated:

(1) By a majority of the members of the county commission voting to terminate use of the system and replace it with a different voting system meeting the requirements of the Help America Vote Act of 2002, 42 U.S.C. § 15301, *et seq.* at a special public meeting called for the purpose of said termination, with due notice thereof published as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved: *Provided,* That such meeting shall be held not less than six months prior to a general election or six months prior to a primary election. If at such meeting, such county commission shall enter an order of its intention to terminate use of an electronic voting system, it shall thereafter forthwith cause to be published a certified copy of such order as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county involved. The first publication of such order shall not be less than twenty days after the entry of such order. Such county commission shall not terminate the use of an electronic voting system until ninety days after the entry of such order of its intention to terminate the same. Promptly after the expiration of ninety days

after the entry of such order of intention to terminate the use of an electronic voting system, if no petition has theretofore been filed with such county commission requesting a referendum on the question of termination of the electronic voting system as hereinafter provided, such county commission shall enter a final order terminating the use of the electronic voting system, and the use of electronic voting system shall thereby be terminated. If a petition has been submitted as provided in this subdivision, the county commission shall not terminate the use of the system but shall proceed as provided in this subdivision.

If five percent or more of the registered voters of such county shall sign a petition requesting that the use of an electronic voting system be terminated in such county and such petition be filed with the county commission of such county within ninety days after the entry of such order of intention to terminate the use of an electronic voting system, such county commission shall submit to the voters of such county at the next general or primary election, whichever shall first occur, the question: "Shall the use of an electronic voting system be terminated in ..... County?" If this question be answered in the affirmative by a majority of the voters in such election upon the question, the use of an electronic voting system shall thereby be terminated. If such question shall not be answered in the affirmative by such majority, the use of an electronic voting system shall continue.

(2) By the affirmative vote of a majority of the voters of such county voting upon the question of termination of the use of an electronic voting system in such county. If five percent or more of the registered voters of such county shall sign a petition requesting the termination of the use of an electronic voting system in such county, and such petition be filed with the county commission of such county, such county commission shall submit to the voters of such county at the next general or primary election, following by not less than ninety days the date of the filing of such petition, the question: "Shall the use of an electronic voting system be terminated in ..... County?" If this question be answered in the affirmative by a majority of the voters of such county voting upon the question, the use of an electronic voting system shall thereby be terminated. If such question shall not be answered in the affirmative by a majority of the voters of such county voting upon the question, the use of an electronic voting system shall thereby continue.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-5. Duty of county commission to acquire vote recording devices, acquire use of automatic tabulating equipment, and provide a central counting center

If the use of an electronic voting system shall have been adopted as hereinbefore provided, it shall be the duty of the county commission of such county to acquire the necessary number of vote recording devices to supply all or part of the election precincts within such county as soon as possible, and to acquire such reserve vote recording device or devices as will be deemed necessary. All such acquisition of vote recording devices shall be by sealed competitive bidding.

If it shall be impossible for the county commission to comply with its order or with the decision of the voters in a referendum at the next primary or general election, it shall in any event do so at the next following primary or general

election, whichever shall first occur.

It shall be the further duty of the county commission of such county to acquire prior to any election in which such electronic voting system is to be used, the use of automatic tabulating equipment approved by the state election commission, for the purpose of counting votes in such election. In addition, the county commission of such county shall provide the necessary central counting center for use in said election. Such central counting center shall be located at the county seat of the county involved.

Acts 1969, c. 55; Acts 1982, c. 60.

§ 3-4A-6. Acquisition of vote recording devices by purchase or lease; acquisition of use of automatic tabulating equipment; counting centers

(a) A county commission may acquire vote recording devices by any one or any combination of the following methods:

(1) By purchasing the same and paying the purchase price from funds available from the maximum general levy or from any other lawful source; and

(2) By leasing the same under written contract of lease and paying the rentals from funds available from the maximum general levy or any other lawful source.

(b) A county commission may acquire the use of automatic tabulating equipment by leasing or renting the same under written contract of lease or rental and paying the rentals therefor from funds available from the maximum general levy or other lawful source.

(c) A county commission may enter into an agreement with another county commission to share automatic tabulating equipment if the automatic tabulating equipment may be transported to the appropriate central counting centers. No ballots may be transported for counting in any county other than the county in which the votes were cast.

(d) A county commission is authorized to accept as a gift the use of suitable automatic tabulating equipment.

(e) The county commission may also secure a counting center.

Acts 1969, c. 55; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-7. Bids and contracts for vote recording devices; false swearing or failure to disclose facts

Contracts for the purchase or lease of vote recording devices shall be based on competitive bids. The county court shall solicit sealed bids by sending requests by mail to all known manufacturers and suppliers of vote recording devices which have been previously approved by the state election commission as hereinafter provided. The award of contracts of purchase or lease shall be based on the quality, cost, specifications and suitability of the particular vote recording device, technical services to be provided by the manufacturer, and the cost and availability of automatic tabulating equipment suitable for

use in connection with said vote recording devices and the ballot cards used therewith.

No bid shall be accepted by the county court unless accompanied by a contract which shall provide that in the event the bid is accepted the party or parties making the sale or lease shall:

(1) Guarantee in writing to keep the vote recording devices in good working order for five years without additional cost to the county court.

(2) Warrant to defend and indemnify the county court against any claim for patent infringement, and in case any vote recording device or devices shall be held to be an infringement of a valid patent, to obtain a license for the use of such patent on the vote recording devices sold or leased to the county court or to modify the devices so that the offending infringement is removed without altering the efficiency or statutory requirements of the devices; all at the sole cost and expense of the supplier of the vote recording devices.

(3) Provide a bond with good corporate surety duly qualified to do business in West Virginia, conditioned upon the due performance of said guaranty and said warranty, in a penal sum to be fixed by the county court.

No bid shall be accepted by the county court unless the party or parties submitting the bid shall file with the bid an affidavit:

(1) Disclosing the name and address of, and the amount of any contribution paid or to be paid to, any individual, partnership, corporation or association hired regularly and specially for the purpose, or party for the purpose, of attempting to influence directly or indirectly the purchase or lease of the vote recording devices represented by the bid.

(2) Declaring that no individual, partnership, corporation or association not disclosed in said affidavit shall thereafter be regularly or specially hired and no contribution shall thereafter be paid for the purpose or partly for the purpose of attempting to influence directly or indirectly the purchase or lease of the vote recording devices represented by the bid.

For the purpose of this affidavit, the word "contribution" shall mean payment, distribution, loan, advance, deposit, gift of money, property, benefit or other consideration, or any agreement providing for a payment, distribution, loan, advance, deposit, or gift by money, property, benefit, or other consideration at any future time.

Any person who shall knowingly or wilfully make any false or fraudulent statement, or who shall knowingly or wilfully fail to disclose any material fact in the affidavit required by this section shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment in the state penitentiary for not less than one year nor more than three years, or both, in the discretion of the court.

In construing this section, the term "person" shall include an individual, partnership, committee, association, and any other organization or group of persons.

Acts 1969, c. 55.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 3-4A-8. Approval of electronic voting system by State Election Commission; expenses; compensation of persons examining system

(a) Any person or corporation owning or interested in any electronic voting system may apply to the State Election Commission so that the system may be examined and a report be made on its accuracy, efficiency, capacity and safety. Upon the written application of any vendor tendered to the Secretary of State or to any clerks in his or her office in charge of receiving filings for any purpose, the Secretary of State shall fix a date, time and place, not more than thirty days after the receipt of the application, for a meeting of the State Election Commission for mutual consideration of the application. The Secretary of State shall mail notice of the hearing by certified mail to each member of the commission.

(b) The State Election Commission shall appoint two qualified computer experts who are not members of the same political party to examine the system and make full reports on the system to the commission within thirty days from the date of the application. They shall state in the report whether the examined system complies with the requirements of this article and can be safely used by voters at elections under the conditions prescribed in this article. If the report is in the affirmative on that question, the commission may approve the system and adopt a system of its make and design for use at elections as provided in this article: *Provided,* That under no circumstances may a system be approved that is not capable of accurately tabulating returns based upon all possible combinations of voting patterns including, but not limited to, crossover voting and in accordance with section five, article six of this chapter. The vendor of the approved system shall provide the State Election Commission with a report, due on the first day of January of each even-numbered year, that outlines any problem that has been experienced with the equipment by any jurisdiction in the state or in any jurisdiction outside the state that uses the same or a similar version of the equipment that has been certified for use in this state.

(c) No electronic voting system may be used at any election unless it has been approved under this section or its former provisions and by the appropriate agency of the federal government whose purpose is to review and issue a certificate of approval. Each of the two qualified computer experts appointed by the commission are entitled to reasonable compensation and expenses in making the examination and report, to be paid in advance of the examination required by subsection (b) of this section by the person or corporation applying for the examination. This sum shall be the sole compensation to be received by any expert for any work performed pursuant to this section.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 2007, c. 103, eff. June 4, 2007.

§ 3-4A-9. Minimum requirements of electronic voting systems

An electronic voting system of particular make and design may not be approved

by the State Election Commission or be purchased, leased or used by any county commission unless it meets the following requirements:

(1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter's election, provides for open voting;

(2) It is constructed to ensure that, except in instances of open voting as provided in this section, the contents of a marked ballot may not be seen or known by anyone other than the voter who has voted or is voting;

(3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

(4) It permits each voter to write in the names of persons for whom he or she desires to vote whose names do not appear upon the ballots;

(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons and capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks approved as to form and testing capabilities by the State Election Commission;

(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots;

(9) It permits each voter at any election, other than a primary election, to vote a straight party ticket, as provided in section five, article six of this chapter, by one mark or punch;

(10) It permits a voter in a primary election to: (A) vote only for the candidates of the party for which the voter is legally permitted to vote; (B) vote for the candidates, if any, for nonpartisan nominations or election; and (C) vote on public questions; and precludes the voter from voting for any candidate seeking nomination by any other political party unless that political party has determined that the voter may participate in its primary election;

(11) It, where applicable, is provided with means for sealing or electronically securing the vote recording device to prevent its use and to prevent tampering with the device, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election

is completed;

(12) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;

(13)(A) Direct recording electronic voting machines must generate a paper copy of each voter's vote that will be automatically kept within a storage container, that is locked, closely attached to the direct recording electronic voting machine, and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article.

(B) The paper copy of the voter's vote shall be generated at the time the voter is at the voting station using the direct recording electronic voting machine.

(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy.

(D) The voter may not touch, handle or manipulate the printed copy manually in any way.

(E) Once the printed copy of the voter's votes is accepted by the voter as correctly reflecting the voter's intent, but not before, it will automatically be stored for recounts or random checks and the electronic vote will be cast within the computer mechanism of the direct recording electronic voting machine.

(F) Direct recording electronic voting machines with a mandatory paper copy shall be approved by the Secretary of State. The Secretary of State may promulgate rules and emergency rules to implement or enforce this subsection pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code.

(14) Where vote recording devices are used, they shall:

(A) Be durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;

(B) Bear a number that will identify it or distinguish it from any other machine;

(C) Be constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question;

(D) Be accompanied by a mechanically or electronically operated instruction model which shows the arrangement of the ballot, party columns or rows, and questions;

(15) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch:

(A) Be constructed to provide for the direct electronic recording and

tabulating of votes cast in a system specifically designed and engineered for the election application;

(B) Be constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(C) Be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

(D) Be constructed to allow election commissioners to spoil a ballot where a voter fails to properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot;

(E) Be constructed to allow election commissioners, poll clerks, or both, to designate, mark or otherwise record provisional ballots;

(F) Consist of devices which are independent, nonnetworked voting systems in which each vote is recorded and retained within each device's internal nonvolatile electronic memory and contain an internal security, the absence of which prevents substitution of any other device;

(G) Store each vote in no fewer than three separate, independent, nonvolatile electronic memory components and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;

(H) Contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and record votes;

(I) Be constructed to record all preelection, election and post-election activities, including all ballot images and system anomalies, in each device's internal electronic memory and are to be accessible in electronic or printed form;

(J) Be constructed with a battery backup system in each device to, at a minimum, prevent the loss of any votes, as well as all preelection, election and post-election activities, including all ballot images and system anomalies, stored in the device's internal electronic memory and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

(K) Be constructed to prevent the loss of any votes, as well as all preelection, election and post-election activities, including all ballot images and system anomalies, stored in each device's internal electronic memory even in case of an electrical and battery power failure.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 1985, c. 72; Acts 1988, c. 55; Acts 1990, c. 80; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2003, c. 100,

eff. 90 days after March 7, 2003; Acts 2005, c. 103, eff. 90 days after April 8, 2005; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-9a. Authorization for ballot-marking voting systems; minimum requirements

(a) For purposes of this section, "ballot-marking accessible voting system" means a device which allows voters, including voters with disabilities, to mark an optical scanning or mark-sensing voting system ballot, privately and independently. The ballot-marking device is capable of marking voter selections on an optically readable or mark-sensing ballot which shall be subsequently read and tallied on state certified optically readable or mark-sensing ballot tabulating and reporting systems. Counties are hereby permitted to obtain and employ ballot-marking accessible voting systems that are approved by the State Election Commission.

(b) The ballot-marking accessible voting device shall be a completely integrated ballot-marking device that is designed to allow voters to either view ballot choices through a high resolution visual display or listen to ballot choices with headphones and then enter ballot selections directly through specially designed, integrated accessibility devices.

(c) Ballot-marking accessible voting systems may be used for the purpose of marking or scanning optically readable or mark-sensing ballots cast in all general, special and primary elections and shall meet the following specific requirements:

(1) The ballot-marking accessible voting system, system firmware and programming software must be certified by an independent testing authority, according to current federal voting system standards and be approved by the State Elections Commission prior to entering into any contract.

(2) The ballot-marking accessible voting system shall, additionally:

(A) Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;

(B) Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue;

(C) Allow the voter to independently review all ballot choices and make any corrections, before the ballot is marked;

(D) Provide the voter with the opportunity to make a write-in ballot choice, where allowed by state law;

(E) Allow voters with disabilities to mark their ballots, in complete independence, and in conformity with both federal and state law concerning mandatory accessibility for disabled persons;

(F) Allow blind or visually impaired voters to vote in complete privacy;

(G) Provide voters with an opportunity to change ballot selections, or correct errors, before the ballot is marked for voting, including the opportunity to

correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error;

(H) Provide voters with the ability to view all ballot selections through a high resolution visual display or to have all ballot selections read to the voter through headphones;

(I) Ensure complete ballot privacy, while employing the ballot-marking audio system and providing the voter with the option to turn off the visual ballot display;

(J) Include a completely integrated voter input keypad, using commonly accepted voter accessibility keys with Braille markings;

(K) Include the ability for a voter to employ a sip/puff device to enter ballot choices;

(L) Allow the voter to magnify all ballot choices and to adjust both the volume of the audio feature and the speed of ballot presentation;

(M) Allow the voter to employ his or her own headset as well as the headset provided with the ballot-marking device while being equipped with multiple output connections to accommodate different headsets;

(N) Have multiple-language capability; and

(O) Allow the voter to verify that:

(i) An optical scan ballot inserted into the device at the start of voting is blank; and

(ii) The voted optical scan ballot that is produced by the device is voted as the voter intended.

(d) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to ensure that any system employed by a county under the provisions of this section is publicly tested prior to use in election.

Acts 2005, c. 103, eff. 90 days after April 8, 2005; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-9b. Authorization for precinct ballot-scanning device; minimum requirements

(a) For purposes of this section, "precinct ballot-scanning device" means a device used by the voter at the precinct on election day or during early voting for the purpose of scanning the voter's ballot after the ballot has been voted but prior to depositing the ballot into the ballot box.

(b) The precinct ballot-scanning device may be used for the purpose of scanning optically readable ballots cast in all primary, general and special elections.

(c) The precinct ballot-scanning device, firmware and programming software must be certified by an independent testing authority, according to current federal standards and be approved by the State Election Commission. No election official may enter into any contract to purchase, rent, lease or otherwise acquire any precinct ballot-scanning device, firmware or software not approved by the State Election Commission.

(d) The precinct ballot-scanning device shall additionally:

(1) Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;

(2) Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue; and

(3) Allow voters an opportunity to change ballot selections, or correct errors, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error.

(e) The precinct ballot-scanning device may be used for tabulating election results only under the following conditions:

(1) The county has at least one precinct ballot-scanning device in each precinct;

(2) No tabulation of results is done at the precinct;

(3) The "tabulation memory device" may be removed from the ballot-scanning device only after the polls close and the votes may only be counted at the central counting center on the night of the election; and

(4) All voters at the precinct are required to use the ballot scanning device as a condition of completing their vote.

(f) If the optical scan ballots from each of the precincts are counted at the central counting center on election night in accordance with section twenty-seven of this article, and the results from that count are the results finally published on election night, then any county meeting each of the requirements in paragraphs (1) through (4) of subsection (e), may turn off the over vote switch on the central counting device since every ballot will have been evaluated for over votes by the precinct scanning device.

(g) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in accordance with the provisions of this section.

Acts 2005, c. 103, eff. 90 days after April 8, 2005; Acts 2006, c. 91, eff. 90 days after March 11, 2006; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-10. County clerk to be custodian of vote-recording devices, tabulating equipment and electronic poll books; duties

(a) When an electronic voting system is acquired by any county commission, the vote-recording devices, where applicable, and the tabulating equipment shall be immediately placed in the custody of the county clerk and shall remain in his or her custody at all times except when in use at an election or when in custody of a court or court officers during contest proceedings. The clerk shall see that the vote-recording devices and the tabulating equipment are properly protected and preserved from damage or unnecessary deterioration and shall not permit any unauthorized person to tamper with them. The clerk shall also keep the vote-recording devices and tabulating equipment in repair and prepare the same for voting.

(b) When a county commission elects to acquire and use electronic poll books in lieu of printed poll books, the clerk of the county commission shall immediately take custody of the electronic poll books, which shall remain in his or her custody at all times except when in use at an election or when in the custody of a court or court officers during contest proceedings. The clerk shall ensure that the electronic poll books are properly protected and preserved from damage or unnecessary deteriorations and the clerk shall not permit any unauthorized person to tamper with the electronic poll books. The clerk shall also keep the electronic poll books in good repair and the clerk shall prepare the electronic poll books for election day.

Acts 1969, c. 55; Acts 1990, c. 80; Acts 2008, c. 98, eff. March 5, 2008; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-10a. Proportional distribution of vote-recording devices

Where vote-recording devices are used, the county commission of each county shall, upon the close of registration, review the total number of active registered voters and the number of registered voters of each party in each precinct. Prior to each election, the commission shall determine the number of voting devices needed to accommodate voters without long delays and shall assign an appropriate number to each precinct. For the purposes of the primary election, the commission shall assign the number of vote recording devices in each precinct to be prepared for each party based as nearly as practicable on the proportion of registered voters of each party to the total: *Provided,* That a minimum of two vote-recording devices be provided.

Acts 1985, c. 72; Acts 1990, c. 80; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-11. Repealed by Acts 2007, c. 101, eff. June 8, 2007

§ 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.

Acts 1990, c. 80; Acts 1993, c. 50; Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2007, c. 101,

eff. June 8, 2007.

§ 3-4A-12. Repealed by Acts 2007, c. 101, eff. June 8, 2007

§ 3-4A-13. Inspection of ballots, electronic poll books and vote-recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote-recording devices; receipt of election materials by ballot commissioners

(a) When the clerk of the county commission has completed the preparation of the ballots and of any electronic poll books and vote-recording devices as provided in sections eleven-a and twelve-a of this article and as provided in section twenty-one, article one of this chapter, and not later than seven days before the day of the election, he or she shall notify the members of the county commission and the ballot commissioners that the ballots and any electronic poll books and devices are ready for use.

(b) The members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place at which any vote-recording devices or electronic poll books and the ballots are stored, not later than five days before the day of the election, and shall inspect the devices, electronic poll books and the ballots to determine whether the requirements of this article have been met. Notice of the place and time of the inspection shall be published, no less than three days in advance, as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county involved.

(c) Any candidate and one representative of each political party on the ballot may be present during the examination. If the devices and electronic poll books and ballots are found to be in proper order, the members of the county commission and the ballot commissioners shall endorse their approval in the book in which the clerk entered the numbers of the devices opposite the numbers of the precincts.

(d) The vote-recording devices, the electronic poll books and the ballots shall then be secured in double lock rooms. The clerk and the president or president pro tempore of the county commission shall each have a key. The rooms shall be unlocked only in their presence and only for the removal of the devices, electronic poll books and the ballots for transportation to the polls. Upon removal of the devices, the electronic poll books and the ballots, the clerk and president or president pro tempore of the county commission shall certify in writing signed by them that the devices, the electronic poll books and packages of ballots were found to be sealed when removed for transportation to the polls.

(e) Vote-recording devices used during the early voting period may be used on election day if retested in accordance with all the provisions of this section, including public notice between the close of early voting and prior to precinct placement for election day. Vote-recording devices must comply with the applicable requirements of section twenty-six of this article.

(f) Not later than one day before the election, the election commissioner of each precinct previously designated by the ballot commissioners shall attend at

the office of the clerk of the county commission to receive the necessary election records, books and supplies required by law. The election commissioners shall receive the per diem mileage rate prescribed by law for this service. The election commissioners shall give the ballot commissioners a sequentially numbered written receipt, on a printed form, provided by the clerk of the county commission, for such records, books and supplies. The receipt shall be prepared in duplicate. One copy of the receipt shall remain with the clerk of the county commission and one copy shall be delivered to the president or president pro tempore of the county commission.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 1985, c. 72; Acts 1985, c. 74; Acts 1990, c. 80; Acts 2005, c. 101, eff. 90 days after April 9, 2005; Acts 2006, c. 90, eff. 90 days after March 10, 2006; Acts 2008, c. 98, eff. March 5, 2008; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-13a. Repealed by Acts 2011, c. 60, eff. March 11, 2011

§ 3-4A-14. Election boards where electronic voting systems used

One receiving board, as defined in article one of this chapter, shall conduct the election in each precinct in which electronic voting systems are used. The provisions of article one of this chapter relating to the qualifications, appointment, substitution, training and compensation of election officers and to the procedure for filling vacancies shall apply.

Acts 1969, c. 55; Acts 1993, c. 50.

§ 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.

Acts 1969, c. 55; Acts 1990, c. 80; Acts 1993, c. 50; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2007, c. 101, eff. June 8, 2007.

§ 3-4A-16. Delivery of vote-recording devices and electronic poll books; time, arrangement for voting

The clerk of the county commission shall deliver or cause to be delivered each vote-recording device, electronic poll book and the package of ballots to the polling place where they are to be employed. The delivery shall be made not less than one hour prior to the opening of the polls and in the presence of the precinct election commissioners. At the time of the delivery the device and electronic poll books are to be sealed to prevent any use prior to the opening of the polls and the ballots are to be packaged and sealed to prevent any tampering with the ballots. Immediately prior to the opening of the polls on election day, the sealed packages of ballots are to be opened, where applicable, and the seal of the vote-recording device and the seal of the electronic poll book is to be broken in the presence of the precinct election commissioners, who shall certify in writing signed by them to the clerk of the county commission that the devices, where applicable, and the ballots have been delivered in their presence, that the devices and packages of ballots were found to be sealed upon delivery and that the seals have been broken and the devices opened in their presence, as may be appropriate. The election commissioners shall then cause the vote-recording device and booth to be arranged so that the front of the vote-recording device will not be visible, when the vote-recording device is being operated, to any person other than the voter. The poll clerks shall ensure that the vote-recording device is placed in a location that maintains voter privacy through the entire period of voting.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 1985, c. 72; Acts 1990, c. 80; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2007, c. 99, eff. June 5, 2007; Acts 2008, c. 98, eff. March 5, 2008.

§ 3-4A-17. Check of vote-recording devices and electronic poll books before use; corrections; reserve vote-recording devices

(a) Any reserve vote-recording device used is to be prepared for use by the clerk or his or her duly appointed deputy and the reserve vote-recording device is to be prepared, inspected and sealed and delivered to the polling place wherein the seal is to be broken and the device opened in the presence of the precinct election commissioners who shall certify in writing signed by them to the clerk of the county commission, that the reserve vote-recording device was found to be sealed upon delivery to the polling place, that the seal was broken and the device opened in their presence at the polling place.

(b) In counties using electronic poll books, the election commissioners shall examine the electronic poll books to ascertain whether the poll books are in working order before allowing any voters to enter the polling location. If the electronic poll books are not in working order, the election commissioners shall contact the county clerk who shall immediately authorize a printed poll book to serve in place of the electronic poll book for that election. A printed poll book may accompany the electronic poll book to each precinct.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 1990, c. 80; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2008, c. 98, eff. March 5, 2008; Acts 2010, c. 75, eff. June 11, 2010; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-18. Disrepair of vote recording devices in use; reserve vote recording devices

If, during the conduct of an election, a vote recording device becomes in a state of disrepair so that it cannot be operated in a manner that will comply with the provisions of this article, the election commissioners shall seal the device in such manner as to prevent further voting thereon. Then the election commissioners shall secure from the county clerk a reserve vote recording device, which shall be prepared, inspected and delivered to the polling place wherein the seal shall be broken and such device opened in the presence of the precinct election commissioners who shall certify in writing signed by them to the clerk of the county commission, that the reserve vote recording device was found to be sealed upon delivery to the polling place, that the seal was broken and the device opened in their presence at the polling place. The commissioners shall proceed to conduct the election.

Acts 1969, c. 55; Acts 1982, c. 60.

§ 3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties

(a) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than five minutes.

(b) In primary elections, before a voter is permitted to occupy the voting booth, the election commissioner representing the party to which the voter belongs shall direct the voter to the vote-recording device or supply the voter with a ballot, as may be appropriate, which will allow the voter to vote only for the candidates who are seeking nomination on the ticket of the party with which the voter is affiliated or for unaffiliated voters in accordance with section thirty-one, article two of this chapter.

(c) The poll clerk shall issue to each voter when he or she signs the poll book a printed card or ticket numbered to correspond to the number on the poll book of the voter and in the case of a primary election, indicating the party affiliation of the voter, which numbered card or ticket is to be presented to the election commissioner in charge of the voting booth.

(d) One hour before the opening of the polls the precinct election commissioners shall arrive at the polling place and set up the voting booths in clear view of the election commissioners. Where applicable, they shall open the vote-recording devices, place them in the voting booths, examine them to see that they have the correct ballots by comparing them with the sample ballots, and determine whether they are in proper working order. They shall open and check the ballots, the electronic poll books, if applicable, supplies, records and forms and post the sample ballots and instructions to voters. Upon ascertaining that all ballots, supplies, electronic poll books, if applicable, records and forms arrived intact, the election commissioners shall certify

their findings in writing upon forms provided and collected by the clerk of the county commission over their signatures to the clerk of the county commission. Any discrepancies are to be noted and reported immediately to the clerk of the county commission. The election commissioners shall then number in sequential order the ballot stub of each ballot in their possession and report in writing to the clerk of the county commission the number of ballots received. They shall issue the ballots in sequential order to each voter.

(e) Upon entering a precinct which is using an electronic poll book, each voter shall be verified by use of the electronic poll book to be a registered voter. If the voter is not registered according to the electronic poll book within that precinct, the poll clerk is to inform the voter of the proper precinct in which the voter is registered.

(f) Where applicable, each voter shall be instructed how to operate the vote-recording device before he or she enters the voting booth.

(g) Where applicable, any voter who spoils, defaces or mutilates the ballot delivered to him or her, on returning the ballot to the poll clerks, shall receive another in its place. Every person who does not vote any ballot delivered to him or her shall, before leaving the election room, return the ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the poll books, at the time, write the word "spoiled" across the face of the ballot and place it in an envelope for spoiled ballots.

Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots during the election and the number of ballots remaining not voted. The election commissioners shall also ascertain from the poll books the number of persons who voted and shall report, in writing signed by them to the clerk of the county commission, any irregularities in the ballot boxes, the number of ballots cast, the number of ballots spoiled during the election and the number of ballots unused. All unused ballots are to be returned at the same time to the clerk of the county commission who shall count them and record the number. All unused ballots shall be stored with the other election materials and destroyed at the expiration of twenty-two months.

(h) Each commissioner who is a member of an election board which fails to account for every ballot delivered to it is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than one year, or both.

(i) The board of ballot commissioners of each county, or the chair of the board, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election and shall deliver them to the clerk of the county commission who shall store them with the other election materials and destroy them at the expiration of twenty-two months.

(j) Where ballots are used, the voter, after he or she has marked his or her ballot, shall, before leaving the voting booth, place the ballot inside the envelope or sleeve provided for this purpose, with the stub extending outside the envelope, and return it to an election commissioner who shall remove the stub and deposit the envelope, if applicable, with the ballot inside in the

ballot box. No ballot from which the stub has been detached may be accepted by the officer in charge of the ballot box, but the ballot shall be marked "spoiled" and placed with the spoiled ballots. If an electronic voting system is used that utilizes a screen on which votes may be recorded by means of a stylus or by means of touch and the signal warning that a voter has attempted to cast his or her ballot has failed to do so properly has been activated and the voter has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot while the voter remains physically present in the polling place, then two election commissioners of different registered party affiliations, two poll clerks of different registered party affiliations or an election commissioner and a poll clerk of different registered party affiliations shall spoil the ballot.

(k) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have voted and, where electronic voting systems are used that utilize a screen on which votes may be recorded by means of a stylus or by means of touch, the number of ballots that were spoiled, as indicated by the poll books, and shall place two copies of this report in the ballot box or where electronic voting systems are used that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, shall place two copies of this report and the electronic ballot devices in a container provided by the clerk of the county commission, which thereupon is to be sealed with a paper seal signed by the election commissioners to ensure that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different registered party affiliations or two special messengers of different registered party affiliations appointed by the clerk of the county commission, shall forthwith deliver the ballot box or container to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor. The receipt must carefully set forth in detail any and all irregularities pertaining to the ballot boxes or containers and noted by the precinct election officers.

The receipt is to be prepared in duplicate, a copy of which remains with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place is to be noted on the two remaining copies of the report, which are to be immediately mailed to the clerk of the county commission.

(l) The poll books, register of voters, unused ballots, spoiled ballots and other records and supplies are to be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

Acts 1969, c. 55; Acts 1981, c. 105; Acts 1982, c. 60; Acts 1990, c. 80; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2006, c. 92, eff. March 10, 2006; Acts 2008, c. 98, eff. March 5, 2008; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-19a. Form of ballots; requiring the signatures of poll clerks; prohibiting the counting of votes cast on ballots without signatures

(a) Where applicable, every ballot utilized during the course of any electronic voting system election conducted under the provisions of this article is to have two lines for the signatures of the poll clerks. Both of the signature lines are to be printed on a portion of the ballot where votes are not recorded

by perforation or marking, but which portion is an actual part of the ballot deposited in the ballot box after the voter has perforated or marked his or her ballot and after the ballot stub has been removed. Each of the two poll clerks shall sign his or her name on one of the designated lines provided on each ballot before any ballot is distributed to a voter.

(b) After a voter has signed the pollbook, as required in section nineteen of this article, the two poll clerks shall deliver a ballot to the voter, which ballot has been signed by each of the two poll clerks as provided in this section: Provided, That where an electronic voting system that utilizes screens upon which votes may be recorded by means of a stylus or by means of touch, an election commissioner shall accompany the voter to the voting device and shall activate the device for voting.

(c) Any ballot which does not contain the proper signatures shall be challenged. If an accurate accounting is made for all ballots in the precinct in which the ballot was voted and no other challenge exists against the voter, the ballot shall be counted at the canvas.

Acts 1983, c. 88; Acts 1990, c. 80; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2002, c. 132, eff. Feb. 5, 2002.

§ 3-4A-20. Non-affiliated voters in primary elections

Unless a voter, not affiliated with a party, is permitted to participate in the primary election of a political party, the following provisions apply to voters, not affiliated with a party, in primary elections that include non-partisan candidates or public questions:

(1) Election officers shall provide a vote recording device, where applicable, or the appropriate ballot to be marked by an electronically sensible pen or ink, or by means of a stylus or by means of touch or by other electronic means, so that voters not affiliated with a party may vote only those portions of the ballot relating to the nonpartisan candidates and the public questions submitted, or shall provide a ballot containing only provisions for voting for those candidates and upon those issues submitted common to the ballots provided to all voters regardless of political party affiliation, or both.

(2) In counties utilizing electronic voting systems in which votes are recorded by perforating, if vote recording devices are not available for the voters not affiliated with a party, provisions are to be made for sealing the partisan section or sections of the ballot or ballot labels on a vote recording device using temporary seals, thus permitting the voter not affiliated with a party to vote for the nonpartisan section or sections of the ballot or ballot labels.

(3) After a voter not affiliated with a party has voted, temporary seals may be removed and the device may then be used by partisan voters.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 1990, c. 80; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-21. Repealed by Acts 2003, c. 100, eff. 90 days after March 7, 2003

§ 3-4A-22. Assistance to illiterate and disabled voters

(a) Any duly registered voter who requires assistance to vote by reason of blindness, disability, advanced age or inability to read and write may be given assistance by one of the following means:

(1) By a person of the voter's choice: *Provided*, That the assistance may not be given by the voter's present or former employer or agent of that employer or by an officer or agent of a labor union of which the voter is a past or present member or a candidate on the ballot or official write-in candidate; or

(2) If no person of the voter's choice be present at the polling place, the voter may request assistance from the poll clerks or ballot commissioners present at the polling place, whereupon assistance may be given by any two of the election officers of opposite political party affiliation to whom the voter shall thereupon declare his or her choice of candidates and his or her position on public questions appearing on the ballot. The election officers, in the presence of the voter and in the presence of each other, shall thereupon cause the voter's declared choices to be recorded on the ballot or a vote recording device, as may be appropriate, as votes.

(b) A person other than an election officer who assists a voter in voting under the provisions of this section shall sign a written oath or affirmation before assisting the voter, stating that he or she will not override the actual preference of the voter being assisted or mislead the voter into voting for someone other than the candidate of the voter's choice. The person assisting the voter shall also swear or affirm that he or she believes that the voter is voting free of intimidation or manipulation.

Acts 1969, c. 55; Acts 1985, c. 72; Acts 1990, c. 80; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-4A-23. Persons prohibited about voting booths; penalties

Excepting election officials acting under authority of sections nineteen, twenty, twenty-one and twenty-two of this article in the conduct of the election, and qualified persons assisting voters pursuant to section twenty-two of this article, no person other than the voter may be in, about or within five feet of the voting booth during the time the voter is voting at any election. While the voter is voting, no person may communicate with the voter in any manner and the voter may not communicate with any other person or persons. No person may enter a voting booth with any recording or electronic device in order to record or interfere with the voting process. Any conduct or action of an election official about or around the voting booth while the voter is in the process of voting, except as expressly provided in this article, is a violation of this section. Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or be sentenced to imprisonment in the county jail for a period not more than twelve months or, in the discretion of the court, shall be subject to both such fine and imprisonment.

Acts 1969, c. 55; Acts 1985, c. 72; Acts 2007, c. 103, eff. June 4, 2007.

§ 3-4A-24. Voting by challenged voter

Except for electronic voting systems using screens on which votes may be recorded by means of a stylus or by means of touch, if the right of any person to vote be challenged in accordance with the provisions of article one of this chapter, relating to the challenging of voters, and a vote recording device or ballot is used that tabulates the vote as an individual vote, the person is to be permitted to cast his or her vote by use of the vote recording device or ballot, as may be appropriate. He or she is to be provided with a challenged ballot and ballot envelopes for the insertion of the ballot after voting. There is to be an inner envelope marked with the precinct number for the challenged ballot. There is also to be another envelope for the inner envelope and the challenged voter stub, which envelope provides a place for the challenged voter to affix his or her signature on the seal of the outer envelope.

After the county commission, as prescribed in article one of this chapter, has determined that the challenges are unfounded, the commissioners shall remove the outer envelopes. Without opening the inner envelope, the commissioners shall shuffle and intermingle the inner envelopes. The commissioners shall then open the inner envelopes, remove the ballots and add the votes to the previously counted totals.

Acts 1969, c. 55; Acts 1981, c. 106; Acts 1982, c. 60; Acts 1990, c. 80; Acts 2001, c. 117, eff. Sept. 1, 2001.

§ 3-4A-24a. Voting by challenged voter where touch-screen electronic voting systems are used

If the right of any person to vote is challenged in accordance with the provisions of article one of this chapter, relating to the challenging of voters, and a vote recording device or ballot is used that tabulates the vote as an individual vote, the person is to be permitted to cast his or her vote by use of the vote recording device or ballot, as may be appropriate. An election commissioner shall enter into the voting device a voter-specific electronic code for any person voting a provisional ballot. The devices are to retain provisional ballots in electronic memory and are not to be tabulated in accordance with the provisions of this code, but are to be reviewed in accordance with the provisions of this code.

After the county commission, as prescribed in article one of this chapter, has determined that the challenges are unfounded, the commissioners shall ensure that the ballots are included in the tabulation.

Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-4A-25. Closing polls

As soon as the polls have been closed and the last qualified voter has voted, no further voting on any ballot may be had and the vote recording devices utilized in counties with electronic voting systems where votes are recorded by perforating shall be sealed against further voting. All unused ballots shall be placed in a container for return to the clerk of the county commission.

Acts 1969, c. 55; Acts 1990, c. 80.

§ 3-4A-26. Test of automatic tabulating equipment

(a) One week prior to the start of the count of the votes recorded on ballots or screens, the clerk of the county commission shall have the automatic tabulating equipment tested to ascertain that it will accurately count the votes cast for all offices and on all measures. This test shall consist of a test of the entire voting system, including removal of data from a vote-recording device and its transferral to automatic tabulating equipment. The county commission shall give public notice of the time and place of the test not less than forty-eight hours nor more than two weeks prior to the test by publication of a notice as a Class I-0 legal advertisement in the county involved, in compliance with the provisions of article three, chapter fifty-nine of this code.

(b)(1) Vote-recording devices used and tested for early voting may also be used on election day upon compliance with all of the following requirements:

(A) Following the close of early voting, the personal electronic ballot and the programable memory chip shall be removed and replaced with another personal electronic ballot and programable memory chip prepared for, but unused during, the current election period;

(B) The printed paper trail used during the early voting period shall be removed and replaced with a new paper trail; and

(C) The vote-recording device shall be retested prior to being used on election day.

(2) Any personal electronic ballot programable memory chip and printed paper trail removed from a vote-recording device used for early voting shall be securely stored by the county clerk until such time as it is used to tally the votes on election day in accordance with section twenty-seven of this article.

(c)(1) A test performed pursuant to this section shall be open to representatives of the political parties, candidates, the press and the public. It is to be conducted by processing a set of preaudited ballots marked to record a predetermined number of valid votes for each candidate or each measure. For each multicandidate office, the test shall include one or more ballots which have cross-over votes in order to test the ability of the automatic tabulating equipment to record those votes in accordance with the provisions of this article and any other applicable law. For each office, the test shall include one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject votes. If, in the process of any of the test counts, any error is detected, the cause of the error is to be ascertained and corrective action promptly taken. After the completion of the corrective action, the test counts are to continue, including a retesting of those precincts previously test counted. Prior to the continuation of the testing, the county commission shall certify in writing, signed by each commissioner, the nature of the error, its cause and the type of corrective action taken. The certification shall be recorded in the office of the clerk of the county commission in the record book. Immediately after conclusion of this completed test, a certified duplicate copy of the test results shall be sent by certified mail to the offices of the State Election Commission, where it is to be preserved and

secured for one year and made available for comparison or analysis by order of a circuit court or the Supreme Court of Appeals.

(2) The tabulating equipment to be used in the election shall be immediately certified by the county commission to be free from error as determined by the test. All testing material shall be placed with the certification in a sealed container and kept under individual multiple locks with individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession. The sealed container shall be opened to conduct the test required immediately before the start of the official count.

(3) The test shall be repeated immediately before the start of the official count and at the conclusion of the official count before the count is approved as errorless and before the election returns are approved as official.

(4) All results of all of the tests are to be immediately certified by the county commission, filed in the office of the clerk of the county commission and immediately recorded in the record book. On completion of the count, the test materials and test ballots are to be sealed, except for purposes of the canvass as provided in section twenty-eight of this article, and retained and kept under individual multiple locks and individual keys for each lock. The number of locks and keys shall be the same as the number of county commissioners together with the county clerk, with each commissioner and the county clerk having a single key in his or her possession.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2006, c. 90, eff. 90 days after March 10, 2006; Acts 2007, c. 103, eff. June 4, 2007.

§ 3-4A-27. Proceedings at the central counting center

(a) All proceedings at the central counting center are to be under the supervision of the clerk of the county commission and are to be conducted under circumstances which allow observation from a designated area by all persons entitled to be present. The proceedings shall take place in a room of sufficient size and satisfactory arrangement to permit observation. Those persons entitled to be present include all candidates whose names appear on the ballots being counted or if a candidate is absent, a representative of the candidate who presents a written authorization signed by the candidate for the purpose and two representatives of each political party on the ballot who are chosen by the county executive committee chairperson. A reasonable number of the general public is also freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission, during the proceedings at the central counting center, is to be granted admission for reasonable periods of time for observation: *Provided,* That no person except those authorized for the purpose may touch any ballot or ballot card or other official records and papers utilized in the election during observation.

(b) All persons who are engaged in processing and counting the ballots are to

work in teams consisting of two persons of opposite political parties, and are to be deputized in writing and take an oath that they will faithfully perform their assigned duties. These deputies are to be issued an official badge or identification card which is assigned an identity control number and the deputies are to prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies' duties, the badges or identification cards are to be returned to the county clerk.

(c) Ballots are to be handled and tabulated and the write-in votes tallied according to procedures established by the Secretary of State, subject to the following requirements:

(1) In systems using ballots marked with electronically sensible ink, ballots are to be removed from the boxes and stacked for the tabulator which separates ballots containing marks for a write-in position. Immediately after tabulation, the valid write-in votes are to be tallied. No write-in vote may be counted for an office unless the voter has entered the name of an official write-in candidate for that office on the line provided, either by writing, affixing a sticker or placing an ink-stamped impression thereon;

(2) In systems using ballots in which votes are recorded upon screens with a stylus or by means of touch, the personalized electronic ballots are to be removed from the containers and stacked for the tabulator. Systems using ballots in which votes are recorded upon screens with a stylus or by means of touch are to tally write-in ballots simultaneously with the other ballots;

(3) When more than one person is to be elected to an office and the voter desires to cast write-in votes for more than one official write-in candidate for that office, a single punch or mark, as appropriate for the voting system, in the write-in location for that office is sufficient for all write-in choices. When there are multiple write-in votes for the same office and the combination of choices for candidates on the ballot and write-in choices for the same office exceed the number of candidates to be elected, the ballot is to be duplicated or hand counted, with all votes for that office rejected;

(4) Write-in votes for nomination for any office and write-in votes for any person other than an official write-in candidate are to be disregarded;

(5) When a voter casts a straight ticket vote and also marks the location for a write-in vote for an office, the straight ticket vote for that office is to be rejected, whether or not a vote can be counted for a write-in candidate; and

(6) Official write-in candidates are those who have filed a write-in candidate's certificate of announcement and have been certified according to the provisions of section four-a, article six of this chapter.

(d) If any ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy is to be made of the damaged ballot card in the presence of representatives of each political party on the ballot and substituted for the damaged ballot card. All duplicate ballot cards are to be clearly labeled "duplicate" and are to bear a serial number which is recorded on the damaged or defective ballot card and on the replacement ballot card.

(e) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, are, when certified by the clerk of the county commission, to constitute the official preliminary returns of each precinct or election district. Further, all the returns are to be printed on a precinct basis. Periodically throughout and upon completion of the count, the returns are to be open to the public by posting the returns as have been tabulated precinct by precinct at the central counting center. Upon completion of the canvass, the returns are to be posted in the same manner.

(f) If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the county commission may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(g) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote recording devices properly boxed or securely covered and removed to a proper and secure place of storage.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 1993, c. 50; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2011, c. 60, eff. March 11, 2011.

§ 3-4A-28. Post-election custody and inspection of vote-recording devices and electronic poll books; canvass and recounts

(a) The vote-recording devices, electronic poll books, tabulating programs and standard validation test ballots are to remain sealed during the canvass of the returns of the election, except that the equipment may be opened for the canvass and must be resealed immediately thereafter. During the seven-day period after the completion of the canvass, any candidate or the local chair of a political party may be permitted to examine any of the sealed materials*: Provided,* That a notice of the time and place of the examination shall be posted at the central counting center before and on the hour of nine o'clock in the morning on the day the examination is to occur and all persons entitled to be present at the central counting center may, at their option, be present. Upon completion of the canvass and after the seven-day period has expired, the vote-recording devices, test results and standard validation test ballots are to be sealed for one year*: Provided, however,* That the vote-recording devices, electronic poll books, and all tabulating equipment may be released for use in any other lawful election to be held more than ten days after the canvass is completed and any of the electronic voting equipment or electronic poll books discussed in this section may be released for inspection or review by a request of a circuit court or the Supreme Court of Appeals.

(b) In canvassing the returns of the election, the board of canvassers shall examine, as required by subsection (d) of this section, all of the vote-recording devices, electronic poll books, the automatic tabulating equipment used in the election and those voter-verified paper ballots generated by direct recording electronic vote machines, shall determine the number of votes cast for each candidate and for and against each question and, by this examination, shall procure the correct returns and ascertain the true results of the election. Any candidate or his or her party representative may be present at the examination.

(c) If any qualified individual demands a recount of the votes cast at an election, the voter-verified paper ballot shall be used according to the same rules that are used in the original vote count pursuant to section twenty-seven of this article. For purposes of this subsection, "qualified individual" means a person who is a candidate for office on the ballot or a voter affected by an issue, other than an individual's candidacy, on the ballot.

(d) During the canvass and any requested recount, at least five percent of the precincts are to be chosen at random and the voter-verified paper ballots are to be counted manually. Whenever the vote total obtained from the manual count of the voter-verified paper ballots for all votes cast in a randomly selected precinct:

(1) Differs by more than one percent from the automated vote tabulation equipment; or

(2) Results in a different prevailing candidate or outcome, either passage or defeat, of one or more ballot issues in the randomly selected precincts for any contest or ballot issue, then the discrepancies shall immediately be disclosed to the public and all of the voter-verified paper ballots shall be manually counted. In every case where there is a difference between the vote totals obtained from the automated vote tabulation equipment and the corresponding vote totals obtained from the manual count of the voter-verified paper ballots, the manual count of the voter-verified paper ballots is the vote of record.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2005, c. 103, eff. 90 days after April 8, 2005; Acts 2007, c. 103, eff. June 4, 2007; Acts 2008, c. 98, eff. March 5, 2008.

§ 3-4A-29. Incorrect recordation or tabulation of votes; testing accuracy of vote recording devices and automatic tabulating equipment; procedures and requirements

(1) When during a canvass or a recount of votes in an election it appears to the board of canvassers or if it is so alleged in a petition for a recount, that a vote recording device or piece of automatic tabulating equipment used in the election has by reason of mechanical failure or improper or fraudulent preparation or tampering, incorrectly recorded or tabulated the actual votes cast or counted on such device or equipment, the board of canvassers shall proceed to determine whether an error has occurred in the vote recorded or counted on such device or equipment. If an error is found, the board of canvassers shall have the cause of the error corrected and the ballots affected recounted so that the election returns will accurately reflect the votes cast at such election if it is possible to accurately correct such error. If the board of canvassers is unable to accurately correct such errors made by said device or equipment and therefore cannot correct the returns to accurately reflect the actual votes cast at such election, the total votes recorded or tabulated on such device or equipment, despite the fact that such vote may be erroneous, shall be accepted in the canvass and in the recount as the votes cast.

(2) If it is necessary for the board of canvassers to test any vote recording device or automatic tabulating equipment counting device for its mechanical

accuracy in recording or tabulating the votes cast at such election, such test shall be conducted by the clerk of the county court in the presence of the board of canvassers and of any candidate or his party representative. After the completion of such test the clerk will then and there prepare and file a statement in writing giving in detail the result of the examination and test.

Acts 1969, c. 55.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 3-4A-30. Adjustments in voting precincts where electronic voting system used

(a) The provisions of section five, article one of this chapter, relating to the number of registered voters in each precinct, shall apply to and control in precincts in counties in which electronic voting systems have been adopted, except that the maximum number of registered voters shall be one thousand five hundred per precinct. The county commissions of such counties, subject to other provisions of this chapter with respect to the altering or changing of the boundaries of voting precincts, may change the boundaries of precincts or consolidate precincts as practicable, to achieve the maximum advantage from the use of electronic voting systems.

(b) The county commission may, in the urban centers of any county adopting an electronic voting system, designate a voting place outside the boundaries of a precinct, provided such voting place is in a public building of sufficient size and in an adjoining precinct. In such event, more than one precinct may vote in any such public building. Upon combination of adjoining precincts pursuant to this subsection, the county commission shall: (1) Publish its order combining the precincts in the same manner as an order of consolidation pursuant to section seven, article one of this chapter; and (2) cause its order to be published with each sample ballot publication required by this chapter.

Acts 1969, c. 55; Acts 1985, c. 72; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2007, c. 99, eff. June 5, 2007.

§ 3-4A-31. Use of electronic voting systems in municipal elections

The county court of any county which has adopted the use of an electronic voting system is hereby authorized to make such system available to any municipality in, or partly in, such county for use in elections conducted by such municipality, and the use of the electronic voting system by such municipality shall be upon such terms and conditions as may be agreed upon between the county court and the municipality.

Acts 1969, c. 55.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 3-4A-32. Applicability of general laws relating to elections

Except as modified by this article, the general laws applying to regular,

special and primary elections shall apply to elections conducted with the use of electronic voting systems.

If it shall be impracticable for the county court of any county, after the adoption of an electronic voting system by such county, to supply the necessary vote recording devices to each precinct of such county for use in any election, the holding of any election in such precincts, which have not been supplied with vote recording devices shall be governed by the general laws with respect to conducting a regular, special and primary election by the use of printed ballots or the laws with respect to conducting such election by the use of voting machines if such machines are used.

Acts 1969, c. 55.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 3-4A-33. Tampering with vote-recording devices, electronic poll books, ballot labels, ballot or ballot cards, program decks, standard validation test decks or other automatic tabulating equipment; other dishonest practices; attempts; penalty

(a) Any person not an election officer or other public official who shall tamper or attempt to tamper with any vote-recording device, electronic poll book, ballot label, ballot or ballot card, program deck, standard validation test deck or automatic tabulating equipment or in any way intentionally impair or attempt to impair their use and any person who shall be guilty of or shall attempt any dishonest practice upon any such devices or equipment, or with or by their use, shall be deemed guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than ten years or fined not less than five thousand dollars, or both.

(b) Any clerk of a county commission, county commissioner, ballot commissioner, election commissioner, or poll clerk, or any custodian, technician or other public official authorized to take part in the holding of an election or in preparing for an election, who, with intent to cause or permit any vote-recording device, electronic poll book, program deck, standard validation test deck or other automatic tabulating equipment to fail to record, test or tabulate correctly all votes cast thereon or tabulated therewith, tampers with or disarranges such device in any way, or any part or appliance thereof, or who causes or consents to the use of such device or equipment for vote recording, testing or tabulating at any election with knowledge of the fact that the same is not in order, or not perfectly set and adjusted so that it will correctly record, test or tabulate all votes cast or who, with the purpose of defrauding or deceiving any voter or of causing it to be doubtful for what ticket or candidate or candidates or proposition any vote is cast, or of causing it to appear on said device or devices that the votes cast for one ticket, candidate or proposition, were cast for another ticket, candidate or proposition, removes, changes or mutilates any ballot, ballot card or ballot label on said device or any part thereof, or does any other thing intended to interfere with the validity or accuracy of the election, shall be deemed guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than one year nor more than ten years, or fined not less than five thousand dollars or both.

Acts 1969, c. 55; Acts 1982, c. 60; Acts 2008, c. 98, eff. March 5, 2008.

§ 3-4A-34. Wilful neglect of duty by officials; penalties

Any public officer or election officer upon whom any duty is imposed by this article who shall wilfully omit or neglect to perform such duty, or who shall do any act prohibited in this article for which punishment is not otherwise provided herein, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars, or imprisonment in the county jail for not less than sixty days nor more than one year, or both, in the discretion of the court.

Acts 1969, c. 55.

ARTICLE 5

PRIMARY ELECTIONS AND NOMINATING PROCEDURES

Section

3-5-1. Time and place of holding primary elections in the year one thousand nine hundred eighty and thereafter; hours polls open.

3-5-1a. Time and place of holding primary elections held in the year one thousand nine hundred seventy-eight; hours polls open.

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§ 3-5-1. Time and place of holding primary elections in the year one thousand nine hundred eighty and thereafter; hours polls open

Primary elections shall be held at the voting place in each of the voting precincts in the state, for the purposes set forth in this article, on the second Tuesday in May in the year one thousand nine hundred eighty-six and in each second year thereafter.

At such election the polls shall be opened and closed at the hours provided for opening and closing the polls in a general election.

Acts 1915, c. 26, § 2; Acts 1916, 3rd Ex. Sess., c. 5, § 2; Acts 1959, c. 67; Acts 1963, c. 64; Acts 1978, c. 43; Acts 1985, c. 72.

§ 3-5-1a. Time and place of holding primary elections held in the year one thousand nine hundred seventy-eight; hours polls open

The primary election held in the year one thousand nine hundred seventy-eight shall be held at the voting place in each of the voting precincts in the state, for the purposes set forth in this article, on the second Tuesday in May in the year one thousand nine hundred seventy-eight.

At such election the polls shall be opened and closed at the hours provided for opening and closing the polls in a general election.

Acts 1978, c. 43.

§ 3-5-2. Delegates to national conventions; alternate delegates

(a) At the primary election to be held in the year one thousand nine hundred ninety-two, and in each fourth year thereafter, there shall be elected by the voters of each political party of the state, in accordance with a plan adopted by the state party, persons to be delegates to the national convention of the party to be held next after the date of such primary.

(b) The plan adopted by each political party of the state shall state the method, subject to compliance with their national party rules and not inconsistent with the provisions of this chapter, for the election of persons in each congressional district of the state as delegates to the national convention of the party, for the election or selection of persons in each congressional district of the state as alternate delegates to the national convention of the party and for the selection of all remaining delegates and alternate delegates allocated to the party in their national convention. Not less than one hundred twenty days before the primary election to be held in the year one thousand nine hundred ninety-two, and in every fourth year thereafter, the governing body of each political party of the state shall certify the plan adopted by the party under signature of the state party chairman and file the plan with the secretary of state. Any questions regarding whether such plan was rightfully adopted by the party shall be resolved by the party based upon party rules.

(c) The plan adopted by each political party of the state shall, to the extent permissible under their national party rules, provide for the following:

(1) The voters of each political party shall elect in each congressional district the number of persons as delegates to the national convention of the party to which the district is entitled.

(2) If the rules of the national political party do not require the apportionment of delegates on the basis of their commitment for president, the persons receiving the highest number of votes as delegates in any congressional district to the number to which the district is entitled, shall be elected delegates. After the election of delegates in each congressional district to the number to which the district is entitled, the persons receiving the next highest votes in each congressional district and having qualified, as may be provided in the plan adopted by the party, shall be elected as alternate delegates to the number of alternate delegates to which the district is entitled.

(3) If the rules of the national political party require that the percentage of votes cast for the various presidential candidates determine the apportionment of committed candidates to be elected as delegates or alternates, regardless of whether such committed candidates received the highest number of votes, then the plan adopted by the political party of the state shall prescribe the number of delegates and alternates to be elected under such apportionment, the method by which the apportionment shall be made, and the method by which the secretary of state shall determine which delegates and alternates are elected. A committed candidate for delegate to national convention is one whose preference for particular presidential candidate appears on the ballot.

(4) In the event the number of persons elected in the primary election in a

congressional district is less than the number to which the district is entitled as delegates and alternate delegates to the national convention of the political party, the governing body of the political party of the state shall appoint persons from the congressional district to serve as delegates or alternate delegates to the national convention of the party unless the rules of the party otherwise provide.

(5) The number of persons which each of the congressional districts in the state are entitled to elect as delegates to the national convention of the political party shall be apportioned among the congressional districts in the same proportion to the total number of delegates to the party's national convention elected in all congressional districts in the state as the population of the congressional district bears to the total population of the state based upon the census of population taken by the bureau of the census of the United States department of commerce in the year one thousand nine hundred ninety, and in every tenth year thereafter.

(d) The official primary ballot at the primary election to be held in the year one thousand nine hundred ninety-two, and in every fourth year thereafter shall, following the names of all candidates for delegates to the national convention of the party, contain the words "For election in accordance with the plan adopted by the party and filed with the secretary of state."

(e) Unless and until a political party of the state has adopted and certified a plan for the election of delegates to the national convention of the party and filed the plan with the secretary of state, there shall be elected by the voters of the political party of the state at the primary election to be held in the year one thousand nine hundred ninety-two, and in each fourth year thereafter, the number of persons to which the party is entitled as delegates-at-large, and by the voters of each political party in each congressional district in the state the number of delegates to which the district is entitled. The persons receiving the highest number of votes in the state as delegates-at-large, to the number to which the state is entitled, shall be elected delegates. The persons receiving the highest number of votes as delegates in any congressional district, to the number to which the district is entitled, shall be elected delegates. Each delegate so elected shall then appoint an individual to serve as alternate delegate, and shall by registered letter notify the secretary of state of such appointment within forty days after the primary election.

Acts 1915, c. 26, § 30; Acts 1916, 3rd Ex. Sess., c. 5, §§ 1, 30; Acts 1957, c. 80; Acts 1959, c. 67; Acts 1963, c. 64; Acts 1984, c. 73; Acts 1991, c. 68.

§ 3-5-3. Presidential preference

In presidential election years, in addition to the candidates required to be nominated at the primary election, the qualified voters of each political party shall have the opportunity of voting for their choice among those aspiring to be the candidates of their respective parties for president of the United States. The names of such aspirants shall be printed on the official election ballot of their respective parties, as provided in section thirteen of this article, upon the filing with the secretary of state of the certificate of announcement as provided in section seven of this article and the filing fee or

petition in lieu of filing fee as provided in sections eight and eight-a of this article, and the ballot shall be marked and the vote shall be counted, canvassed and returned under the same conditions as to names, certificates and other matters, as the names and certificates of the party aspirants for the party nomination for the office of governor.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 31; Acts 1939, c. 58; Acts 1963, c. 64; Acts 1991, c. 68.

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

(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.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, §§ 1, 20, 30; Acts 1939, c. 57; Acts 1943, c. 48; Acts 1951, c. 86; Acts 1955, c. 61; Acts 1963, c. 64; Acts 1964, 1st Ex. Sess., c. 2; Acts 1974, c. 39; Acts 1990, c. 79; Acts 1991, c. 68; Acts 2009, c. 47, eff. Aug. 25, 2009.

§ 3-5-5. Repealed by Acts 1993, c. 43

§ 3-5-6. Election of county board of education members at primary elections

(a) An election for the purpose of electing members of the county board of education shall be held on the same date as the primary elections, as provided by law, but upon a nonpartisan ballot printed for the purpose.

(b) No more than two members may be elected or serve from the same magisterial district. The eligibility of candidates to be declared elected for full terms of four years and for unexpired terms of two or more years based on this limitation shall be determined at the time of certification of the election.

(1) Such eligibility shall be based on the magisterial district residence of incumbent members of the board whose terms will continue beyond the first day of July following the primary election.

(A) No person is eligible to be declared elected who resides in a district which has two such incumbent members.

(B) No more than one candidate is eligible to be declared elected who resides in a district which has one such incumbent member.

(C) A person with the highest number of votes may be declared elected to an unexpired term notwithstanding the fact that the person's magisterial district has two representatives serving on the board at the time of the election: Provided, That the number of representatives from that magisterial district will be less than two as of the first day of July following the primary.

(2) The person declared elected to an unexpired term shall assume the duties of a member of the board of education according to the provisions of section two, article five, chapter eighteen of this code.

(c) In each nonpartisan election for board of education the board of canvassers shall:

(1) Declare and certify the election of the required number of eligible candidates receiving the highest numbers of votes to fill any full terms;

(2) Declare and certify the election of the required number of eligible candidates receiving the next highest numbers of votes, after all full terms are filled, to fill any unexpired terms.

(d) It is the intent of this statute that any person declared to be elected under the preceding provisions of this section shall take office as a duly elected member or members, even though the person may not have received a majority or plurality of all votes cast at such election.

(e) In case of a tie vote for a seat on a county board of education in any

primary election, the provisions of section twelve, article six of this chapter shall control in breaking the tie.

Acts 1951, c. 86; Acts 1963, c. 64; Acts 1978, c. 43; Acts 1993, c. 43.

§ 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 his or her candidacy for the nomination or election to the office.

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

(1) Candidates for the House of Delegates or the State Senate and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State;

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates or State Senate, shall file a certificate of announcement with the clerk of the county commission;

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(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.

(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 administer oaths, containing the following information:

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

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

(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 may 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) A person may not 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) A 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 may 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 1991 shall apply to the primary election held in the year 1992 and every primary election held thereafter. The provisions of this section enacted during the regular session of the Legislature in the year 2009 shall apply to the primary election held in the year 2010 and every primary election held thereafter.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5; Acts 1919, c. 78, § 8; Acts 1941, c. 39; Acts 1963, c. 64; Acts 1964, c. 14; Acts 1964, 1st Ex. Sess., c. 2; Acts 1978, c. 43; Acts 1985, c. 72; Acts 1990, c. 79; Acts 1991, c. 68; Acts 1998, c. 136, eff. 90 days after March 14, 1998; Acts 2005, c. 101, eff. 90 days after April 9, 2005; Acts 2007, c. 101, eff. June 8, 2007; Acts 2009, c. 92, eff. July 10, 2009.

§ 3-5-8. Filing fees and their disposition

Every person who becomes a candidate for nomination for or election to office in any primary election shall, at the time of filing the certificate of announcement as required in this article, pay a filing fee as follows:

(a) A candidate for president of the United States, for vice president of the United States, for United States Senator, for member of the United States House of Representatives, for Governor and for all other state elective offices shall pay a fee equivalent to one percent of the annual salary of the office for which the candidate announces: *Provided*, That the filing fee for any candidate for president or vice president of the United States shall not exceed two thousand five hundred dollars commencing with the two thousand four filing period;

(b) A candidate for the office of judge of a circuit court and judge of a family court shall pay a fee equivalent to one percent of the total annual salary of the office for which the candidate announces;

(c) A candidate for member of the House of Delegates shall pay a fee of one-half percent of the total annual salary of the office and a candidate for state Senator shall pay a fee of one percent of the total annual salary of the office;

(d) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor, member of the county commission and magistrate shall pay a fee equivalent to one percent of the annual salary, excluding any additional compensation or commission of the office for which the candidate announces. A candidate for county board of education shall pay a fee of twenty-five dollars. A candidate for any other county office shall pay a fee of ten dollars;

(e) Delegates to the national convention of any political party shall pay the following filing fees:

A candidate for delegate-at-large shall pay a fee of twenty dollars; and a candidate for delegate from a congressional district shall pay a fee of ten dollars;

(f) Candidates for members of political executive committees and other political committees shall pay the following filing fees:

A candidate for member of a state executive committee of any political party shall pay a fee of twenty dollars; a candidate for member of a county executive committee of any political party shall pay a fee of ten dollars; and a candidate for member of a congressional, senatorial or delegate district committee of any political party shall pay a fee of five dollars.

Candidates filing for an office to be filled by the voters of one county shall pay the filing fee to the clerk of the county commission and candidates filing for an office to be filled by the voters of more than one county shall pay the filing fee to the Secretary of State at the time of filing their certificates of announcement and no certificate of announcement shall be received until the filing fee is paid.

All moneys received by the clerk from the fees shall be credited to the general county fund. Moneys received by the Secretary of State from fees paid by candidates for offices to be filled by all the voters of the state shall be deposited in a special fund for that purpose and shall be apportioned and paid by him or her to the several counties on the basis of population and that received from candidates from a district or judicial circuit of more than one county shall be apportioned to the counties comprising the district or judicial circuit in like manner. When such moneys are received by sheriffs, it shall be credited to the general county fund.

Acts 1937, c. 35; Acts 1943, c. 48; Acts 1951, c. 86; Acts 1963, c. 64; Acts 1964, 1st Ex. Sess., c. 2; Acts 1972, c. 51; Acts 1997, c. 165, eff. July 1, 1997; Acts 2001, 5th Ex. Sess., c. 5, eff. Sept. 19, 2001; Acts 2004, c. 112, eff. Feb. 23, 2004; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 3-5-8a. Nominating petitions as alternatives to filing fees; oath of impecuniosity required; petition in lieu of payment of filing fee

A candidate seeking nomination to any office who is unable to pay the filing fee may qualify through the following petition process in lieu of payment of the filing fee.

The candidate shall file an oath with the appropriate office required under section eight of this article stating that he or she is unable to pay the filing fee due to a lack of financial resources. Such oath shall be filed not earlier than the second Monday in January next preceding the primary election day.

Upon receipt of the written oath the receiving officer shall provide the candidate with in-lieu-of-filing-fee petition forms and instructions on

gathering the required signatures. The number of required signatures shall be four qualified voters for each whole dollar of the filing fee: *Provided,* That the filing fee shall be waived, in whole and not in part. Only signatures of voters registered in the county, district or other political division represented by the office sought may be solicited. Solicitors of signatures shall also be residents of the county, district or other geographical entity represented by the office sought: *Provided, however,* That for offices to be filled by the voters of more than one county, separate petition forms shall be used for the signatures of qualified voters from each county.

No qualified voter forfeits his or her opportunity to vote in the primary election by signing an in-lieu-of-filing-fee petition.

The candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The clerk of the county commission may not be required to determine the validity of a greater number of signatures than that required by this section.

Signatures obtained on an in-lieu-of-filing-fee petition shall not be counted toward the number of voters required to sign a nomination certificate in accordance with section twenty-three of this article.

The candidate shall file all in-lieu-of-filing-fee petitions with the required number of valid signatures with the clerk of the county commission or Secretary of State, as the case may be, not later than the last date required by law for filing declarations of candidacies and payment of the filing fee.

The oath and forms required by this section shall be prescribed by the Secretary of State.

Acts 1986, c. 75; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 3-5-9. Certification and posting of candidacies

By the eighty-fourth day next preceding the day fixed for the primary election, the Secretary of State shall arrange the names of all candidates, who have filed announcements with him or her, as provided in this article, and who are entitled to have their names printed on any political party ballot, in accordance with the provisions of this chapter, and shall forthwith certify the same under his or her name and the lesser seal of the state, and file the same in his or her office.

The certificate of candidates shall show: (1) The name and residence of each candidate; (2) the office for which he or she is a candidate; (3) the name of the political party of which he or she is a candidate; (4) upon what ballot his or her name is to be printed; and (5) in the case of a candidate for delegate to the national convention of any political party, the name of the person the candidate prefers as the presidential nominee of his or her party, or if he or she has no preference, the word "uncommitted".

The Secretary of State shall post a duplicate of the certificate in a conspicuous place in his or her office and keep same posted until after the primary election.

Immediately upon completion of such certification, the Secretary of State shall ascertain therefrom the candidates whose names are to appear on the primary election ballots in the several counties of the state and shall certify to the clerk of the county commission in each county the certificate information relating to each of the candidates whose names are to appear on the ballot in that county. He or she shall transmit the certificate to the several clerks by registered or certified mail, but, in emergency cases, he may resort to other reliable and speedy means of transmission which may be available so that such certificates shall reach the several clerks by the seventieth day next preceding such primary election day.

The provisions of this section shall apply to the primary election held in the year one thousand nine hundred eighty-six and every primary election held thereafter.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 9; Acts 1941, c. 39; Acts 1941, c. 42; Acts 1963, c. 64; Acts 1978, c. 43; Acts 1980, c. 49; Acts 1985, c. 72; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 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 smaller than fourteen point; (B) 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 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 fourteen 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 primary election to be held in the year two thousand, the ballot commissioners of any county may choose to publish a facsimile sample ballot for each political party and for nonpartisan candidates or ballot issues instead of the official list of offices and candidates for each office for purposes of the last publication required before any primary election.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 11; Acts 1919, c. 78, § 11; Acts 1941, c. 42; Acts 1943, c. 49; Acts 1961, c. 52; Acts 1963, c. 64; Acts 1967, c. 105; Acts 1978, c. 43; Acts 1993, c. 50; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2007, c. 101, eff. June 8, 2007.

§ 3-5-11. Withdrawals; filling vacancies in candidacy; publication

(a) A candidate who has filed a certificate of announcement and wishes to withdraw and decline to stand as a candidate for the office shall file a signed and notarized statement of withdrawal with the same officer with whom the certificate of announcement was filed. If the statement of withdrawal is received not later than the third Tuesday following the close of candidate filing, the name of a candidate who files that statement of withdrawal may not be printed on the ballot. No candidate who files a statement of withdrawal after that time may have his or her name removed from the ballot.

(b) Upon request of the candidate's family, the board of ballot commissioners may remove the name of a candidate who dies before the ballots are printed. If a candidate dies after the ballots are printed but before the election, the clerk of the county commission shall give a written notice which shall be posted with the sample ballot at each precinct with the county to the following effect: "To the voter: (name) of (residence), a candidate for (office) is deceased."

(c) If after the time is closed for announcing as a candidate there is a vacancy on the ballot caused by failure of any person of a party to file for each available seat of each available office, the executive committee of the party for the political division within which such candidate was to be voted for, or its chair if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer. Certification of the appointment by the executive committee or its chair, the candidate's certificate of announcement and the filing fee must be received by the appropriate filing officer as follows: For an appointment by an executive committee, no later than the second Friday following the close of filing, for an appointment by its chair, no later than the third Tuesday following the close of filing. A candidate appointed to fill a vacancy on the ballot under

this subsection shall have his or her name printed on the primary ballot for that party.

Acts 1891, c. 89, §§ 27, 29; Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5; Acts 1919, c. 78; Acts 1963, c. 64; Acts 1991, c. 68; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 3-5-12. Official and sample ballots; color

There shall be a separate ballot printed on different colored paper for each political party participating in the primary election and the ballot of no two parties may be of the same color or tint. The Secretary of State shall select and determine the color of the paper of the ballot of each of the parties, and shall notify the clerk of the county commission of each county thereof, at the time he or she certifies the names of the candidates of the various parties to the clerk, as herein provided.

A different color of paper shall be selected and designated by the Secretary of State for each party. The sample ballots of each party shall be of a different color than the official ballot and of a different color from one another. There shall be printed across the face of such sample ballot in large letters the words "sample ballot". No sample ballot shall be voted or counted in any election.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5; Acts 1919, c. 78, § 10; Acts 1963, c. 64; Acts 1975, c. 130; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 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 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: *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.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 12; Acts 1941, c. 42; Acts 1943, c. 48; Acts 1951, c. 86; Acts 1963, c. 64; Acts 1964, 1st Ex. Sess., c. 2; Acts 1972, c. 51; Acts 1975, c. 130; Acts 1982, c. 61; Acts 1991, c. 68; Acts 1998, c. 137, eff. Feb. 9, 1998; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2004, c. 112, eff. Feb. 23, 2004; Acts 2007, c. 101, eff. June 8, 2007; Acts 2010, c. 74, eff. June 10, 2010.

§ 3-5-13a. Order of offices and candidates on the ballot; uniform drawing date

(a) The order of offices for state and county elections on all ballots within the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

NATIONAL TICKET: President (and Vice President in the general election), United States Senator, member of the United States House of Representatives

STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, Justice of the Supreme Court of Appeals, State Senator, member of the House of Delegates, circuit judge in multicounty districts, family court judge in multicounty districts, any other multicounty office, state executive committee

COUNTY TICKET: Circuit judge in single-county districts, family court judge in single-county districts, clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, magistrate, surveyor, congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district executive committee in multicounty districts

NATIONAL CONVENTION: Delegate to the national convention — at-large, delegate to the national convention — congressional district

DISTRICT TICKET: County executive committee.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at nine o'clock a. m., a drawing by lot shall be conducted in the office of the clerk of the county commission in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the county commission shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the Secretary of State.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate

individually: *Provided,* That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.

(4) A candidate or the candidate's representative may attend the drawings.

Acts 1991, c. 68; Acts 2004, c. 112, eff. Feb. 23, 2004; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 3-5-14. General provisions applicable to primary elections

Provisions of article one of this chapter relating to ballot commissioners, election commissioners and clerks, procedures for obtaining election supplies and conducting elections, loss and replacement of election supplies, challenge of voters, leaves of absence for voting, election expenses and recount procedures shall control and govern primary elections wherever applicable.

In all other particulars, when no specific provision is made in this article for the control, conduct and government of any phase of primary elections, resort shall be had to other provisions of this chapter which may be applicable thereto and controlling thereof.

Acts 1963, c. 64.

§ 3-5-15. Ascertaining and certifying primary election results

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election and join in making out the certificates of the result of the election provided in this article. They shall not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall first process the absentee ballots according to the provisions of section eight, article three of this chapter. After the absentee ballots to be counted have been deposited in the ballot box, the election officers shall proceed to ascertain the result of the election in the following manner:

(a) The receiving board shall ascertain from the poll books and record separately on the proper form the total number of voters of each party and nonpartisan voters who have voted.

(1) The number of provisional ballots of each party shall be counted and subtracted from the number of voters of the same party, which result should equal the number of ballots of that party deposited in the ballot box.

(2) The total of all voters, including both partisan and nonpartisan voters, minus the total of all provisional ballots, should equal the number of nonpartisan ballots deposited in the ballot box.

(3) The commissioners and clerks shall also report, over their signatures, the number of each type of ballots spoiled and the number of each type of ballots not voted.

(b) The procedure for counting ballots, whether performed throughout the day by the counting board, as provided in section thirty-three, article one of this chapter, or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose without unfolding it. If properly signed, the commissioner shall announce which type of ballot it is and hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for nomination for any office and write-in votes for election for any person other than an official write-in candidate shall be disregarded;

(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots of each party and any nonpartisan ballot as they are removed and whenever the number of ballots of a particular party shall equal the number of voters entered on the poll book for that party minus the number of provisional ballots of that party, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same, or allowing anyone to examine or know the contents thereof, and the number of excess ballots of each party shall be recorded on the envelope;

(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose so as to show the number of votes received by each candidate for each office;

(5) When the votes have been read from a ballot, the ballot shall be immediately strung on a thread, with separate threads for each party's ballots and for nonpartisan ballots.

(c) As soon as the results at the precinct are ascertained, the commissioners and clerks shall make out and sign three certificates of result, for each party represented, of the vote for all candidates of each party represented, on a form prescribed by the Secretary of State, giving the complete returns of the

election at the polling place, which form shall include the following oath:

We, the undersigned commissioners and poll clerks of the primary election held at precinct No. ..... of ..... district of ..... County, W.Va., on the ..... day of ....., 20..., do hereby certify that having been first duly sworn, we have carefully and impartially ascertained the result of said election at said precinct for the candidates on the official ballot of the ..... party, and the same is as follows:

The election officers shall enter the name of each office and the full name of each candidate on the ballot and the number of votes, in words and numbers, received by each. The election officers shall also enter the full name of every official write-in candidate for election to offices to be filled in the primary, except delegate to national convention, and the number of votes for each. Two of the certificates of result of election, for each party, shall be sealed in separately addressed envelopes, furnished for that purpose, and shall be disposed of by the precinct commissioners as follows: Two of the sealed envelopes containing the returns of each party shall be delivered to the clerk of the county commission who shall, within forty-eight hours, mail one of the sealed returns for each precinct by certified mail to the Secretary of State. The one unsealed certificate shall be posted on the outside of the front door of the polling place.

(d) All ballots voted for candidates of each party shall be sealed in separate envelopes and the commissioners and clerks shall each sign across the seal.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, §§ 14, 35, 36; Acts 1917, c. 37; Acts 1943, c. 50; Acts 1963, c. 64; Acts 1993, c. 50; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2008, c. 99, eff. June 4, 2008.

§ 3-5-16. Return of supplies and certificates

Immediately after completion of the count, tabulation and the posting of the certificate of result of the primary election in each precinct, one of the commissioners or poll clerks of each party at the precinct, designated for that purpose, shall return to the clerk of the county commission the ballot boxes, registration books and the several packages of ballots, poll books, tally sheets, certificates and all other election supplies and returns.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 17; Acts 1963, c. 64; Acts 1993, c. 50; Acts 2008, c. 99, eff. June 4, 2008.

§ 3-5-17. Canvassing and certifying returns; recount procedures

The commissioners of the county commission, sitting as a board of canvassers, shall convene at the courthouse of the county on the fifth day following any primary election, which is not a Saturday, Sunday or legal holiday, and shall proceed to canvass the returns of the election. The procedures prescribed in section nine, article six, of this chapter relating to canvass of general election returns, shall, where adaptable, be applied in the canvass of the primary election returns. The board shall proceed to ascertain the result of the election in the county and district and election precincts and cause to be prepared and recorded in the primary election precinct record book a table or tables which show, as to each candidate of each political party for each

office, the number of votes cast for him or her at each precinct and the total number cast in the entire county. The board shall then make up and enter in said record book a certificate for each political party showing, as to each candidate for each political party for each office, the total number of votes, in words and figures, cast for him or her in the entire county and the number of votes received by all the candidates of such party in such district in the following form:

The board of canvassers of the county of ..... of West Virginia, having carefully and impartially examined the returns of the primary election held in said county on the ..... day of ....., 19..., do hereby certify that in said county or district, at said election, on the official ballot of the ..... party for the office of ....., A. B. received ..... (.....) votes; C. D. received ..... (.....) votes.

And so on for each office for each political party according to the truth. When the certificates are all entered, the report shall be signed by the members of the board or by a majority of the board. Such members shall also sign separate certificates of the result of the election, within the county, for each of the offices to be filled by each political party as provided by the following section.

The provisions of article six of this chapter, relating to the recount of votes in general elections, shall, to the extent applicable, be operative in primary and other elections conducted under provisions of this article.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 18; Acts 1941, c. 44; Acts 1963, c. 64; Acts 2011, c. 61, eff. June 9, 2011.

§ 3-5-18. Disposition of certificates of results

The certificates of the board of canvassers made pursuant to the preceding section shall be by them disposed of as follows: One of the certificates showing the votes received by each candidate of each party for each office to be filled by the voters of a political division greater than a county, including members of the State Executive Committee, shall be filed with the Secretary of State, and preserved in his or her office, and a copy thereof filed in the office of the clerk of the county commission of the county of such board, to be preserved by the clerk, and which shall be open to public inspection; one certificate showing the votes received by each candidate of each party for each office to be filled by the voters of the county or magisterial district within such county, including members of the county executive committee, shall be filed with the clerk of the county commission, and preserved in his or her office. If requested, the board of canvassers shall furnish to the county chairman of each political party a certificate showing the number of votes received by each of the candidates of such party in the county or any magisterial district therein.

The Secretary of State shall certify, under the seal of the state, to the clerk of the county commission of each county in which a candidate is to be voted for, the name of the candidate of each political party receiving the highest number of votes in the political division in which he or she is a candidate, and who is entitled to have his or her name placed on the official ballot in the general election as the nominee of the party for such office. The

Secretary of State shall also certify in the same manner the names of all candidates nominated by political parties or by groups of citizens, not constituting a political party, in any manner provided for making such nominations in this chapter.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 19; Acts 1963, c. 64; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

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

(a) If any vacancy occurs 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 thirty days after the last day to file a certificate of announcement pursuant to section seven of this article.

(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.

(c) When a vacancy occurs in the board of education after the close of candidate filing for the primary election but not later than eighty-four days before the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for board of education shall file a certificate of announcement and pay the filing fee to the clerk of the county commission no earlier than the first Monday in August and no later than seventy-seven days before the general election.

Acts 1891, c. 89, § 29; Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5; Acts 1919, c. 78; Acts 1951, c. 87; Acts 1957, c. 81; Acts 1963, c. 64; Acts 1973, c. 47; Acts 1991, c. 68; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2005, c. 101, eff. 90 days after April 9, 2005; Acts

2007, c. 104, eff. June 8, 2007.

§ 3-5-20. Election contests and court review

Any candidate for nomination for or election to an office to be filled by the voters of the state or any political subdivision thereof or any candidate for membership on any political party executive committee, may contest the primary election before the county court of the county in which any primary election procedures, practices or results may be in issue. The procedure in such case shall be the same as that governing the contest of a general election by candidates for county offices or offices in magisterial districts. The decision of the county court upon such contest may be reviewed by the circuit court of the county and by the supreme court of appeals of the state. Wherever practicable, the circuit court, on review, may, by order entered of record, consolidate and hear together any such primary election cases arising in one or more counties of the circuit, and the supreme court of appeals, on further review, may likewise consolidate and hear together any such cases whenever considered practicable by the court so to do.

Any action of a political party executive committee in the discharge of any of the duties imposed upon such committee by this article, or of any board of election officials in conducting and ascertaining the result of the primary election, or of any board of canvassers in canvassing and certifying the result of the primary election for the county, may be reviewed by the circuit court of the county, upon the petition of any candidate, political committeeman or delegate voted for at such primary and affected adversely by the action of such committee, board of election officials, or board of canvassers. From the judgment of the circuit court in any such proceeding, an appeal shall lie to the supreme court of appeals of the state.

Any such contest, or petition for review, of a candidate for a nomination not finally determined within ten days next preceding the date of the next election after the primary, or of a candidate for delegate to any convention within ten days next preceding the date fixed for holding the convention, shall stand dismissed, and the person shown by the face of the returns of the primary election to be nominated for any office shall be entitled to have his name printed upon the regular ballot to be voted at the election, and the person shown upon the face of the returns to have been elected as a delegate to any convention shall be entitled to sit in such convention as a delegate.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 22; Acts 1951, c. 86; Acts 1963, c. 64; Acts 1964, 1st Ex. Sess., c. 2.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 3-5-21. Party conventions to nominate presidential electors; candidates; organization; duties

Candidates for presidential electors shall be nominated by the delegated representatives of the political party assembled in a state convention to be held during the months of June, July or August next preceding any general election at which presidential electors are to be elected. The state executive committee of the political party, by resolution, shall designate the place and

fix the date of the convention, shall prescribe the number of delegates thereto, and shall apportion the delegates among the several counties of the state in proportion to the vote cast in the state for the party's candidate for governor at the last preceding general election at which a governor was elected. The state executive committee shall also ascertain and designate all offices for which candidates are to be nominated at the convention.

At least sixty days prior to the date fixed for holding any state convention, the chairman of the party's state executive committee shall cause to be delivered to the party's county executive committee in each county of the state a copy of the resolutions fixing the time and place for holding the state convention and prescribing the number of delegates from each county to the convention. Within ten days after receipt of the copy of the resolutions, the party executive committee of each county shall meet and, by resolution, shall apportion the delegates to the state convention among the several magisterial districts of the county, on a basis of the vote received in the county by the candidate of the party for governor at the last preceding general election at which a governor was elected, but in such apportionment of county delegates each magisterial district shall be entitled to at least one delegate to the state convention. The party's county executive committee shall call a meeting of the members of the political party in mass convention in the county, which meeting shall be held at least thirty days prior to the date fixed for the state convention and at which meeting the members of the political party in each magisterial district shall elect the number of delegates to which the district is entitled in the state convention.

The meeting place in the county shall be as central and convenient as can reasonably be selected, and all recognized members of the political party shall be entitled to participate in any mass convention and in the selection of delegates. Notice of the time and place of holding the county mass convention and of the person who shall act as temporary chairman thereof shall be given by publication as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county. The first publication shall be made not more than fifteen days and the second publication shall be made not less than five days prior to the date fixed for holding the convention. The notice published shall specify the number of delegates which each magisterial district in the county is entitled to elect to the state convention.

Upon assembling, the mass convention of the county, shall choose a chairman and a secretary, who, within five days after the holding of the convention, shall certify to the chairman of the state executive committee of the political party and the chairman of the county committee of the political party, the names and addresses of the parties selected as delegates to the state convention.

If, after the election, a vacancy exists for a delegate from any magisterial district, the party's county executive committee, within ten days after the mass convention, shall appoint a member of the political party in the magisterial district to fill the vacancy, and shall certify the appointment to the chairman of the state executive committee of the political party.

All contests over the selection of delegates to conventions shall be heard and determined by the party executive committee of the county from which the

delegates are chosen, and the county executive committee shall, upon written petition of any contest, meet for a hearing and make a determination within ten days after the holding of a county mass convention. The circuit court of the county and the supreme court of appeals of the state shall have concurrent original jurisdiction to review, by mandamus or other proper proceeding, the decision of a county executive committee in any contest.

The delegates chosen and certified by and from the several magisterial districts in the state and, in the event of any contest, those prevailing in the contest, shall make up the state convention. The number present of those entitled to participate in any convention shall cast the entire vote to which the county is entitled in the convention, and it shall require a majority vote to nominate any candidate for office.

All nominations made at state conventions shall be certified within fifteen days thereafter, by the chairman and the secretary of the convention, to the secretary of state, who shall certify them to the clerk of the circuit court of each county concerned, and the names of the persons so nominated shall be printed upon the regular ballot to be voted at the ensuing general election, except that the names of the presidential elector candidates shall not be printed thereon.

The delegates to any state convention may formulate and promulgate the party platform or declaration of party principles as to them shall seem advisable.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5, § 29; Acts 1919, c. 78, § 29; Acts 1963, c. 64; Acts 1967, c. 105; Acts 1980, c. 49; Acts 1984, c. 74; Acts 2003, c. 101, eff. 90 days after March 8, 2003.

§ 3-5-22. Other party and group nominations; procedure

Any political party which polled less than ten percent of the total vote cast only for governor at the general election immediately preceding may nominate candidates and select committees by party conventions, provided such nominations are made and the certificates thereof filed within the time and in the manner provided in section twenty-four of this article, or by certificate in the same manner as groups of citizens may make nominations as provided in the following section.

No delegate or person participating in the selection of delegates under this section shall vote in any primary election held in that year.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5; Acts 1919, c. 78; Acts 1963, c. 64.

§ 3-5-23. Certificate nominations; requirements and control; penalties

(a) Groups of citizens having no party organization may nominate candidates who are not already candidates in the primary election for public office otherwise than by conventions or primary elections. In that case, the candidate or candidates, jointly or severally, shall file a nomination certificate in accordance with the provisions of this section and the provisions of section twenty-four of this article.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on the certificate or certificates, may solicit or canvass duly registered voters residing within the county, district or other political division represented by the office sought, but must first obtain from the clerk of the county commission credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of ....., ss:

This certifies that the holder of this credential is hereby authorized to solicit and canvass duly registered voters residing in ..... (here place the county, district or other political division represented by the office sought) to sign a certificate purporting to nominate ..... (here place name of candidate heading list on certificate) for the office of ..... and others, at the general election to be held on ....., 20.....

Given under my hand and the seal of my office this ..... day of ....., 20.....

.....

Clerk, county commission of ..... County.

The clerk of each county commission, upon proper application made as herein provided, shall issue such credentials and shall keep a record thereof.

(c) The certificate shall be personally signed by duly registered voters, in their own proper handwriting or by their marks duly witnessed, who must be residents within the county, district or other political division represented by the office sought wherein the canvass or solicitation is made by the person or persons duly authorized. The signatures need not all be on one certificate. The number of signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for the office in the state, district, county or other political division for which the nomination is to be made, but in no event shall the number be less than twenty-five. The number of signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for any statewide, congressional or presidential candidate, but in no event shall the number be less than twenty-five. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the candidates receiving the highest number of votes on each ticket for the office shall constitute the entire vote. A signature on a certificate may not be counted unless it be that of a duly registered voter of the county, district or other political division represented by the office sought wherein the certificate was presented.

(d) The certificates shall state the name and residence of each of the candidates; that he or she is legally qualified to hold the office; that the subscribers are legally qualified and duly registered as voters and desire to have the candidates placed on the ballot; and may designate, by not more than five words, a brief name of the party which the candidates represent and may adopt a device or emblem to be printed on the official ballot. All candidates

nominated by the signing of the certificates shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter.

The Secretary of State shall prescribe the form and content of the nomination certificates to be used for soliciting signatures.

Offices to be filled by the voters of more than one county shall use separate petition forms for the signatures of qualified voters for each county.

Notwithstanding any other provision of this code to the contrary, a duly registered voter may sign the certificate provided in this section and may vote for candidates of his or her choosing in the corresponding primary election.

(e) The Secretary of State, or the clerk of the county commission, as the case may be, may investigate the validity of the certificates and the signatures thereon. If, upon investigation, there is doubt as to the legitimacy and the validity of certificate, the Secretary of State may ask the Attorney General of the state, or the clerk of the county commission may ask the prosecuting attorney of the county, to institute a quo warranto proceeding against the nominee by certificate to determine his or her right to the nomination to public office and upon request being made, the Attorney General or prosecuting attorney shall institute the quo warranto proceeding. The clerk of the county commission shall, at the request of the Secretary of State or the clerk of the circuit court, compare the information from any certificate to the county voter registration records in order to assist in determining the validity of any certificates.

(f) In addition to penalties prescribed elsewhere for violation of this chapter, any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000, or confined in jail not more than one year, or both fined and imprisoned: *Provided,* That a criminal penalty may not be imposed upon anyone who signs a nomination certificate and votes in the primary election held after the date the certificate was signed.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5; Acts 1919, c. 78, § 23; Acts 1941, c. 40; Acts 1963, c. 64; Acts 1986, c. 76; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2001, c. 117, eff. Sept. 1, 2001; Acts 2005, c. 101, eff. 90 days after April 9, 2005; Acts 2006, c. 89, eff. March 10, 2006; Acts 2009, c. 92, eff. July 10, 2009.

§ 3-5-24. Filing of nomination certificates; time

(a) All certificates nominating candidates for office under the preceding section shall be filed, in the case of a candidate to be voted for by the voters of the entire state or by any subdivision of the state other than a single county, with the Secretary of State, and in the case of all candidates for county and magisterial district offices, including all offices to be filled by the voters of a single county, with the clerk of the county commission, not later than August 1 preceding the general election.

(b) Each candidate shall pay the filing fee required by section eight of this article, at the time of the filing of the nomination certificate. If any

nomination certificate is not timely filed or if the filing fee is not timely paid, the certificate may not be received by the Secretary of State, or by the clerk of the county commission, as the case may be.

Acts 1915, c. 26; Acts 1916, 3rd Ex. Sess., c. 5; Acts 1919, c. 78; Acts 1963, c. 64; Acts 2005, c. 101, eff. 90 days after April 9, 2005; Acts 2009, c. 92, eff. July 10, 2009.

ARTICLE 6

CONDUCT AND ADMINISTRATION OF ELECTIONS

Section

3-6-1. Provisions of article govern general elections; applicability of other provisions of chapter; applicability of article to primary and special elections.

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§ 3-6-1. Provisions of article govern general elections; applicability of other provisions of chapter; applicability of article to primary and special elections

The provisions of this article shall govern the conduct and administration of general elections. Other provisions of this chapter, where applicable, shall be considered supplementary and complementary to the provisions of this article regulating and controlling general elections.

In all voting precincts in which voting machines have been approved, procured,

and are in use, the provisions of article four of this chapter shall be applicable to the conduct and administration of general elections.

Where applicable and not inconsistent with other positive provisions of law, the provisions of this article shall govern the conduct of and procedures in primary and special elections.

Acts 1963, c. 64.

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

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

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

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

(3) The names of every candidate for any office to be voted for at the election 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 according to law and no others.

(b) The provisions of paragraphs (C) and (D), subdivision (2), section thirteen, article five of this 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 For House of Delegates

First Delegate District First Delegate District

(Vote For Not More Than Two) (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 each amendment or issue is to be printed in large, bold type according to the requirements of the resolution authorizing the election.

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

Acts 1891, c. 89, § 27; Acts 1893, c. 25; Acts 1907, c. 71; Acts 1908, c. 21, § 34; Acts 1955, c. 63; Acts 1963, c. 64; Acts 1980, c. 49; Acts 1980, c. 51; Acts 1982, c. 61; Acts 1985, c. 72; Acts 1991, c. 68; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2007, c. 101, eff. June 8, 2007.

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

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

(b) The facsimile sample general election ballot 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 general election, the ballot commissioners shall publish the sample official general 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 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.

Acts 1891, c. 89, §§ 30, 31; Acts 1963, c. 64; Acts 1967, c. 105; Acts 1993, c. 50; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2007, c. 101, eff. June 8, 2007.

§ 3-6-4. Late nominations; stickers

If a nomination to fill a vacancy is made by a political party executive committee or, on its failure to so act within the time prescribed by law, is made by the chairman of the committee, and certified to the clerk of the county commission after the ballots to be used at the ensuing election shall have been printed, the clerk shall forthwith lay such certificates before the ballot commissioners who, without delay, shall prepare, or cause to be prepared, and deliver, or cause to be delivered, to the election commissioners of each precinct in which the candidate is to be voted for, a number of stickers, containing only the name of the candidate, at least equal to the total number of ballots provided for the precinct; but no such stickers shall be furnished to or received by any person except a commissioner of election. It is the duty of the commissioners holding the election to deliver such stickers to the poll clerks, who shall, in the presence of the election commissioners, affix one of the stickers in a careful manner at the proper place for the name of the candidate, upon each ballot to be voted at the election, before the poll clerks sign their names on the ballots. The stickers may be delivered to the election officers, by the clerk of the county commission, with the ballots, poll books and other supplies.

Acts 1891, c. 89, § 29; Acts 1963, c. 64; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 3-6-4a. Filing requirements for write-in candidates

Any eligible person who seeks to be elected by write-in votes to an office, except delegate to national convention, which is to be filled in a primary, general or special election held under the provisions of this chapter, shall file a write-in candidate's certificate of announcement as provided in this section. No certificate of announcement may be accepted and no person may be certified as a write-in candidate for a political party nomination for any office or for election as delegate to national convention.

(a) The write-in candidate's certificate of announcement shall be in 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:

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

(2) The legal name of the candidate and the first and last name by which the candidate may be identified in seeking the office;

(3) 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;

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

(5) The words "subscribed and sworn to before me this _____ day of _____, _____" and a space for the signature of the officer giving the oath.

(b) The certificate of announcement shall be filed with the filing officer for the political division of the office as prescribed in section seven, article five of this chapter.

(c) The certificate of announcement shall be filed with and received by the proper filing officer as follows:

(1) Except as provided in subdivisions (2) and (3) of this subsection, the certificate of announcement for any office shall be received no later than the close of business on the forty-second day before the election at which the office is to be filled;

(2) When a vacancy occurs in the nomination of candidates for an office on the ballot resulting from the death of the nominee or from the disqualification or removal of a nominee from the ballot by a court of competent jurisdiction not earlier than the twenty-first day nor later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later;

(3) When a vacancy occurs in an elective office which would not otherwise appear on the ballot in the election, but which creates an unexpired term of one or more years which, according to the provisions of this chapter, is to be filled by election in the next ensuing election and the vacancy occurs no earlier than the twenty-first day and no later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later.

(d) Any eligible person who files a completed write-in candidate's certificate of announcement with the proper filing officer within the required time shall be certified by that filing officer as an official write-in candidate:

(1) The Secretary of State shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in more than one county and certify the name of each official write-in candidate

to the clerks of the county commissions of the appropriate counties.

(2) The clerk of the county commission shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in one county and certify and deliver to the election officials of the appropriate precincts, the names of all official write-in candidates and the office sought by each for statewide, district and county offices on the ballot in the precinct for which valid write-in votes will be counted and the names shall be posted at the office where absentee voting is conducted and at the precincts in accordance with section twenty, article one of this chapter.

Acts 1993, c. 50; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2005, c. 101, eff. 90 days after April 9, 2005; Acts 2007, c. 105, eff. June 4, 2007.

§ 3-6-5. Rules and procedures in election other than primaries

The provisions of article one of this chapter relating to elections generally shall govern and control arrangements and election officials for the conduct of elections under this article. The following rules and procedures shall govern the voting for candidates in general and special elections:

(a) If the voter desires to vote a straight ticket, or in other words, for each and every candidate for one party for whatever office nominated, the voter shall either:

(1) Mark the position designated for a straight ticket in the manner appropriate to the voting system; or

(2) Mark the voting position for each and every candidate of the chosen party in the manner appropriate to the voting system.

(b) If the voter desires to vote a mixed ticket, or in other words, for candidates of different parties, the voter shall either:

(1) Omit marking any straight ticket voting position and mark, in the manner appropriate to the voting system, the name of each candidate for whom he or she desires to vote on whatever ticket the name may be; or

(2) Mark the position designated for a straight ticket for the party for some of whose candidates he or she desires to vote and then mark the name of any candidate of any other party for whom he or she may desire to vote, in which case the cross mark in the circular space above the name of the party straight ticket mark will cast his or her vote for every candidate on the ticket of the party except for offices for which candidates are marked on other party tickets and the marks for the candidates will cast a vote for them; or

(3) Write with ink or other means or affix a sticker or label or place an ink-stamped impression of the name of an official write-in candidate for an office for whom he or she desires to vote in the space designated for write-in votes for the particular voting system or for paper ballot systems, write or place the name and office designation in any position on the face of the ballot which makes the intention of the voter clear as to both the office and the candidate chosen.

(c) If in marking either a straight or mixed ticket as above defined, a straight ticket voting position is marked, and also one or more marks are made for candidates on the same ticket for offices for which candidates on other party tickets are not individually marked, the marks before the name of candidate on the ticket so marked shall be treated as surplusage and ignored.

(d) When a voter casts a straight ticket vote and also writes in any name for an office, the straight ticket vote for that office shall be rejected, whether or not a vote can be counted for a write-in candidate.

(e) The secretary of state may proscribe devices for casting write-in votes which would cause mechanical difficulty with voting machines or electronic devices or which would obliterate or deface a paper ballot or any portion thereof, but the secretary of state shall preserve the right to vote by a write-in vote for those candidates who have filed and have been certified as official write-in candidates under the provisions of section four-a of this article.

(f) If the voter marks more names than there are persons to be elected to an office or if, for any reason, it is impossible to determine the voter's choice for an office to be filled, the ballot shall not be counted for the office. The intention of the voter shall be deemed to be clear if the write-in vote cast for an office contains both the first and last name of an official write-in candidate for that office; and if no two official write-in candidates for that office share a first or last name, either the first name or last name alone shall be deemed to express the clear intention of the voter.

(g) Except as otherwise specifically provided in this chapter, no ballot shall be rejected for any technical error which does not make it impossible to determine the voter's choice.

Acts 1891, c. 89, § 57; Acts 1893, c. 25; Acts 1907, c. 71; Acts 1908, c. 21, § 34; Acts 1941, c. 44; Acts 1943, c. 51; Acts 1963, c. 64; Acts 1978, c. 43; Acts 1993, c. 50; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-6-6. Ballot counting procedures in paper ballot systems

When the polls are closed in an election precinct where only a single election board has served, the receiving board shall perform all of the duties prescribed in this section. When the polls are closed in an election precinct where two election boards have served, both the receiving and counting boards shall together conclude the counting of the votes cast, the tabulating and summarizing of the number of the votes cast, unite in certifying and attesting to the returns of the election and join in making out the certificates of the result of the election provided for in this article. They shall not adjourn until the work is completed.

In all election precincts, as soon as the polls are closed and the last voter has voted, the receiving board shall proceed to ascertain the result of the election in the following manner:

(a) In counties in which the clerk of the county commission has determined that the absentee ballots should be counted at the precincts in which the absent

voters are registered, the receiving board must first process the absentee ballots and deposit the ballots to be counted in the ballot box. The receiving board shall then proceed as provided in subsections (b) and (c) of this section. In counties in which the absentee ballots are counted at the central counting center, the receiving board shall proceed as provided in subsections (b) and (c) of this section.

(b) The receiving board shall ascertain from the pollbooks and record on the proper form the total number of voters who have voted. The number of ballots challenged shall be counted and subtracted from the total, the result should equal the number of ballots deposited in the ballot box. The commissioners and clerks shall also report, over their signatures, the number of ballots spoiled and the number of ballots not voted.

(c) The procedure for counting ballots, whether performed throughout the day by the counting board as provided in section thirty-three, article one of this chapter or after the close of the polls by the receiving board or by the two boards together, shall be as follows:

(1) The ballot box shall be opened and all votes shall be tallied in the presence of the entire election board;

(2) One of the commissioners shall take one ballot from the box at a time and shall determine if the ballot is properly signed by the two poll clerks of the receiving board. If not properly signed, the ballot shall be placed in an envelope for the purpose, without unfolding it. Any ballot which does not contain the proper signatures shall be challenged. If an accurate accounting is made for all ballots in the precinct in which the ballot was voted and no other challenge exists against the voter, the ballot shall be counted at the canvas. If properly signed, the commissioner shall hand the ballot to a team of commissioners of opposite politics, who shall together read the votes marked on the ballot for each office. Write-in votes for election for any person other than an official write-in candidate shall be disregarded. When a voter casts a straight ticket vote and also casts a write-in vote for an office, the straight ticket vote for that office shall be rejected whether or not a vote can be counted for a write-in candidate;

(3) The commissioner responsible for removing the ballots from the box shall keep a tally of the number of ballots as they are removed and whenever the number shall equal the number of voters entered on the pollbook minus the number of provisional ballots, as determined according to subsection (a) of this section, any other ballot found in the ballot box shall be placed in the same envelope with unsigned ballots not counted, without unfolding the same or allowing anyone to examine or know the contents thereof, and the number of excess ballots shall be recorded on the envelope;

(4) Each poll clerk shall keep an accurate tally of the votes cast by marking in ink on tally sheets, which shall be provided for the purpose, so as to show the number of votes received by each candidate for each office and for and against each issue on the ballot; and

(5) When the reading of the votes is completed, the ballot shall be immediately strung on a thread.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89; Acts 1917, c. 37; Acts 1963, c. 64; Acts 1985, c. 72; Acts 1993, c. 50; Acts 2002, c. 132, eff. Feb. 5, 2002; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-6-7. Ballot irregularities; procedures

If two or more ballots are found folded or rolled together and the names voted for thereon be the same, one of them only shall be counted; but if the names voted for thereon be different, in any particular, neither of them shall be counted except as hereinbefore provided; and in either case, the commissioners of election shall, in writing in ink, place a common number on the ballots and state thereon that they were folded or rolled together when voted. If any ballot be found to contain more than the proper number of names for any office, the ballot shall not be counted as to the office. In any election for state senator, if a person is voted for on any ballot who is not a resident of the proper county, as required by section four, article VI of the constitution, the ballot shall not be counted for the office. Any ballot or part of a ballot from which it is impossible to determine the elector's choice of candidates shall not be counted as to the candidates affected thereby.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89; Acts 1893, c. 25, § 66; Acts 1963, c. 64; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-6-8. Precinct returns; certificates; procedures

As soon as the results are ascertained, the election officials shall make out and sign, under oath as provided in section fifteen, article five of this chapter, four certificates of result on a form prescribed by the Secretary of State, giving the complete returns of the election at the polling place, including the name of each office and the full name of every candidate on the ballot and the full name of every official write-in candidate for each office and the number of votes, in words and numbers, received by each, and the designation of each issue on the ballot and the number of votes, in words and numbers, for and against the issue.

The certificates shall be sealed and disposed of as provided in section fifteen, article five of this chapter for certificates of result of a primary election.

Immediately after the completion of the tabulation and the posting of the certificate of result of the general election in each precinct, the ballots, registration books, poll books, tally sheets and other election supplies shall be sealed and delivered to the clerk of the county commission as provided in section sixteen, article five of this chapter.

Acts 1863, c. 100; Acts 1864, c. 16; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89; Acts 1963, c. 64; Acts 1993, c. 50; Acts 2008, c. 99, eff. June 4, 2008.

§ 3-6-9. Canvass of returns; declaration of results; recounts; recordkeeping

(a) The commissioners of the county commission shall be ex officio a board of

canvassers and, as such, shall keep in a well-bound book, marked "election record", a complete record of all their proceedings in ascertaining and declaring the results of every election in their respective counties.

(1) They shall convene as the canvassing board at the courthouse on the fifth day (Sundays excepted) after every election held in their county, or in any district of the county, and the officers in whose custody the ballots, pollbooks, registration records, tally sheets and certificates have been placed shall lay them before the board for examination.

(2) They may, if considered necessary, require the attendance of any of the commissioners, poll clerks or other persons present at the election to appear and testify respecting the election and make other orders as shall seem proper to procure correct returns and ascertain the true results of the election in their county; but in this case all the questions to the witnesses and all the answers to the questions and evidence shall be taken down in writing and filed and preserved. All orders made shall be entered upon the record.

(3) They may adjourn, from time to time, but no longer than absolutely necessary.

(4) When a majority of the commissioners are not present, the meeting shall stand adjourned until the next day and so from day to day, until a quorum is present.

(5) All meetings of the commissioners sitting as a board of canvassers shall be open to the public.

(6) The board shall proceed to open each sealed package of ballots laid before them and, without unfolding them, count the number in each package and enter the number upon their record.

(7) The ballots shall then be again sealed carefully in a new envelope and each member of the board shall write his or her name across the place where the envelope is sealed.

(8) After canvassing the returns of the election, the board shall publicly declare the results of the election.

(A) For a candidate on the ballot in entirely one county, the board shall not enter an order certifying the election results for a period of forty-eight hours after the declaration. At the end of the 48-hour period, an order shall be entered certifying all election results except for those offices in which a recount has been demanded.

(B) For a candidate on the ballot in more than one county, the board may not enter an order certifying the election results for a period of forty-eight hours after the final county's board has publicly declared the results of the election. In such case, each relevant board shall notify the Secretary of State immediately following each relevant board's public declaration of results. For offices on the ballot in more than one county, the Secretary of State shall notify the board of each relevant county when the final county has made a public declaration of the results of the election. At the end of the 48-hour period in this section, an order shall be entered by each relevant

county certifying all election results except for those offices in which a recount has been demanded.

(b) Within the 48-hour period, a candidate on the ballot in entirely one county may demand the board to open and examine any of the sealed packages of ballots and recount them.

(c) If a candidate is on the ballot in more than one county, then within the 48-hour period after the final county's board has made a public declaration of the results, such candidate may demand the board to open and examine any of the sealed packages of ballots and recount them.

(d) After any recount pursuant to either subsection (b) or (c) of this section the board shall seal the ballots again, along with the envelope above named, and the clerk of the county commission and each member of the board shall write his or her name across the places where it is sealed and endorse in ink, on the outside: "Ballots of the election held at precinct No.____, in the district of _____, and county of _____, on the _____ day of _____."

(e) In computing the 48-hour period as used in this section, Saturdays, Sundays and legal holidays shall be excluded. A candidate on the ballot in more than one county shall not be precluded from demanding a recount in any county in which the candidate is on the ballot until the final county in which the candidate is on the ballot has certified the election results.

(f) If a recount has been demanded, the board shall have forty-eight hours in which to send notice to all candidates who filed for the office in which a recount has been demanded of the date, time and place where the board will convene to commence the recount. The notice shall be served under the provisions of subsection (g) of this section. The recount shall be set for no sooner than three days after the serving of the notice: *Provided,* That after the notice is served, candidates so served shall have an additional twenty-four hours in which to notify the board, in writing, of their intention to preserve their right to demand a recount of precincts not requested to be recounted by the candidate originally requesting a recount of ballots cast: *Provided, however,* That there shall be only one recount of each precinct, regardless of the number of requests for a recount of any precinct. A demand for the recount of ballots cast at any precinct may be made during the recount proceedings only by the candidate originally requesting the recount and those candidates who notify the board, pursuant to this subdivision, of their intention to preserve their right to demand a recount of additional precincts.

(g) Any sheriff of the county in which the recount is to occur shall deliver a copy thereof in writing to the candidate in person; or if the candidate is not found, by delivering the copy at the usual place of abode of the candidate and giving information of its purport, to the spouse of the candidate or any other person found there who is a member of his or her family and above the age of sixteen years; or if neither the spouse of the candidate nor any other person be found there and the candidate is not found, by leaving the copy posted at the front door of the place of abode. Any sheriff, thereto required, shall serve a notice within his or her county and make return of the manner and time of service; for a failure so to do, he or she shall forfeit $20. The return shall be evidence of the manner and time of service.

(h) Every candidate who demands a recount shall be required to furnish bond in a reasonable amount with good sufficient surety to guarantee payment of the costs and the expenses of the recount in the event the result of the election is not changed by the recount; but the amount of the bond shall in no case exceed three hundred dollars.

(i) After the board of canvassers has made their certificates and declared the results as hereinafter provided, they shall deposit the sealed packages of ballots, absent voter ballots, registration records, pollbooks, tally sheets and precinct certificates with the clerk of the county commission from whom they were received, who shall carefully preserve them for twenty-two months: *Provided,* That the clerk may use these records to update the voter registration records in accordance with subsection (d), section eighteen, article two of this chapter. If there is no contest pending as to any election and their further preservation is not required by any order of a court, the ballots, pollbooks, tally sheets and certificates shall be destroyed by fire or otherwise, without opening the sealed packages of ballots. If there is a contest pending, they shall be destroyed as soon as the contest is ended.

(j) If the result of the election is not changed by the recount, the costs and expenses of the recount shall be paid by the party at whose instance the recount was made.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89, § 68; Acts 1945, c. 61; Acts 1963, c. 64; Acts 1968, c. 24; Acts 1973, c. 48; Acts 1976, c. 46; Acts 1981, c. 107; Acts 1985, c. 72; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2008, c. 99, eff. June 4, 2008; Acts 2009, c. 93, eff. April 8, 2009.

§ 3-6-10. Certificates of election results

Whenever an election is held in any county or district to fill any national, state, county, or district office, the board of canvassers of the county, or a majority of them, under the regulations prescribed in the next preceding section, shall carefully and impartially ascertain the result of the election in their county and in each district thereof, and shall record the same in the following form, or to the following effect: "The board of canvassers of the county of ..., having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the ... day of ..., do hereby certify that in said county for the office of ....., A... B..... received ... votes, C..... D... received ... votes, and E..... F..... received ... votes. And we further certify that at said election held in the district of ....., in the said county, for the office of ....., G..... H..... received ..... votes, and I..... J..... received ..... votes." (And so on as to each particular office.) In such certificates shall be set forth, according to the truth, the full name of every person voted for, and, in words at length, the number of votes received for any office. When the certificates are all entered, the record shall be signed by the board or majority of them. The board shall then sign separate certificates of the result of the election within the county, for each of the offices to be filled.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89,

§ 69; Acts 1963, c. 64.

§ 3-6-11. Disposition of certificates

The separate certificates of the board of canvassers, made pursuant to section ten of this article, shall be disposed of by the board of canvassers as follows: Of the certificates respecting the election for delegate or delegates in the Legislature, they shall, upon request of the candidate, transmit a copy to any candidate, and shall file a copy in the office of the clerk of the county commission to be preserved and made available to the general public and to the media. The clerk shall transmit a copy to the secretary of state within thirty days from the date of the election, except that in the case of a recount, within thirty days from the date of the completion of the recount, who shall submit the same to the House of Delegates, on the first day of the next ensuing session, together with a list of the persons appearing thereby to be elected. Of the certificates respecting the election of state senator, they shall, upon request of the candidate, transmit a copy to any candidate, and shall file a copy in the office of the clerk of the county commission to be preserved and made available to the general public and to the media. The clerk shall transmit a copy to the secretary of state within thirty days from the date of the election, except that in the case of a recount, within thirty days from the date of the completion of the recount, to be submitted by the secretary of state to the Senate, on the first day of the next ensuing session, together with a list of persons appearing thereby to be elected. Of the certificates respecting the election of state officers, a copy for each officer, except justice of the supreme court of appeals, shall be sealed and transmitted by the commissioners to the secretary of state within thirty days from the date of the election endorsed on the envelope as follows: "Returns of the election for state officers." Except in the case of a recount, the certificates shall be transmitted within thirty days from the date of the completion of the recount. The secretary of state shall deliver the certificates to the speaker of the House of Delegates on the first day of the next session of the Legislature; and the speaker shall, immediately after the organization of the House of Delegates and before proceeding to other business, open and publish the certificates in the presence of a majority of each house of the Legislature, which bodies shall, for that purpose, assemble in the hall of the House of Delegates. The person having the highest number of votes for any one of such offices shall be declared duly elected thereto; but if two or more persons have the same and the highest number of votes for the same office, the Legislature shall, by a joint vote of the two houses, choose one of said persons for the office; and one of each of the last-mentioned certificates shall also be transmitted, under seal, to the governor, who shall immediately tabulate the vote in all the counties, for each office, and cause the results to be printed in a newspaper published at the seat of government. Of the certificates respecting the election for United States senator, member of the House of Representatives in the Congress of the United States, justice of the supreme court of appeals, judge of a circuit court, and president and vice president of the United States, respectively, the commissioners shall, upon request of the candidate, transmit a copy to any candidate, and a copy to the governor within thirty days from the date of the election; except that in the case of a recount, within thirty days from the date of the completion of the recount; and the governor shall ascertain who are elected and make proclamation thereof. The commissioners shall also file a copy of the certificates in the office of the clerk of the county commission to be

preserved and made available to the general public and to the media. Of the certificates respecting the election of all county and district officers, the commissioners shall, upon request of the candidate, transmit a copy to any candidate, and shall file a copy in the office of the clerk of the county commission to be preserved and made available to the general public and to the media.

No county may be charged for the publication of any certificates of election.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89; Acts 1917, c. 61, § 70; Acts 1963, c. 64; Acts 1981, c. 108; Acts 1998, c. 138, eff. 90 days after March 10, 1998.

§ 3-6-12. Tie vote procedures

Whenever the governor or the board of canvassers of a county is to declare the result of an election, and it appears to him or them that two or more of the persons voted for have received the highest and equal number of votes for the same office, so that the election to the office is not decided by the returns, he, or they, being required to declare the result, shall decide the tie by the election of one of such persons, but in the event the board of canvassers shall have failed to decide the tie within thirty days after such tie shall have been found by them to exist, upon application to the governor by any one of such persons so voted for, he shall break the tie by the selection of one of such persons and shall certify his choice to such board of canvassers and declare such person duly elected for the office for which such person was a candidate.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89, § 71; Acts 1919, c. 2, § 42; Acts 1933, 2nd Ex. Sess., c. 84; Acts 1963, c. 64.

§ 3-6-13. Repealed by Acts 1972, c. 52

ARTICLE 7

CONTESTED ELECTIONS

Section

3-7-1. Contests for state offices and judgeships; procedure.

3-7-2. Procedure of legislature on contest for office of governor.

3-7-3. Contests before special court; procedure; enforcement.

3-7-4. Contests of seats in Legislature; notices and procedure.

3-7-5. Depositions; subpoenas; time; tie vote decision.

3-7-6. County and district contests; notices; time.

3-7-7. County court to hear county and district contests; procedure; review.

3-7-8. Correction of returns; extent.

3-7-9. Costs in election contests.

§ 3-7-1. Contests for state offices and judgeships; procedure

If the election of governor, secretary of state, treasurer, auditor, attorney general, commissioner of agriculture, a judge of the supreme court of appeals or a judge of a circuit court, is contested, the contestant shall give notice, with specifications and affidavit, to the person whose election is contested within ten days after the election is certified and within ten days thereafter the return notice shall be given to the contestant. The parties shall finish taking depositions within forty days after the notice is delivered. The depositions shall be transmitted to the clerk of the House of Delegates, to be delivered by him or her to the joint committee or special court hereinafter provided for. In other respects the regulations contained in this article respecting contests for a seat in the Legislature shall be observed, so far as they are applicable.

Acts 1863, c. 143; Acts 1872-3, c. 118; Acts 1882, c. 103; Acts 1916, 3rd Ex. Sess., c. 3, § 13; Acts 1963, c. 64; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-7-2. Procedure of legislature on contest for office of governor

When the election of governor is contested, the notice of contest and the depositions shall be referred to a joint committee of the two houses, for examination and report, which committee shall consist of two senators elected by ballot by the Senate, and three delegates elected in the same manner by the House of Delegates. The contest shall be determined by the Legislature, both houses thereof sitting in joint session in the hall of the House of Delegates, and the president of the Senate shall preside.

Acts 1863, c. 112; Acts 1872-3, c. 118; Acts 1882, c. 103, § 14; Acts 1963, c. 64.

§ 3-7-3. Contests before special court; procedure; enforcement

Where the election of secretary of state, auditor, treasurer, attorney general, commissioner of agriculture, or of a judge of the supreme court of appeals, or of a circuit court, is contested, the case shall be heard and decided by a special court constituted as follows: The contestee shall select one, the contestant another, and the governor a third person, who shall preside in said court; and the three, or any two of them, shall meet at a time and place within the state to be appointed by the governor, and, being first duly sworn impartially to decide according to law and the truth upon the petition, returns and evidence to be submitted to them, shall proceed to hear and determine the case and certify their decision thereon to the governor. They shall be entitled to ten dollars a day each, and the same mileage as members of the legislature, to be paid out of the treasury of the state, and such special court is hereby given authority to employ a stenographer at a reasonable compensation, to be also paid out of the treasury of the state. In all hearings or proceedings before such special court, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing by such special court, or any member thereof; and in case of

disobedience to a subpoena or other process of such special court, or any member thereof, such special court, or any member thereof, or either of the parties to such contest, may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books and documents. And such circuit court, in case of a refusal to obey the subpoena issued to any person, shall issue an order requiring such person to appear before such special court and produce all books and papers, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the circuit court may be punished by such court as a contempt thereof. A written record shall be kept of all testimony and other proceedings before such special court.

Either party to such contest feeling aggrieved by the final decision of such special court may present his petition in writing to the supreme court of appeals, or a judge thereof in vacation, within thirty days after such final decision is certified to the governor, as hereinbefore provided, praying for the suspension, setting aside, or vacation of such final decision. The applicant shall deliver, or cause to be delivered, a copy of such petition to the other party to such contest, or, in case of his absence from the state or from his usual place of abode, he shall mail, or cause to be mailed a copy of such petition addressed to his last known post-office address, before presenting the same to the court, or the judge. The court, or the judge, shall fix a time for the hearing on the application, but such hearing shall not be held sooner than five days, unless by agreement of the parties, after the presentation of such petition, and notice of the time and place of such hearing shall be forthwith delivered to the other party to such contest, or, in case of absence from the state or from his usual place of abode, such notice may be given by mailing, or causing to be mailed, the same, or a copy thereof, addressed to him at his last known post-office address. If the court, or the judge, after such hearing, be of the opinion that a suspending order should issue, the court in its, or the judge in his, discretion, may suspend such final decision and may require bond upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable; and the court, or the judge, shall fix a time for the final hearing on the application. The hearing of the matter shall take precedence over all other matters before the court. For such final hearing, and before the day fixed therefor, the special court shall file with the clerk of the supreme court of appeals all papers, documents, testimony, evidence, and records, or certified copies thereof, which were before it at the hearing resulting in the final decision from which the petitioner appeals, together with a copy in writing of its final decision; and, after argument by counsel, the court shall decide the matter in controversy, both as to the law and the evidence, as may seem to it to be just and right. The supreme court of appeals is hereby given jurisdiction to enforce the provisions of this section by writ of prohibition, mandamus and certiorari, as may be appropriate.

Acts 1863, c. 112; Acts 1872-3, c. 118; Acts 1882, c. 103; Acts 1916, 3rd Ex. Sess., c. 2, § 15; Acts 1963, c. 64.

§ 3-7-4. Contests of seats in Legislature; notices and procedure

Any person intending to contest the election of another as senator or delegate shall, within ten days after the election is certified, give him or her notice thereof in writing and a list of the votes he or she will dispute, with the

objections to each, and of the votes rejected for which he or she will contend. If the contestant objects to the legality of the election or the qualification of the person returned, the notice shall set forth the facts on which the objection is founded. The person whose election is contested shall, within ten days after receiving the notice, deliver to the contestant a like list of the votes he or she will dispute and of the objection to each, and of the rejected votes he or she will claim; and, if he or she has any objection to the qualification of the contestant, shall specify in the notice the facts on which the objection is founded. Each party shall append to the notice an affidavit that the matters therein set forth, so far as they are stated of his or her knowledge, are true and that, so far as they are stated on the information of others, he or she believes them to be true. If new facts are discovered by either party after he or she has given notice, he or she may give an additional notice or notices to his or her adversary, with specifications and affidavit as above prescribed.

The notice of contest shall be presented to the proper branch of the Legislature, within ten days after its meeting.

Acts 1863, c. 112; Acts 1872-3, c. 112; Acts 1872-3, c. 118; Acts 1882, c. 103, §§ 4, 6, 11; Acts 1963, c. 64; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

§ 3-7-5. Depositions; subpoenas; time; tie vote decision

Either party may begin to take the depositions in such contests for seats in the Legislature at any time after the delivery of the original notice by the contestant. But reasonable notice of every such deposition shall be given, and such notice shall specify the names of the witnesses to be examined. The depositions may be taken before a justice, notary, or any officer authorized to take depositions in civil suits; and the officer before whom they are taken shall certify and seal the same, and endorse his name across the place where they are sealed, and address and transmit the same, by mail or otherwise, to the clerk of the body in which the seat is contested. When the contest is referred to a committee, the clerk shall deliver the depositions to such committee for examination and report. The parties shall finish taking depositions five days at least before the second Wednesday of January next following. Neither party shall have the benefit of any deposition taken otherwise than as aforesaid, unless further time be given by resolution of the proper branch of the Legislature.

Subpoenas for witnesses shall be issued by the clerk of the circuit court, or by a justice, upon application of either party; and witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as if summoned to attend before the circuit court in civil suits.

If it be ascertained that an equal number of legal votes was given for the contestant and the person returned, the Senate or the House of Delegates, as the case may be, in which the contest is pending, shall declare which of them is elected.

Acts 1863, c. 112; Acts 1872-3, c. 118; Acts 1882, c. 103, §§ 7, 8, 9, 10, 12; Acts 1963, c. 64.

§ 3-7-6. County and district contests; notices; time

In all cases of contested elections, the county commission shall be the judge of the election, qualifications and returns of their own members and of all county and district officers: Provided, That a member of the county commission whose election is being contested may not participate in judging the election, qualifications and returns.

A person intending to contest the election of another to any county or district office, including judge of any court or any office that shall hereafter be created to be filled by the voters of the county or of any magisterial or other district therein, shall, within ten days after the result of the election is certified, give the contestee notice in writing of such intention and a list of the votes he will dispute, with the objections to each, and of the votes rejected for which he will contend. If the contestant objects to the legality of the election or the qualification of the person returned as elected, the notice shall set forth the facts on which such objection is founded. The person whose election is so contested shall, within ten days after receiving such notice, deliver to the contestant a like list of the votes he will dispute, with the objections to each, and of the rejected votes for which he will contend; and, if he has any objection to the qualification of the contestant, he shall specify in writing the facts on which the objection is founded. Each party shall append to his notice an affidavit that he verily believes the matters and things set forth to be true. If new facts be discovered by either party after he has given notice as aforesaid, he may, within ten days after such discovery, give an additional notice to his adversary, with the specifications and affidavit prescribed in this section.

The provisions of this section apply to all elections, including municipal elections, except that the governing body of the municipality is the judge of any contest of a municipal election.

Acts 1863, c. 100; Acts 1863, c. 112; Acts 1872-3, c. 118; Acts 1882, c. 103, §§ 1, 2; Acts 1882, c. 155; Acts 1891, c. 89, § 72; Acts 1963, c. 64; Acts 1995, c. 102, eff. 90 days after March 6, 1995; Acts 2002, c. 132, eff. Feb. 5, 2002.

§ 3-7-7. County court to hear county and district contests; procedure; review

The county court shall hear and decide election contests initiated pursuant to the provisions of the preceding section. Subpoenas for witnesses for either party shall be issued by the clerk of the county court, and served as in other cases, and the witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as witnesses attending a circuit court in a civil suit. The notice of contest shall be presented to the county court at its first term after the same is delivered to the person whose election is contested, and the same shall be docketed for trial in such court. At the trial of such contest, the court shall hear all such legal and proper evidence that may be brought before it by either party, and may, if deemed necessary, require the production of the poll books, certificates and ballots deposited with its clerk, and examine the same. The hearing may be continued by the court from time to time, if it be shown that justice and right require it, but not beyond three months from the day of election. At the final trial of such contest the court shall declare the true result of such election, and

cause the same to be entered on the records of the court. When the result of the election is declared, as aforesaid, a certified copy of the order declaring such result shall, if required, be delivered by the clerk of the court to the person declared elected, if such be the result of the trial, and such copy shall be received in all courts and places as legal evidence of the result of the election therein declared. Either the contestant or contestee shall have the right of appeal to the circuit court of the county from the final order or decision of the county court in such proceeding, upon the filing of a bond with good personal security, by the party desiring the appeal, to be approved by the county court, in a sum deemed sufficient by such court, with condition to the effect that the person proposing to appeal will perform and satisfy any judgment which may be rendered against him by the circuit court on such appeal. But such appeal shall not be granted unless the party desiring the appeal shall make application for such appeal, and file such bond, within thirty days from the entering of the final order in such proceeding; and the circuit court may at any time require a new bond or increase the penalty thereof when the court deems it necessary. When such appeal is taken to the circuit court, as hereinbefore provided, it shall be heard and determined upon the original papers, evidence, depositions and records filed before and considered by the county court, and the circuit court shall decide the contest upon the merits. From the decision of the circuit court, an appeal shall lie to the supreme court of appeals, as in other cases, but such appeal shall be heard upon the original papers and copies of all orders made, without requiring the same to be printed.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1882, c. 103; Acts 1901, c. 80, § 3; Acts 1963, c. 64.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 3-7-8. Correction of returns; extent

Though illegal votes be received, or legal votes be rejected, at any place of voting, the returns of the votes taken at such place shall not be set aside for that cause, but it may be shown, by proper evidence before the tribunal authorized by law to hear and determine contested elections, for whom such illegal votes or any of them were cast, or for whom the legal votes which were rejected would have been given, and the returns shall be corrected only to the extent that it is so shown.

Acts 1872-3, c. 118; Acts 1882, c. 155; Acts 1891, c. 89, § 73; Acts 1963, c. 64.

§ 3-7-9. Costs in election contests

The cost of every contested election shall include only the expenses of serving notices, taking depositions and the allowances to witnesses; and shall be noted at the foot of every deposition or set of depositions, by the person taking the same. If the contestant fails in setting aside the election, there shall be awarded against him the amount of such costs incurred or expended by the person who was returned or declared elected. Otherwise, each party shall pay his own costs; unless it appears that the person returned or declared elected was guilty of fraud or malpractice in the election, or in procuring

such return or declaration, in which case costs shall be awarded against him in favor of the contestant. Where costs are awarded in favor of either party, the amount thereof shall be ascertained under direction of the house joint session, or court, which decides the case, and a certificate thereof, authenticated by the signature of the presiding officer, shall be delivered to the party in whose favor they are awarded, which certificate shall have the force of a judgment, and if such costs be not paid within ten days after the date thereof, the clerk of the circuit court, of the county in which the party against whom the costs were awarded resides, may issue execution on such certificate, upon its delivery to such clerk, in like manner as upon a judgment of the circuit court. But no person contesting the seat of another in the Legislature shall be entitled to pay or mileage if the contest fails.

Acts 1863, c. 112; Acts 1872-3, c. 118; Acts 1882, c. 103, §§ 3, 16; Acts 1901, c. 80, § 3; Acts 1963, c. 64.

ARTICLE 8

REGULATION AND CONTROL OF ELECTIONS

Section

3-8-1. Provisions to regulate and control elections.

3-8-1a. Definitions.

3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

3-8-2a. Detailed accounts and verified financial statements for certain inaugural events; limitations; reporting requirements.

3-8-2b. Disclosure of electioneering communication.

3-8-3. Committee treasurers; required to receive and disburse funds.

3-8-4. Treasurers and financial agents; written designation requirements.

3-8-4a. Termination of political committees.

3-8-5. Detailed accounts and verified financial statements required.

3-8-5a. Information required in financial statement.

3-8-5b. Where financial statements shall be filed; filing date prescribed.

3-8-5c. Repealed.

3-8-5d. Offenses and penalties.

3-8-5e. Precandidacy financing and expenditures.

3-8-5f. Loans to candidates, organizations or persons for election purposes.

3-8-6. Financial statement forms; filing; disposition.

3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

3-8-10. Use of certain contributions.

3-8-11. Specific acts forbidden; penalties.

3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty.

3-8-13. Parties liable and subject to penalties.

3-8-14. Effective date of certain criminal offenses.

§ 3-8-1. Provisions to regulate and control elections

(a) The Legislature finds that:

(1) West Virginia's population is 1,808,344, ranking 37th among the fifty states.

(2) State Senate districts have a population of approximately one hundred six thousand three hundred seventy-three, and the average Delegate district has a population of approximately thirty-one thousand, one hundred seventy-eight. The size of these districts is substantially smaller than the United States Senatorial and Congressional Districts.

(3) When the relatively small size of the State's legislative and other voting districts is combined with the economics and typical uses of various forms of electioneering communication, history shows that non-broadcast media is and will continue to be a widely used means of making campaign related communications to target relevant audiences. Consequently, non-broadcast communications are prevalent during elections.

(4) Disclosure provisions are appropriate legislative weapons against the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions, and the ceilings imposed accordingly serve the basic governmental interest in safeguarding the integrity of the electoral process without directly impinging upon the rights of individual citizens and candidates to engage in political debate and discussion.

(5) Disclosure of expenditures serve a substantial governmental interest in

informing the electorate and preventing the corruption of the political process.

(6) Disclosure by persons and entities that make expenditures for communications that expressly advocate the election or defeat of clearly identified candidates, or perform its functional equivalent, is a reasonable and minimally restrictive method of furthering First Amendment values by public exposure of the state election system.

(7) Failing to regulate non-broadcast media messages would permit those desiring to influence elections to avoid the principles and policies that are embodied in existing state law.

(8) The regulation of the various types of non-broadcast media in addition to broadcast media, is tailored to meet the circumstances found in the State of West Virginia.

(9) Non-broadcast media such as newspapers, magazines or other periodicals have proven to be effective means of election communication in West Virginia. Broadcast, satellite and non-broadcast media have all been used to influence election outcomes.

(10) Certain non-broadcast communications, such as newspaper inserts, can be more effective campaign methods than broadcast media because such communications can be targeted to registered voters or historical voters in the particular district. In contrast, broadcasted messages reach all of the general public, including person ineligible to vote in the district.

(11) Non-broadcast media communications in the final days of a campaign can be particularly damaging to the public's confidence in the election process because they reduce or make impossible an effective response.

(12) Identifying those funding non-broadcast media campaigns in the final days of a campaign may at least permit voters to evaluate the credibility of the message.

(13) In West Virginia, contributions up to the amounts specified in this article allow contributors to express their opinions, level of support and their affiliations.

(14) In West Virginia, campaign expenditures by entities and persons who are not candidates have been increasing. Public confidence is eroded when substantial amounts of such money, the source of which is hidden or disguised, is expended. This is particularly true during the final days of a campaign.

(15) In West Virginia, contributions to political organizations, defined in Section 527(e)(1) of the Internal Revenue Code of 1986, substantially larger than the amounts permitted to be received by a candidate's political committee have been recorded and are considered by the legislature to be large contributions.

(16) Independent expenditures intended to influence candidates' campaigns in the state are increasingly utilizing non-broadcast media to support or defeat candidates.

(17) Identification of persons or entities funding political advertisements assists in enforcement of the contribution and expenditure limitations established by this article and simply informs voters of the actual identities of persons or entities advocating the election or defeat of candidates.

(18) Identification of persons or entities funding political advertisements allows voters to evaluate the credibility of the message contained in the advertisement.

(19) Disclosure of the identity of persons or entities funding political communications regarding candidates bolsters the right of listeners to be fully informed.

(b) Political campaign contributions, receipts and expenditures of money, advertising, influence and control of employees, and other economic, political and social control factors incident to primary, special and general elections shall be regulated and controlled by the provisions of this article and other applicable provisions of this chapter.

Acts 1963, c. 64; Acts 2008, 2nd Ex. Sess., c. 13, eff. Sept. 26, 2008; Acts 2010, c. 76, eff. June 11, 2010.

§ 3-8-1a. Definitions

As used in this article, the following terms have the following definitions:

(1) "Ballot issue" means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits or any other question that is placed before the voters for a binding decision.

(2) "Broadcast, cable or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system or satellite system.

(3) "Candidate" means an individual who:

(A) Has filed a certificate of announcement under section seven, article five of this chapter or a municipal charter;

(B) Has filed a declaration of candidacy under section twenty-three, article five of this chapter;

(C) Has been named to fill a vacancy on a ballot; or

(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county or municipal office or party office to be filled at any primary, general or special election.

(4) "Candidate's committee" means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid

his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(5) "Clearly identified" means that the name, nickname, photograph, drawing or other depiction of the candidate appears or the identity of the candidate is otherwise apparent through an unambiguous reference, such as "the Governor," "your Senator" or "the incumbent" or through an unambiguous reference to his or her status as a candidate, such as "the Democratic candidate for Governor" or "the Republican candidate for Supreme Court of Appeals."

(6) "Contribution" means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: *Provided*, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

(7) "Corporate political action committee" means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

(8) "Direct costs of purchasing, producing or disseminating electioneering communications" means:

(A) Costs charged by a vendor, including, but not limited to, studio rental time, compensation of staff and employees, costs of video or audio recording media and talent, material and printing costs and postage; or

(B) The cost of air time on broadcast, cable or satellite radio and television stations, the costs of disseminating printed materials, studio time, use of facilities and the charges for a broker to purchase air time.

(9) "Disclosure date" means either of the following:

(A) The first date during any calendar year on which any electioneering communication is disseminated after the person paying for the communication has spent a total of $5,000 or more for the direct costs of purchasing, producing or disseminating electioneering communications; or

(B) Any other date during that calendar year after any previous disclosure date on which the person has made additional expenditures totaling $5,000 or more for the direct costs of purchasing, producing or disseminating electioneering communications.

(10) "Election" means any primary, general or special election conducted under the provisions of this code or under the charter of any municipality at which the voters nominate or elect candidates for public office. For purposes of

this article, each primary, general, special or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term "nomination" as used in this article.

(11)(A) "Electioneering communication" means any paid communication made by broadcast, cable or satellite signal, or published in any newspaper, magazine or other periodical that:

(i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals or the Legislature;

(ii) Is publicly disseminated within:

(I) Thirty days before a primary election at which the nomination for office sought by the candidate is to be determined; or

(II) Sixty days before a general or special election at which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate: *Provided*, That for purposes of the general election of 2008 the amendments to this article are effective October 1, 2008.

(B) "Electioneering communication" does not include:

(i) A news story, commentary or editorial disseminated through the facilities of any broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical publication not owned or controlled by a political party, political committee or candidate: *Provided*, That a news story disseminated through a medium owned or controlled by a political party, political committee or candidate is nevertheless exempt if the news is:

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing or listening area;

(ii) Activity by a candidate committee, party executive committee or caucus committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to section five of this article or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: *Provided,* That independent expenditures by a party executive committee or caucus committee or a political action committee required to be reported pursuant to subsection (b), section two of this article are not exempt from the reporting requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986;

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organization, in existence prior to the date on which the individual named or depicted became a candidate, made in a newsletter or other communication distributed only to bona fide members of that organization;

(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate or his or her status as a candidate; or

(viii) A communication, such as a voter's guide, which refers to all of the candidates for one or more offices, which contains no appearance of endorsement for or opposition to the nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

(12) "Expressly advocating" means any communication that:

(A) Uses phrases such as "vote for the Governor," "re-elect your Senator," "support the Democratic nominee for Supreme Court," "cast your ballot for the Republican challenger for House of Delegates," "Smith for House," "Bob Smith in j04," "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory," "defeat" accompanied by a picture of one or more candidates, "reject the incumbent";

(B) Communications of campaign slogans or individual words, that can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc., which say "Smith's the One," "Jones '06," "Baker", etc; or

(C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

(13) "Financial agent" means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(14) "Fund-raising event" means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

(15) "Independent expenditure" means an expenditure by a person:

(A) Expressly advocating the election or defeat of a clearly identified candidate; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee or a political party committee or its agents.

Supporting or opposing the election of a clearly identified candidate includes supporting or opposing the candidates of a political party. An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

(16) "Membership organization" means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors and the ability to hold office, to its members and which uses a majority of its membership dues for purposes other than political purposes. "Membership organization" does not include organizations that grant membership upon receiving a contribution.

(17) "Name" means the full first name, middle name or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

(18) "Person" means an individual, corporation, partnership, committee, association and any other organization or group of individuals.

(19) "Political action committee" means a committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates. The following are types of political action committees:

(A) A corporate political action committee, as that term is defined by subdivision (8) of this section;

(B) A membership organization, as that term is defined by subdivision(18) of this section;

(C) An unaffiliated political action committee, as that term is defined by subdivision (29) of this section.

(20) "Political committee" means any candidate committee, political action committee or political party committee.

(20) "Political party" means a political party as that term is defined by section eight, article one of this chapter or any committee established, financed, maintained or controlled by the party, including any subsidiary, branch or local unit thereof and including national or regional affiliates of the party.

(22) "Political party committee" means a committee established by a political party or political party caucus for the purposes of engaging in the influencing

of the election, nomination or defeat of a candidate in any election.

(23) "Political purposes" means supporting or opposing the nomination, election or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party and determining the advisability of becoming a candidate under the precandidacy financing provisions of this chapter.

(24) "Targeted to the relevant electorate" means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by one hundred forty thousand or more individuals in the state in the case of a candidacy for statewide office, eight thousand two hundred twenty or more individuals in the district in the case of a candidacy for the State Senate and two thousand four hundred ten or more individuals in the district in the case of a candidacy for the House of Delegates.

(25) "Two-year election cycle" means the twenty-four month period that begins the day after a general election and ends on the day of the subsequent general election.

(26) "Unaffiliated political action committee" means a political action committee that is not affiliated with a corporation or a membership organization.

Acts 2005, 4th Ex. Sess., c. 9, eff. Sept. 13, 2005; Acts 2006, c. 93, eff. March 11, 2006; Acts 2007, c. 106, eff. June 7, 2007; Acts 2008, 2nd Ex. Sess., c. 13, eff. Sept. 26, 2008; Acts 2010, c. 76, eff. June 11, 2010.

§ 3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures

(a) Except for: (1) Candidates for party committeeman and committeewoman; and (2) federal committees required to file under the provisions of 2 U.S.C.§ 434, all candidates for nomination or election and all persons supporting, aiding or opposing the nomination, election or defeat of any candidate shall keep for a period of six months records of receipts and expenditures which are made for political purposes. All of the receipts and expenditures are subject to regulation by the provisions of this article. Verified financial statements of the records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives or any person acting for and on behalf of any candidate and by the treasurers of all political party committees.

(b)(1) In addition to any other reporting required by the provisions of this chapter,, any person who makes independent expenditures in an aggregate amount or value in excess of $1,000 during a calendar year shall file a disclosure statement, on a form prescribed by the Secretary of State, that contains all of the following information:

(A) The name of (i) the person making the expenditure; (ii) the name of any person sharing or exercising direction or control over the activities of the person making the expenditure; and (iii) the name of the custodian of the

books and accounts of the person making the expenditure;

(B) If the person making the expenditure is not an individual, the principal place of business of the partnership, corporation, committee, association, organization or group which made the expenditure;

(C) The amount of each expenditure of more than $1,000 made during the period covered by the statement and the name of the person to whom the expenditure was made;

(D) The elections to which the independent expenditure pertain, the names, if known, of the candidates referred to or to be referred to therein, whether the expenditure is intended to support or oppose the identified candidates and the amount of the total expenditure reported pursuant to paragraph (C) of this subdivision spent to support or oppose each of the identified candidates;

(E) The name and address of any person who contributed a total of more than $250 between the first day of the preceding calendar year, and the disclosure date, and whose contributions were made for the purpose of furthering the expenditure.

(F) With regard to the contributors required to be listed pursuant to paragraph (E) of this subdivision, the statement shall also include:

(i) The month, day and year that the contributions of any single contributor exceeded $250;

(ii) If the contributor is a political action committee, the name and address the political action committee registered with the Secretary of State, county clerk or municipal clerk;

(iii) If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual's current employer, if any, or, if the individual is self-employed, the name and address of the individual's business, if any;

(iv) A description of the contribution, if other than money; and

(v) The value in dollars and cents of the contribution.

(G)(1) A certification that such independent expenditure was not made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such candidate.

(2) Any person who makes a contribution for the purpose of funding an independent expenditure under this subsection shall, at the time the contribution is made, provide his or her name, address, occupation, his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(3) The Secretary of State shall expeditiously prepare indices setting forth, on a candidate-by-candidate basis, all independent expenditures separately, made by, or on behalf of, or for, or against each candidate, as reported under this subsection, and for periodically publishing such indices on a timely

pre-election basis.

(c)(1) A person, including a political committee, who makes or contracts to make independent expenditures aggregating $1,000 or more for any statewide, legislative or multi-county judicial candidate or $500 or more for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, after the fifteenth day, but more than twelve hours, before the date of an election, shall file a report on a form prescribed by the Secretary of State, describing the expenditures within twenty-four hours: *Provided*, That a person making expenditures in the amount of $1,000 or more for any statewide or legislative candidate on or after the fifteenth day but more than twelve hours before the day of any election shall report such expenditures in accordance with section two-b of this article and shall not file an additional report as provided herein.

(2) Any person who files a report under subdivision (1) of this subsection, shall file an additional report within twenty-four hours after each time the person makes or contracts to make independent expenditures aggregating an additional $500 with respect to the same election, for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, as that to which the initial report relates.

(d)(1) A person, including a political committee, who makes or contracts to make independent expenditures aggregating $10,000 or more at any time up to and including the fifteenth day before the date of an election shall file a report on a form prescribed by the Secretary of State, describing the expenditures within forty-eight hours.

(2) A person who files a report under subdivision (1) of this subsection, the person shall file an additional report within forty-eight hours after each time the person makes or contracts to make independent expenditures aggregating an additional $10,000 with respect to the same election as that to which the initial report relates.

(e) Any communication paid for by an independent expenditure must include a clear and conspicuous public notice that:

(1) Clearly states that the communication is not authorized by the candidate or the candidate's committee; and

(2) Clearly identifies the person making the expenditure: *Provided*, That if the communication appears on or is disseminated by broadcast, cable or satellite transmission, the statement required by this subsection must be both spoken clearly and appear in clearly readable writing at the end of the communication.

(f) Any person who has spent a total of $5,000 or more for the direct costs of purchasing, producing or disseminating electioneering communications during any calendar year shall maintain all financial records and receipts related to such expenditure for a period of six months following the filing of a disclosure pursuant to subsection (a) of this section and, upon request, shall make such records and receipts available to the Secretary of State or county clerk for

the purpose of an audit as provided in section seven of this article.

(g) Any person who willfully fails to comply with this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500, or confined in jail for not more than one year, or both fined and confined.

(h)(1) Any person who is required to file a statement under this section may file the statement by facsimile device or electronic mail, in accordance with such rules as the Secretary of State may promulgate.

(2) The Secretary of State shall make any document filed electronically pursuant to this subsection accessible to the public on the internet not later than twenty-four hours after the document is received by the secretary.

(3) In promulgating a rule under this subsection, the secretary shall provide methods, other than requiring a signature on the document being filed, for verifying the documents covered by the rule. Any document verified under any of the methods shall be treated for all purposes, including penalties for perjury, in the same manner as a document verified by signature.

(i) This section does not apply to candidates for federal office.

(j) The Secretary of State may promulgate emergency and legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section.

Acts 1908, c. 22; Acts 1915, c. 27, § 1; Acts 1963, c. 64; Acts 1973, c. 49; Acts 1976, c. 46; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2005, 4th Ex. Sess., c. 9, eff. Sept. 13, 2005; Acts 2007, c. 106, eff. June 7, 2007; Acts 2010, c. 76, eff. June 11, 2010.

§ 3-8-2a. Detailed accounts and verified financial statements for certain inaugural events; limitations; reporting requirements

(a) For purposes of this section:

(1) "Inaugural committee" includes any person, organization or group of persons soliciting or receiving contributions for the purpose of funding an inaugural event for a person elected to a statewide public office; and

(2) "Inaugural event" means any event or events held between the general election of a person elected to a statewide public office and ninety days after the general election, whether the event is sponsored by the inaugural committee or the state political party committee representing the party of the person elected and for which the person elected is a prominent participant or for which solicitations of contributions include the name of the person elected in prominent display.

(b) Any inaugural committee soliciting or receiving contributions for the funding of all or any part of an inaugural event for any person elected to a statewide office that receives an individual contribution in excess of two hundred fifty dollars for any such event shall file and retain detailed records of any such contribution.

(c) No person may contribute more than five thousand dollars for any inaugural event. For purposes of this section, "contribution" does not include volunteer personal services but does include in-kind contributions of materials or supplies.

(d) Any inaugural committee, financial agent or any person or officer acting on behalf of such committee which is subject to the provisions of this section shall file a verified financial statement with the Secretary of State on a form prescribed by the state election commission within ninety days of the event. The financial statement shall contain information as may be required by the provisions of this section relating to any contribution in excess of two hundred fifty dollars. The Secretary of State shall file and retain such statements as public records for a period of not less than six years.

(e) In addition to any other information required by the state election commission, the report of contributions required by the provisions of this section shall include the methodology of the fund raising, the nature of the expenditures made and the names, addresses and amounts paid to any person.

(f) Amounts received by an inaugural committee for any person elected to a statewide public office in excess of the amount expended for an inaugural event may be contributed to any educational, cultural or charitable organization, or to the governor's mansion fund created in section two, article four, chapter five-a of this code. The inaugural committee shall, within sixty days after filing the report required by subsection (d) of this section, expend any excess moneys and report, on a form prescribed by the Secretary of State, any amounts contributed to the governor's mansion fund, any amounts contributed to educational, cultural or charitable organizations and the names of the organizations to which such excess moneys were contributed. The Secretary of State shall file and retain such records as public records for a period of not less than six years.

Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2005, 1st Ex. Sess., c. 2, eff. Jan. 27, 2005.

§ 3-8-2b. Disclosure of electioneering communication

(a) Every person who has spent:

(1) A total of five thousand dollars or more for the direct costs of purchasing, producing or disseminating electioneering communications during any calendar year; or

(2) A total of one thousand dollars or more on or after the fifteenth day but more than twelve hours before the day of any election for the direct costs of purchasing, producing or disseminating electioneering communications during any calendar year shall, within twenty-four hours of each disclosure date, file with the Secretary of State a statement which contains all of the information listed in subsection (b) of this section.

(b)(1) The name of the person making the expenditure, the name of any person sharing or exercising direction or control over the activities of the person

making the expenditure and the name of the custodian of the books and accounts of the person making the expenditure;

(2) If the person making the expenditure is not an individual, the principal place of business of the partnership, committee, association, organization or group which made the expenditure;

(3) The amount of each expenditure of more than one thousand dollars made for electioneering communications during the period covered by the statement and the name of the person to whom the expenditure was made;

(4) The elections to which the electioneering communications pertain, the names, if known, of the candidates referred to or to be referred to therein, whether the electioneering communication is intended to support or oppose the identified candidates and the amount of the total expenditure reported in subdivision (3) of this subsection spent to support or oppose each of the identified candidates; and

(5) The names and addresses of any contributors who contributed a total of more than one thousand dollars between the first day of the preceding calendar year and the disclosure date and whose contributions were used to pay for electioneering communications.

(c) With regard to the contributors required to be listed pursuant to subdivision (5), subsection (b) of this section, the statement shall also include:

(1) The month, day and year that the contributions of any single contributor exceeded two hundred fifty dollars;

(2) If the contributor is a political action committee, the name and address the political action committee registered with the State Election Commission;

(3) If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual's current employer, if any, or, if the individual is self-employed, the name and address of the individual's business, if any;

(4) A description of the contribution, if other than money;

(5) The value in dollars and cents of the contribution.

(d)(1) Any person who makes a contribution for the purpose of funding the direct costs of purchasing, producing or disseminating an electioneering communication under this section shall, at the time the contribution is made, provide his or her name and address to the recipient of the contribution;

(2) Any individual who makes contributions totaling two hundred fifty dollars or more between the first day of the preceding calendar year and the disclosure date for the purpose of funding the direct costs of purchasing, producing or disseminating electioneering communications shall, at the time the contribution is made, provide the name of his or her occupation and of his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(e) In each electioneering communication, a statement shall appear or be presented in a clear and conspicuous manner that:

(1) Clearly indicates that the electioneering communication is not authorized by the candidate or the candidate's committee; and

(2) Clearly identifies the person making the expenditure for the electioneering communication: *Provided,* That if the electioneering communication appears on or is disseminated by broadcast, cable or satellite transmission, the statement required by this subsection must be both spoken clearly and appear in clearly readable writing at the end of the communication.

(f) Within five business days after receiving a disclosure of electioneering communications statement pursuant to this section, the Secretary of State shall make information in the statement available to the public through the internet.

(g) For the purposes of this section, a person is considered to have made an expenditure when the person has entered into a contract to make the expenditure at a future time.

(h) The Secretary of State is hereby directed to propose legislative rules and emergency rules implementing this section for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(i) If any person, including, but not limited to, a political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) makes, or contracts to make, any expenditure for electioneering communications which is coordinated with and made with the cooperation, consent or prior knowledge of a candidate, candidate's committee or agent of a candidate, the expenditure shall be treated as a contribution and expenditure by the candidate. If the expenditure is coordinated with and made with the cooperation or consent of a state or local political party or committee, agent or official of that party, the expenditure shall be treated as a contribution to and expenditure by the candidate's party.

(j) This section does not apply to candidates for federal office. This section is not intended to restrict or to expand any limitations on, obligations of or prohibitions against any candidate, committee, agent, contributor or contribution contained in any other provision of this chapter.

Acts 2005, 4th Ex. Sess., c. 9, eff. Sept. 13, 2005; Acts 2006, c. 93, eff. March 11, 2006; Acts 2007, c. 106, eff. June 7, 2007.

§ 3-8-3. Committee treasurers; required to receive and disburse funds

Every political committee shall appoint and retain a treasurer to receive, keep and disburse all sums of money which may be collected or received by such committee, or by any of its members, for election expenses, and, unless such treasurer is first appointed and thereafter retained, it shall be unlawful for any such committee or any of its members to collect, receive or disburse money for any such purposes. All moneys collected or received by any such committee, or by any of its members, for election expenses shall be paid over to, and pass

through the hands of, the treasurer, and shall be disbursed by him, and it shall be unlawful for any such committee, or any of its members, to disburse any money for election expenses unless such money shall be paid to, and disbursed by, the treasurer. The same person may be designated to act as treasurer for two or more political party committees.

Acts 1908, c. 22; Acts 1915, c. 27, § 3; Acts 1963, c. 64; Acts 2007, c. 106, eff. June 7, 2007.

§ 3-8-4. Treasurers and financial agents; written designation requirements

(a) No person may act as the treasurer of any political action committee or political party committee supporting, aiding or opposing the nomination, election or defeat of any candidate for an office encompassing an election district larger than a county unless a written statement of organization, on a form to be prescribed by the Secretary of State, is filed with the Secretary of State at least twenty-eight days before the election at which that person is to act as a treasurer and is received by the Secretary of State before midnight, eastern standard time, of that day or, if mailed, is postmarked before that hour. The form shall include the name of the political committee; the name of the treasurer; the mailing address, telephone number and e-mail address, if applicable, of the committee and of the treasurer if different from the committee information; the chairman of the committee; the affiliate organization, if any; type of committee affiliation, as defined in subdivisions (21) and (24), section one-a of this article, if any; and whether the committee will participate in statewide, county or municipal elections. The form shall be certified as accurate and true and signed by the chairman and the treasurer of the committee: *Provided,* That a change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(b) No person may act as the treasurer for any candidate for nomination or election to any statewide office, or to any office encompassing an election district larger than a county or to any legislative office unless a written statement designating that person as the treasurer or financial agent is filed with the Secretary of State at least twenty-eight days before the election at which that person is to act as a treasurer and is received by the Secretary of State before midnight, eastern standard time, of that day or if mailed, is postmarked before that hour: *Provided*, That a change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(c) No person may act as treasurer of any committee or as financial agent for any candidate to be nominated or elected by the voters of a county or a district therein, except legislative candidates, or as the financial agent for a candidate for the nomination or election to any other office, unless a written statement designating him or her as the treasurer or financial agent is filed with the clerk of the county commission at least twenty-eight days before the election at which he or she is to act and is received before midnight, eastern standard time, of that day or if mailed, is postmarked before that hour: *Provided*, That a change of treasurer may be made at any time by filing a written statement with the clerk of the county commission.

(d) Notwithstanding the provisions of subsections (a), (b) and (c) of this

section, a filing designating a treasurer for a state or county political executive committee may be made anytime before the committee either accepts or spends funds. Once a designation is made by a state or county political executive committee, no additional designations are required under this section until a successor treasurer is designated. A state or county political executive committee may terminate a designation made pursuant to this section by making a written request to terminate the designation and by stating in the request that the committee has no funds remaining in the committee's account. This written request shall be filed with either the Secretary of State or the clerk of the county commission as provided by subsections (a), (b) and (c) of this section.

Acts 1908, c. 22; Acts 1915, c. 27, §§ 2, 4; Acts 1941, c. 41; Acts 1963, c. 64; Acts 1976, c. 47; Acts 1989, c. 72; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2005, 4th Ex. Sess., c. 9, eff. Sept. 13, 2005; Acts 2007, c. 106, eff. June 7, 2007; Acts 2008, 2nd Ex. Sess., c. 13, eff. Sept. 26, 2008.

§ 3-8-4a. Termination of political committees

(a) A political committee may terminate by filing a written request, in accordance with the provisions of section four of this article, and by stating in the request that it will no longer receive any contributions or make any disbursements and that it has no outstanding debts or obligations. At such time, any excess funds of the committee may be transferred to a political committee established by the same candidate pursuant to the provisions of section four or five-e of this article.

(b) The provisions of this section may not be construed to eliminate or limit the authority of the secretary of state, in consultation with the state election commission, to establish procedures for: (1) The determination of insolvency with respect to any political committee; (2) the orderly liquidation of an insolvent political committee and the orderly application of its assets for the reduction of outstanding debts; and (3) the termination of an insolvent political committee after such liquidation and application of assets.

(c) Notwithstanding any other provision of this code, any political committee which has been terminated within three years prior to the effective date of the reenactment of this section during the regular session of the Legislature in the year two thousand two, pursuant to a written request made in accordance with the provisions of section four of this article, may file a written request and be authorized by the secretary of state to reestablish the political committee. Any request to reestablish a political committee pursuant to the provisions of this subsection must be filed on or before the first day of July, two thousand two. The provisions of this subsection may not be construed to increase the maximum contribution authorized during an election cycle, as provided in section twelve of this article.

Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 2002, c. 132, eff. Feb. 5, 2002.

§ 3-8-5. Detailed accounts and verified financial statements required

(a) Every candidate, treasurer, person and association of persons, organization

of any kind, including every corporation, directly, or by an independent expenditure, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by this section and also including the treasurer or equivalent officer of the association or organization, expressly advocating the election or defeat of a clearly identified candidate for state, district, county or municipal office, and the treasurer of every political committee shall keep detailed accounts of every sum of money or other thing of value received by him or her, including all loans of money or things of value and of all expenditures and disbursements made, liabilities incurred, by the candidate, financial agent, person, association or organization or committee, for political purposes, or by any of the officers or members of the committee, or any person acting under its authority or on its behalf.

(b) Every person or association of persons required to keep detailed accounts under this section shall file with the officers hereinafter prescribed a detailed itemized sworn statement:

(1) Of all financial transactions, whenever the total exceeds $500, which have taken place before the last Saturday in March, to be filed within six days thereafter and annually whenever the total of all financial transactions relating to an election exceeds $500;

(2) Of all financial transactions which have taken place before the fifteenth day preceding each primary or other election and subsequent to the previous statement, if any, to be filed within four business days after the fifteenth day;

(3) Of all financial transactions which have taken place before the thirteenth day after each primary or other election and subsequent to the previous statement, if any, to be filed within twenty business days after the thirteenth day; and

(4) Of all financial transactions, whenever the total exceeds $500 or whenever any loans are outstanding, which have taken place before the forty-third day preceding the general election day, to be filed within four business days after the forty-third day.

(c) Every person who announces as a write-in candidate for any elective office and his or her financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of the person's candidacy has been made.

(d) For purposes of this section, the term "financial transactions" includes all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate to be voted on.

(e) Candidates for the office of conservation district supervisor elected pursuant to the provisions of article twenty-one-a, chapter nineteen of this code are required to file only the reports required by subdivisions (2) and (3), subsection (b) of this section immediately prior to and after the primary election: Provided, That during the election in the year 2008, the statements

required by this subsection shall be filed immediately prior to and after the general election.

Acts 1908, c. 22; Acts 1915, c. 27, §§ 5, 6; Acts 1941, c. 41; Acts 1963, c. 64; Acts 1976, c. 47; Acts 1978, c. 43; Acts 1980, c. 49; Acts 1985, c. 72; Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2005, c. 6, eff. April 9, 2005; Acts 2007, c. 106, eff. June 7, 2007; Acts 2008, 2nd Ex. Sess., c. 13, eff. Sept. 26, 2008; Acts 2009, c. 94, eff. July 10, 2009.

§ 3-8-5a. Information required in financial statement

(a) Each financial statement required by the provisions of this article, other than a disclosure of electioneering communications pursuant to section two-b of this article, shall contain only the following information:

(1) The name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person and the name, address and telephone number of each association, organization or committee filing a financial statement.

(2) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(3) The name of any person making a contribution and the amount of the contribution. If the total contributions of any one person in any one election cycle amount to more than two hundred fifty dollars, the residence and mailing address of the contributor and, if the contributor is an individual, his or her major business affiliation and occupation shall also be reported. A contribution totaling more than fifty dollars of currency of the United States or currency of any foreign country by any one contributor is prohibited and a violation of section five-d of this article. The statement on which contributions are required to be reported by this subdivision may not distinguish between contributions made by individuals and contributions made by partnerships, firms, associations, committees, organizations or groups.

(4) The total amount of contributions received during the period covered by the financial statement.

(5) The name, residence and mailing address of any individual or the name and mailing address of each lending institution making a loan or of the spouse cosigning a loan, as appropriate, the amount of any loan received, the date and terms of the loan, including the interest and repayment schedule, and a copy of the loan agreement.

(6) The name, residence and mailing address of any individual or the name and mailing address of each partnership, firm, association, committee, organization or group having previously made or cosigned a loan for which payment is made or a balance is outstanding at the end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(7) The total outstanding balance of all loans at the end of the period.

(8) The name, residence and mailing address of any person to whom each expenditure was made or liability incurred, including expenditures made on behalf of a candidate or political committee that otherwise are not made directly by the candidate or political committee, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

(9) The total expenditure for the nomination, election or defeat of a candidate or any person supporting, aiding or opposing the nomination, election or defeat of any candidate in whose behalf an expenditure was made or a contribution was given for the primary or other election.

(10) The total amount of expenditures made during the period covered by the financial statement.

(b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a beginning balance in the next financial statement.

(c) Each financial statement required by this section shall contain a separate section setting forth the following information for each fund-raising event held during the period covered by the financial statement:

(1) The type of event, date held and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (3), subsection (a) of this section.

(3) The total of all moneys received at the fund-raising event.

(4) The expenditures incident to the fund-raising event.

(5) The net receipts of the fund-raising event.

(d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.

(e) Any contribution or expenditure made by or on behalf of a candidate for public office, to any other candidate or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person may make any contribution except from his, her or its own funds, unless such person discloses in writing to the person required to report under this section the name, residence, mailing address, major business affiliation and occupation of the person which furnished the funds to the contributor. All such disclosures shall be included in the statement required by this section.

(g) Any firm, association, committee or fund permitted by section eight of this article to be a political committee shall disclose on the financial statement

its corporate or other affiliation.

(h) No contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor's identity.

(i) No person may accept any contribution for the purpose of influencing the nomination, election or defeat of a candidate or for the passage or defeat of any ballot issue unless the identity of the donor and the amount of the contribution is known and reported.

(j) When any person receives an anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the General Revenue Fund of the state. Any anonymous contribution shall be recorded as such on the candidate's financial statement, but may not be expended for election expenses. At the time of filing, the financial statement shall include a statement of distribution of anonymous contributions, which total amount shall equal the total of all anonymous contributions received during the period.

(k) Any membership organization which raises funds for political purposes by payroll deduction, assessing them as part of its membership dues or as a separate assessment, may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals twenty-five dollars or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals twenty-five dollars or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through payroll deductions during the reporting period and, to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues, or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.

(l) Notwithstanding the provisions of section five of this article or of the provisions of this section to the contrary, an alternative reporting procedure may be followed by a political party committee in filing financial reports for fund-raising events if the total profit does not exceed five thousand dollars per year. A political party committee may report gross receipts for the sale of food, beverages, services, novelty items, raffle tickets or memorabilia,

except that any receipt of more than fifty dollars from an individual or organization shall be reported as a contribution. A political party committee using this alternative method of reporting shall report:

(i) The name of the committee;

(ii) The type of fund-raising activity undertaken;

(iii) The location where the activity occurred;

(iv) The date of the fundraiser;

(v) The name of any individual who contributed more than fifty dollars worth of items to be sold;

(vi) The name and amount received from any person or organization purchasing more than fifty dollars worth of food, beverages, services, novelty items, raffle tickets or memorabilia;

(vii) The gross receipts of the fundraiser; and

(viii) The date, amount, purpose and name and address of each person or organization from whom items with a fair market value of more than fifty dollars were purchased for resale.

Acts 1976, c. 47; Acts 1978, c. 43; Acts 1985, c. 72; Acts 1991, c. 69; Acts 1994, c. 59; Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2005, c. 9, eff. Sept. 13, 2005; Acts 2007, c. 106, eff. June 7, 2007.

§ 3-8-5b. Where financial statements shall be filed; filing date prescribed

(a) The financial statements provided for in this article shall be filed, by or on behalf of candidates, with:

(1) The Secretary of State for legislative offices and for statewide and other offices to be nominated or elected by the voters of a political division greater than a county;

(2) The clerk of the county commission by candidates for offices to be nominated or elected by the voters of a single county or a political division within a single county; or

(3) The proper municipal officer by candidates for office to be nominated or elected to municipal office.

(b) The statements may be filed by mail, in person, or by facsimile or other electronic means of transmission: *Provided*, That the financial statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture and Supreme Court of Appeals shall be filed electronically by the means of an internet program to be established by the Secretary of State.

(c) Committees required to report electronically may apply to the State

Election Commission for an exemption from mandatory electronic filing in the case of hardship. An exemption may be granted at the discretion of the State Election Commission.

(d) For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the date of the postmark of the United States Postal Service, and in the case of hand delivery or delivery by facsimile or other electronic means of transmission, the date delivered to the office of the Secretary of State or to the office of the clerk of the county commission, in accordance with the provisions of subsection (a) of this section, during regular business hours of such office.

(e) The sworn financial statements required to be filed by this section with the Secretary of State shall be posted on the internet by the Secretary of State within ten business days from the date the financial statement was filed.

Acts 1976, c. 47; Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2007, c. 106, eff. June 7, 2007.

§ 3-8-5c. Repealed by Acts 2005, 4th Ex. Sess., c. 9, eff. Sept. 13, 2005

§ 3-8-5d. Offenses and penalties

(a) Any person who makes or receives a contribution of currency of the United States or currency of any foreign country of more than fifty dollars in value is guilty of a misdemeanor, and, upon conviction, shall be fined a sum equal to three times the amount of the contribution.

(b) Notwithstanding any provision of section twenty-four, article nine of this chapter to the contrary, a criminal prosecution or civil action for a violation of this article may be commenced within five years after the violation occurred.

(c) No person required to report under this article shall be found in violation of this article if any person, firm, association or committee making a contribution has provided false information to such person: Provided, That any person, firm, association or committee who provides false information to a person required to report under this article is guilty of a misdemeanor and subject to the penalties provided in section twenty-three, article nine of this chapter.

Acts 1976, c. 47; Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-8-5e. Precandidacy financing and expenditures

(a) Notwithstanding any other provisions of this code, it is lawful for a person, otherwise qualified to be a candidate for any public office or position to be determined by public election, to receive contributions or make expenditures, or both, personally or by another individual acting as a treasurer, to determine the advisability of becoming such a candidate or preparing to be such a candidate: *Provided,* That such contributions may be received and such expenditures made only during the four years immediately preceding the term for which such person may be a candidate or during the term

of office immediately preceding the term for which such person may be a candidate, whichever is less: *Provided, however,* That no person is disqualified from receiving contributions or making expenditures as permitted under the provisions of this section solely because such person then holds a public office or position.

(b) Any person undertaking to determine the advisability of becoming or preparing to be a candidate, who desires to receive contributions before filing a certificate of candidacy, shall name himself or another individual to act as a treasurer and shall file a designation of treasurer in the manner provided in section four of this chapter before receiving any contributions permitted by this section. Any expenditures made before the filing of a designation of treasurer shall be reported in accordance with the provisions of this section, regardless of the source of funds used for such expenditures.

(c) A person who receives a contribution who is acting for and by himself or as treasurer or agent for another pursuant to the provisions of this section shall keep detailed accounts of every sum of money or other thing of value received by him, and of all expenditures and disbursements made, and liabilities incurred, in the same manner as such accounts are required by section five of this article, for the period prior to the date of filing for candidacy for the office he is considering seeking. Any person who has received contributions or made expenditures subject to the provisions of this section shall file annually on the last Saturday in March or within six days thereafter preceding the election at which the names of candidates would appear on the ballot for the public office or position which the person originally considered seeking, a detailed itemized statement setting forth all contributions received and expenditures made pursuant to the provisions of this section concerning the candidacy of that person. If the person on whose behalf such contributions are received or expenditures are made becomes a candidate for any office or position to be decided at such election then the itemized statement shall be included within the first statement required to be filed by the provisions of section five of this article. If such person does not become a candidate for any office or position to be decided at such election, then the detailed itemized statements required by this subsection shall be the only statements required to be filed by such person. Regardless of whether such person becomes a candidate as originally intended, or becomes a candidate for some office other than the office or position originally intended, or does not become a candidate, all limits on campaign contributions and campaign expenditures applicable to the candidacy of or advocacy of the candidacy of such person for the office he actually seeks, shall be applicable to and inclusive of the receipts had and expenditures made during such precandidacy period as well as after the person becomes a candidate.

Acts 1982, c. 62; Acts 2007, c. 106, eff. June 7, 2007.

§ 3-8-5f. Loans to candidates, organizations or persons for election purposes

(a) No candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon may receive any money or any other thing of value as a loan toward election expenses except from the candidate, his or her spouse or a lending institution. All loans shall be evidenced by a written agreement executed by the lender, whether the

candidate, his or her spouse, or the lending institution. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the agreement shall be filed with the financial statement next required after the loan is executed.

(b) Loans may only be made in the regular course of business by a lending institution which is a state bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits are insured by the federal deposit insurance corporation or the national credit union administration. Such loans shall be subject to the following requirements:

(1) Endorsements or guarantees of such loans may be made by the candidate or his or her spouse;

(2) Endorsements or guarantees of such loans by parties other than the candidate or his or her spouse may be made only to the extent of the contribution limits established in this article; and

(3) No other form of security shall be furnished in connection with such loans by any party other than the candidate or his or her spouse.

(c) The provisions of this section shall not be construed to prohibit a candidate or his or her spouse from lending money to the candidate or to the candidate's political committee: Provided, That the spouse of a candidate may not borrow money from a third party other than a lending institution authorized to make loans under this section for the purposes of lending money to the candidate or the candidate's political committee.

Acts 1985, c. 72; Acts 1999, c. 118, eff. 90 days after March 13, 1999.

§ 3-8-6. Financial statement forms; filing; disposition

Blank forms for all financial statements required under this article shall be provided by the state election commission. The content of the forms shall be as prescribed by legislative rule promulgated in accordance with the provisions of chapter twenty-nine-a of this code. Pending legislative approval of such legislative rule, the state election commission may by emergency rule prescribe the contents of the forms. Copies thereof, together with a copy of this article, shall be furnished through the county clerk or otherwise, as the secretary of state may deem expedient, to all treasurers of political committees, to all political financial agents, and to all candidates for nomination or election to any office, upon the filing of a petition or announcement for nomination, and to all other persons required by law to file such statements who shall apply therefor. The form shall also be furnished, at a nominal cost, on computer disc or magnetic media. All statements filed in accordance with the provisions of this article shall be received, endorsed and filed by the secretary of state and county clerks, and shall be preserved for five years, after which time they may be destroyed, if not required to be further preserved by the order of any court.

Acts 1908, c. 22; Acts 1915, c. 27, § 7; Acts 1963, c. 64; Acts 1976, c. 47;

Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties

(a) Any person, candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement required by this article within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 or confined in jail for not more than one year, or both, in the discretion of the court. Sixty days after any primary or other election, the Secretary of State, or county clerk, or municipal recorder, as the case may be, shall give notice of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county where the person, candidate, financial agent, or treasurer resides, is located or has its principal place of business.

(b)(1) Any person, candidate, financial agent or treasurer of a political party committee who fails to file a sworn, itemized statement as required in this article or who files a grossly incomplete or grossly inaccurate statement may be assessed a civil penalty by the Secretary of State of $25 a day for each day after the due date the statement is delinquent, grossly incomplete or grossly inaccurate. Sixty days after any primary or other election, the county clerk shall give notice to the Secretary of State of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of such delinquent, incomplete or inaccurate statements to the Secretary of State.

(2) A civil penalty assessed pursuant to this section shall be payable to the State of West Virginia and is collectable as authorized by law for the collection of debts.

(3) The Secretary of State may negotiate and enter into settlement agreements for the payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete or inaccurate statement.

(4) The Secretary of State and county clerk may review and audit any sworn statement required to be filed pursuant to this article. The State Election Commission shall propose legislative rules for promulgation, in accordance with chapter twenty-nine-a of this code, to establish procedures for the assessment of civil penalties as provided in this section.

(c) No candidate nominated at a primary election who has failed to file a sworn statement, as required by this article, shall have his or her name placed on the official ballot for the ensuing election, unless there has been filed by or on behalf of such candidate, or by his or her financial agent, if any, the financial statement relating to nominations required by this article. It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file a sworn statement as required by this article and no person may enter upon

the duties of his or her office until he or she has filed such statement, nor may he or she receive any salary or emolument for any period prior to the filing of such statement.

Acts 1908, c. 22; Acts 1915, c. 26, § 26; Acts 1915, c. 27, § 8; Acts 1916, c. 5; Acts 1963, c. 64; Acts 1985, c. 72; Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 2004, c. 112, eff. Feb. 23, 2004; Acts 2005, 4th Ex. Sess., c. 9, eff. Sept. 13, 2005; Acts 2009, c. 94, eff. July 10, 2009.

§ 3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission

(a) An officer, agent or person acting on behalf of any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may not pay, give, lend or authorize to be paid, any money or other thing of value belonging to the corporation to any candidate or candidate's campaign for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(b) A person may not solicit or receive any payment, contribution or other thing from any corporation or from any officer, agent or other person acting on behalf of the corporation to any candidate or candidate's campaign for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(c)(1) The provisions of this section do not prohibit a corporation from soliciting, through any officer, agent or person acting on behalf of the corporation, contributions to a separate segregated fund to be used for political purposes. Any separate segregated fund is considered a political action committee for the purpose of this article and is subject to all reporting requirements applicable to political action committees;

(2) It is unlawful for:

(A) A corporation or separate segregated fund to make a primary or other election contribution or expenditure by using money or anything of value secured: (i) By physical force, job discrimination or financial reprisal; (ii) by the threat of force, job discrimination or financial reprisal; or (iii) as a condition of employment;

(B) Any person soliciting a stockholder or executive or administrative personnel and members of their families for a contribution to a corporation or separate segregated fund to fail to inform the person solicited of the political purposes of the separate segregated fund at the time of the solicitation;

(C) Any person soliciting any other person for a contribution to a corporation or separate segregated fund to fail to inform the person solicited at the time of the solicitation of his or her right to refuse to contribute without any reprisal;

(D) A separate segregated fund established by a corporation: (i) To solicit contributions to the fund from any person other than the corporation's stockholders and their families and its executive or administrative personnel

and their families; or (ii) to contribute any corporate funds;

(E) A separate segregated fund established by a corporation to receive contributions to the fund from any person other than the corporation's stockholders and their immediate families and its executive or administrative personnel and their immediate families;

(F) A corporation to engage in job discrimination or to discriminate in job promotion or transfer because of an employee's failure to make a contribution to the corporation or a separate segregated fund;

(G) A separate segregated fund to make any contribution, directly or indirectly, in excess of $1,000 in connection with or on behalf of any campaign for nomination or election to any elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any such office;

(H) A corporation to pay, give or lend or to authorize payment, giving or lending of any moneys or other things of value belonging to the corporation to a separate segregated fund for the purpose of making a contribution to a candidate or a candidate's committee. This provision does not prohibit a separate segregated fund from using the property, real or personal, facilities and equipment of a corporation solely to establish, administer and solicit contributions to the fund, subject to the rules of the State Election Commission as provided in subsection (d) of this section: *Provided*, That any such corporation shall also permit any group of its employees represented by a bona fide political action committee to use the real property of the corporation solely to establish, administer and solicit contributions to the fund of the political action committee, subject to the rules of the State Election Commission promulgated in accordance with said subsection.

(3) For the purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policy-making, managerial, professional or supervisory responsibilities.

(d) Any person or corporation violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000. A corporation may not reimburse any person the amount of any fine imposed pursuant to this section.

(e) To ensure uniform administration and application of the provisions of this section and of those of the Federal Election Campaign Act Amendments of 1976 relating to corporate contributions, the State Election Commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this section consistent, insofar as practicable, with the rules and regulations promulgated by the Federal Election Commission to carry out similar or identical provisions of 2 U.S.C. § 441b.

(f) In addition to the powers and duties set forth in article one-a of this chapter, the State Election Commission has the following powers and duties:

(1) To investigate, upon complaint or on its own initiative, any alleged violations or irregularities of this article.

(2) To administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and all other evidence necessary to any investigation.

(3) To involve the aid of any circuit court in the execution of its subpoena power.

(4) To report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall present to the grand jury such alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(g) The Attorney General shall, when requested, provide legal and investigative assistance to the State Election Commission.

(h) Any investigation, either upon complaint or initiative, shall be conducted in an executive session of the State Election Commission and shall remain undisclosed except upon an indictment by a grand jury.

(i) Any person who discloses the fact of any complaint, investigation or report or any part thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000, nor more than $5,000, and shall be confined in jail not less than six months nor more than one year.

(j) The amendments to this section enacted during the second extraordinary session of 2008 are intended to conform to the existing proscription to constitutionally permissible limits and not to create a new offense or offenses.

(k) The effective date of the amendments to this section enacted during the second extraordinary legislative session of 2008 is October 1, 2008.

Acts 1908, c. 22; Acts 1915, c. 27, § 9; Acts 1963, c. 64; Acts 1978, c. 43; Acts 2005, 4th Ex. Sess., c. 9, eff. Sept. 13, 2005; Acts 2006, c. 93, eff. March 11, 2006; Acts 2008, 2nd Ex. Sess., c. 13, eff. Sept. 26, 2008; Acts 2010, c. 76, eff. June 11, 2010.

§ 3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures

(a) No financial agent or treasurer of a political committee shall pay, give or lend, either directly or indirectly, any money or other thing of value for any election expenses, except for the following purposes:

(1) For rent, maintenance, office equipment and other furnishing of offices to be used as political headquarters and for the payment of necessary clerks, stenographers, typists, janitors and messengers actually employed therein;

(2) In the case of a candidate who does not maintain a headquarters, for reasonable office expenses, including, but not limited to, filing cabinets and other office equipment and furnishings, computers, computer hardware and software, scanners, typewriters, calculators, audio visual equipment, the rental of the use of the same, or for the payment for the shared use of same with the candidate's business and for the payment of necessary clerks, stenographers and typists actually employed;

(3) For printing and distributing books, pamphlets, circulars and other printed matter and radio and television broadcasting and painting, printing and posting signs, banners and other advertisements, including contributions to charitable, educational or cultural events, for the promotion of the candidate, the candidate's name or an issue on the ballot;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings and for the payment of traveling expenses of speakers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of candidates, political agents and committees and for stationery, postage, telegrams, telephone, express, freight and public messenger service;

(6) For preparing, circulating and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons listed therein and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments and any information relating to any political issue, candidate or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase "conducting of public opinion poll or polls" shall mean and be limited to the gathering, collection, collation and evaluation of information reflecting public opinion, needs and preferences as to any candidate, group of candidates, party, issue or issues. No such poll shall be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition or other matter to be voted on by the public at any election: *Provided,* That nothing herein shall prevent the use of the results of any such poll or polls to further, promote or enhance the election of any candidate or group of candidates or the approval or defeat of any proposition or other matter to be voted on by the public at any election;

(11) For legitimate advertising agency services, including commissions, in connection with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7), (9) and (10) of this subsection;

(12) For the purchase of memorials, flowers or citations by political party executive committees or political action committees representing a political party;

(13) For the purchase of nominal noncash expressions of appreciation following the close of the polls of an election or within thirty days thereafter;

(14) For the payment of dues or subscriptions to any national, state or local committee of any political party;

(15) For contributions to a county party executive committee, state party executive committee or a state party legislative caucus political committee; and

(16) For contributions to a candidate committee: *Provided,* That a candidate committee may not contribute to another candidate committee except as otherwise provided by section ten of this article.

(b) A political action committee may not contribute to another political action committee or receive contributions from another political action committee: *Provided,* That a political action committee may receive contributions from its national affiliate, if any.

(c) Every liability incurred and payment made shall be for the fair market value of the services rendered.

(d) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by section five-a of this article, the financial statements required by section five of this article at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent or treasurer of a political party committee.

(e) Any candidate may designate a financial agent by a writing duly subscribed by him which shall be in such form and filed in accordance with the provisions of section four of this article.

Acts 1908, c. 22; Acts 1915, c. 27, § 10; Acts 1943, c. 47; Acts 1963, c. 64; Acts 1980, c. 49; Acts 1994, c. 59; Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2007, c. 107, eff. June 5, 2007.

§ 3-8-10. Use of certain contributions

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

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

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

(A) Any charitable organization or subsequent campaign by the same candidate,

without limitation;

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

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

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

(b) The State Election Commission shall promulgate emergency and legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section.

Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2006, c. 89, eff. March 10, 2006.

§ 3-8-11. Specific acts forbidden; penalties

(a) Any person who shall, directly or indirectly, by himself, or by any other person on his behalf, make use of, or threaten to make use of, any force, violence or restraint, or inflict, or threaten to inflict, any damage, harm or loss, upon or against any person, or by any other means attempt to intimidate or exert any undue influence, in order to induce such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who shall, by abduction, duress or any fraudulent device or contrivance, impede or prevent the free exercise of the suffrage by any elector, or shall thereby compel, induce or prevail upon any elector either to vote or refrain from voting for or against any particular candidate or measure; or

(b) Any person who, being an employer, or acting for or on behalf of any employer, shall give any notice or information to his employees, containing any threat, either express or implied, intended or calculated to influence the political view or actions of the workmen or employees; or

(c) Any person who shall, knowingly, make or publish, or cause to be made or published, any false statement in regard to any candidate, which statement is intended or tends to affect any voting at any election whatever; or

(d) Any person who shall pay any owner, publisher, editor or employee or any newspaper or other periodical, to advocate or oppose editorially, any candidate for nomination or election, or any political party, or any measure to be submitted to the vote of the people; or any owner, publisher, editor or employee, who shall solicit or accept such payment:

Is guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than ten thousand dollars, or confined in jail for not more than one year, or, in the discretion of the court, shall be subject to both such fine and imprisonment.

Acts 1905, c. 43; Acts 1908, c. 22; Acts 1915, c. 27, § 12; Acts 1963, c. 64; Acts 1995, c. 101, eff. 90 days after March 10, 1995.

§ 3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; limitations on contributions; public contractors; penalty

(a) A person may not publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, radio or television advertisement or other publication supporting or aiding the election or defeat of a clearly identified candidate.

(b) An owner, publisher, editor or employee of a newspaper or other periodical may not insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

(c) A person may not, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision of the state, solicit orally or by written communication delivered within the room or building, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the State, or a political subdivision of the State. An officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision of the state, who may have charge or control of any building, office or room, occupied for any official purpose, may not knowingly permit any person to enter any building, office or room, occupied for any official purpose for the purpose of soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the state, or a political subdivision of the state.

(d) Except as provided in section eight of this article, a person entering into any contract with the state or its subdivisions, or any department or agency of the state, either for rendition of personal services or furnishing any material, supplies or equipment or selling any land or building to the state, or its subdivisions, or any department or agency of the state, if payment for the performance of the contract or payment for the material, supplies, equipment, land or building is to be made, in whole or in part, from public funds may not, during the period of negotiation for or performance under the contract or furnishing of materials, supplies, equipment, land or buildings, directly or indirectly, make any contribution to any political party, committee or candidate for public office or to any person for political purposes or use; nor may any person or firm solicit any contributions for any purpose during any period.

(e) A person may not, directly or indirectly, promise any employment, position, work, compensation or other benefit provided for, or made possible, in whole or in part, by act of the Legislature, to any person as consideration, favor or reward for any political activity for the support of or opposition to any candidate, or any political party in any election.

(f) Except as provided in section eight of this article, a person may not, directly or indirectly, make any contribution in excess of the value of $1,000 in connection with any campaign for nomination or election to or on behalf of any statewide office, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the state or any of its subdivisions, or in connection with or on behalf of any person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any of the offices.

(g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its existence and of the purposes for which it was formed. During the two-year election cycle, a political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) may not accept contributions totaling more than $1,000 from any one person prior to the primary election and contributions totaling more than $1,000 from any one person after the primary and before the general election.

(h) It is unlawful for any person to create, establish or organize more than one political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) with the intent to avoid or evade the contribution limitations contained in subsection (g) of this section.

(i) Notwithstanding the provisions of subsection (f) of this section to the contrary, a person may not, directly or indirectly, make contributions to a state party executive committee or state party legislative caucus committee which, in the aggregate, exceed the value of $1,000 in any calendar year.

(j) The limitations on contributions contained in this section do not apply to transfers between and among a state party executive committee or a state party's legislative caucus political committee from national committees of the same political party: *Provided*, That transfers permitted by this subsection may not exceed $50,000 in the aggregate in any calendar year to any state party executive committee or state party legislative caucus political committee: *Provided, however*, That the moneys transferred may only be used for voter registration and get-out-the-vote activities of the state committees.

(k) A person may not solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: *Provided*, That in no event may any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution. A person may not coerce or intimidate any nonelective salaried employee into making a contribution. a person may not coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily without coercion, intimidation or solicitation.

(l) A person may not solicit a contribution from any other person without informing the other person at the time of the solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of the contribution

being successfully collected. Nothing in this subsection may be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.

(m) A person may not place any letter, circular, flyer, advertisement, election paraphernalia, solicitation material or other printed or published item tending to influence voting at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside receptacle by the business or entity owning the receptacle; and (2) contains a written acknowledgment of the approval. This subdivision does not apply to any printed material contained in a newspaper or periodical published or distributed by the owner of the receptacle. The term "roadside receptacle" means any container placed by a newspaper or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.

(n) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined in jail for not more than one year, or, both fined and confined.

(o) The provisions of subsection (k) of this section, permitting contributions to a campaign for or against a county or local government ballot issue shall become operable on and after January 1, 2005.

(p) The limitations on contributions established by subsection (g) of this section do not apply to contributions made for the purpose of supporting or opposing a ballot issue, including a constitutional amendment.

Acts 1915, c. 27, § 13; Acts 1941, c. 41; Acts 1963, c. 64; Acts 1978, c. 43; Acts 1985, c. 72; Acts 1995, c. 101, eff. 90 days after March 10, 1995; Acts 1999, c. 118, eff. 90 days after March 13, 1999; Acts 2001, c. 119, eff. 90 days after April 12, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2004, c. 114, eff. 90 days after March 13, 2004; Acts 2005, 4th Ex. Sess., c. 9, eff. Sept. 13, 2005; Acts 2010, c. 76, eff. June 11, 2010.

§ 3-8-13. Parties liable and subject to penalties

In all cases of violation of the provisions of this article by any partnership, committee, association, corporation, or other organization or group of persons, the officers, directors, or managing or controlling heads thereof, who knowingly and willingly participate in such violation, shall be subject to the penalties and punishments provided herein.

Acts 1941, c. 41; Acts 1963, c. 64.

§ 3-8-14. Effective date of certain criminal offenses

The criminal offenses created in sections two, seven and twelve of this article by the provisions of Enrolled Committee Substitute for House Bill No. 402 during the fourth extraordinary session, two thousand five, shall be effective ninety days from passage.

Acts 2005, 4th Ex. Sess., c. 9, eff. Sept. 13, 2005.

ARTICLE 9

OFFENSES AND PENALTIES

Section

3-9-1. False or fraudulent returns; tampering with, destroying or misdelivering ballots, records, etc.; forgeries; aiding, etc., in offense; penalties.

3-9-2. Unlawful printing, possession or delivery of ballots; penalties.

3-9-3. False swearing; penalties.

3-9-4. Commissioner's failure to procure or return supplies; penalties.

3-9-5. Destruction or removal of election supplies and equipment; attempts; penalties.

3-9-6. Unauthorized presence in election room; three hundred-foot limit; penalties.

3-9-7. Wrongful refusal or allowance of votes; malicious or frivolous challenges; penalties.

3-9-8. Distinguishing marks on ballots; conspiracies; penalties.

3-9-9. Other unlawful acts at polling places; penalties.

3-9-10. Disorder at polls; prevention; failure to assist in preventing disorder; penalties.

3-9-11. Failure to make returns; penalties.

3-9-12. Improper influence and bribery by candidates; penalties.

3-9-13. Buying or selling vote unlawful; penalties.

3-9-14. Repealed.

3-9-15. Unlawful acts by employers; penalties.

3-9-16. Receiving or soliciting bribes by voters; penalties.

3-9-17. Illegal voting; deceiving voters; penalties.

3-9-18. Unlawful voting in primary elections; penalties.

3-9-19. Violations concerning absent voters' ballots; penalties.

3-9-20. Obstructing employees' freedom to vote; penalties.

3-9-21. Repealed.

3-9-22. Wagering or betting on elections; penalties.

3-9-23. Punishment where penalty not prescribed or where failure to perform duty not specifically made an offense.

3-9-24. Limitations on prosecutions.

§ 3-9-1. False or fraudulent returns; tampering with, destroying or misdelivering ballots, records, etc.; forgeries; aiding, etc., in offense; penalties

Every person named and identified in this section, who shall violate any of the provisions of the election laws as herein specified, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in a state correctional facility for not less than one nor more than ten years:

(a) Any commissioner of election or poll clerk who shall knowingly make or cause to be made, or conspire with others to make, a false return of the result of the votes cast for any candidate at any precinct in an election held pursuant to law; or

(b) Any commissioner of election receiving the ballot of a voter to be deposited in the ballot box at any election precinct, who shall put another ballot in the box instead of the one received by him; or

(c) Any commissioner of election or poll clerk, who knowingly shall count and string a ballot not taken from the ballot box, in lieu of one taken, or which should have been taken from such ballot box; or

(d) Any commissioner of a county court, whether acting as such or ex officio as a member of a board of canvassers or otherwise, clerk of a county court, or other person, who shall, except as authorized by law, abstract any ballot from any package of ballots voted, sealed or returned from any election precinct, either before or after they are filed with the clerk of the county court, or who shall in any manner change any such ballot from what it was when voted by the voter, or who shall put another ballot in such package in the place of the one so abstracted therefrom; or

(e) Any commissioner of a county court, whether acting as such commissioner or ex officio as a member of a board of canvassers, or otherwise, who shall knowingly make and enter of record, or in any way aid, counsel, or advise the same to be done, or permit the same to be done without objection on his part, any false or fraudulent statement of the result of any election held within the county; or

(f) Any person who shall falsely make, or fraudulently deface, or fraudulently destroy, any certificate of nomination, or any part thereof, or file any certificate of nomination, knowing the same, or any part thereof, to be falsely made, or suppress any certificate of nomination which has been duly filed, or any part thereof; or erase, deface, or change in any manner, any election record, or any ballot, poll book, tally sheet or certificate of election, deposited with either of the clerks of the county or circuit courts; or conspire with another to do any of said acts; or induce or attempt to induce any other persons to do any of said acts; or

(g) Any person who shall aid, assist, counsel or advise in the commission of any of the offenses above specified, whether or not said acts, or any of them be committed or attempted to be committed; or

(h) Any person, who, without the assent of another, shall sign the name of such other person to any certificate, affidavit, ballot, report, statement or writing, required under any provision of this chapter, with intent to mislead and deceive; or who shall use or employ any certificate, affidavit, ballot, report, statement or writing to which the name of a person has been signed without the authority of such person, knowing that such name has been so signed with intent to mislead or deceive; or

(i) Any clerk of a court, poll clerk, member of the board of ballot commissioners, commissioner of election, or messenger intrusted with the custody of the ballots, who shall open unlawfully any of the packages in which the ballots are contained, or permit any of them to be opened, or destroy any of such ballots, or permit them to be destroyed, or give, or deliver any such packages or ballots to any person not lawfully entitled to receive them, as in this chapter provided, or conspire to procure, or in any way aid, abet, or connive at any robbery, loss or unlawful destruction of any such ballots or packages; or

(j) Any person not duly authorized by law who shall, during the progress of any election in this state, or after the closing of the polls and before the ballots are counted and the results ascertained, or within twelve months thereafter, open without breaking, or break open or violate, the seals or locks of any ballot box, paper, envelope or bag, in which ballots have been deposited at or after such election, or who shall obtain possession of such ballot box, paper, envelope or bag containing such ballots, and cancel, withhold, or destroy such ballots, or who shall fraudulently or forcibly add to or diminish the number of ballots legally deposited therein, or who shall fraudulently make any erasure or alteration of any kind, upon any tally sheet, poll book, list of voters, or election returns, deposited therein; or

(k) Any person who knowingly, willfully and without authorization from the Secretary of State, a county clerk or municipal clerk directly or indirectly, tampers with, deletes, alters, damages or destroys or attempts to tamper with, delete, alter, damage or destroy any computer or computer network that contains voter registration files, records or data or who knowingly introduces, directly or indirectly, a computer contaminant into any computer, computer program or computer network that contains voter registration files, records or data; or

(l) Any person who knowingly, directly or indirectly, accesses, attempts to access, or causes to be accessed any voter registration files, records or data stored on or in a computer owned by the Secretary of State, a county commission or municipality, without authorization; or

(m) Any person employed by the Secretary of State, a county commission or a municipality who knowingly, directly or indirectly accesses, attempts to access or causes to be accessed any voter registration files, records or data stored on or in a computer in an unauthorized manner, in excess of his or her authorization or for unauthorized use or purpose.

Acts 1890, c. 16, § 5; Acts 1891, c. 89, §§ 38, 74, 75, 78; Acts 1963, c. 64;

Acts 2005, c. 104, eff. 90 days after April 8, 2005.

§ 3-9-2. Unlawful printing, possession or delivery of ballots; penalties

No one, except the person employed and authorized by the ballot commissioners to do so, shall print any ballot for any election. No person engaged or employed in printing such ballots shall deliver any ballot to any person except a member of the board of ballot commissioners, or knowingly permit any other person to obtain possession of any ballot; or print, or cause to be printed, any ballot in any other form, or with the names of any other persons thereon, or with the names thereon spelled or arranged in any other manner than that prescribed by the ballot commissioners. No person shall print, have in his possession, or deliver, any imitation ballot having a similitude or likeness to the official ballot, and which would be calculated to deceive: Provided, however, That nothing herein contained shall prohibit any person from printing or having in his possession a sample ballot printed on paper of a color different from the official ballot, and not calculated to deceive. Any person violating any provision of this section shall be guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the state penitentiary for not less than one nor more than ten years.

Any person who shall unlawfully take or remove, with or without the consent of the lawful custodian thereof, any ballot from the place at which such ballots are lawfully kept for the time being; or unlawfully remove or attempt to remove any ballot from the election room; or have in his possession outside of the election room during the election any ballot, shall be guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary not less than one nor more than five years, or, in the discretion of the court, be confined in jail for not more than one year.

Acts 1891, c. 89, §§ 35, 39, 62; Acts 1963, c. 64.

§ 3-9-3. False swearing; penalties

(a) If any election official, or other person, making any affidavit required under any provision of this chapter, shall therein knowingly swear falsely, or if any person shall counsel, advise, aid or abet another in the commission of false swearing, he shall be guilty of a misdemeanor, and, on conviction therefor shall be fined not less than fifty nor more than one thousand dollars and imprisoned in the county jail for a period of not more than one year.

(b) If any person making any declaration required under any provision of this chapter shall knowingly make a false statement or representation therein, or if any person shall counsel, advise, aid or abet another to make such a declaration containing any false statement or representation, any such person shall be deemed to be guilty of false swearing although no oath was administered, and such offense is hereby declared to be a misdemeanor. Upon conviction of such offense, any such person shall be fined not less than fifty nor more than one thousand dollars and imprisoned in the county jail for a period of not more than one year.

Acts 1891, c. 89; Acts 1916, 3rd Ex. Sess., c. 6; Acts 1921, c. 55; Acts 1963, c. 64; Acts 1988, c. 54.

§ 3-9-4. Commissioner's failure to procure or return supplies; penalties

Any commissioner of election designated to call for and deliver election supplies as provided in article one of this chapter who shall wilfully or negligently fail to appear at the offices of the clerks of the circuit and county courts of his county and procure and deliver such supplies, or who shall wilfully or negligently fail or refuse to return such supplies, as provided in articles five and six of this chapter, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than ten nor more than one hundred dollars.

Acts 1891, c. 89; Acts 1963, c. 64.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 3-9-5. Destruction or removal of election supplies and equipment; attempts; penalties

If any person shall, during the election, remove or destroy any of the supplies or other conveniences placed in the booths or compartments as aforesaid, or delivered to the voter for the purpose of enabling the voter to prepare his ballot or shall, during an election, remove, tear down or deface, the cards printed for the instruction of the voters, or shall, during an election, destroy or remove any booths or other convenience provided for such election, or shall induce or attempt to induce any person to commit any of such acts, whether or not any of such acts be committed, or attempted to be committed, then such person shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, in the discretion of the court.

Acts 1891, c. 89, § 82; Acts 1963, c. 64.

§ 3-9-6. Unauthorized presence in election room; three hundred-foot limit; penalties

If any person, not herein authorized so to do, enters or attempts to enter the election room, except upon a lawful errand and for a proper purpose, or remains within three hundred feet of the outside entrance to the building housing the polling place, contrary to the provisions of this chapter, he shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars, or confined in the county jail for not more than thirty days.

Excepting those individuals provided for expressly in this or other sections of the code, only full-time employees of the secretary of state's office or full-time employees of the respective county offices of the county clerk or the county prosecutor may enter or otherwise disturb the polling place.

Acts 1891, c. 89, § 81; Acts 1963, c. 64; Acts 1986, c. 73.

§ 3-9-7. Wrongful refusal or allowance of votes; malicious or frivolous challenges; penalties

Any election officer who refuses the vote of a duly registered and qualified voter, whom he knows is entitled to vote or who accepts the vote of a person whom he knows to be not lawfully registered, without challenging such person, shall be guilty of a misdemeanor, and, upon conviction, fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, at the discretion of the court.

Any person who shall maliciously or frivolously, and without probable cause, challenge the right of any person to vote, shall be guilty of a misdemeanor, and, upon conviction, be fined not more than one hundred dollars or confined in the county jail for not more than ninety days, or both, in the discretion of the court.

Acts 1941, c. 44; Acts 1963, c. 64.

§ 3-9-8. Distinguishing marks on ballots; conspiracies; penalties

If any person shall induce, or attempt to induce, any voter to write, paste or otherwise place on his ballot the name of any person, or any sign or device of any kind, as a distinguishing mark by which to indicate to any other person how such voter voted, or shall enter into or attempt to form any agreement or conspiracy with any other person to induce or attempt to induce a voter to so place a distinguishing name or mark on his ballot, whether or not such act be committed or attempted to be committed, such person so offending shall be guilty of a misdemeanor, and on conviction thereof, shall be fined not more than one thousand dollars, or be imprisoned in the county jail for not more than one year, or both, in the discretion of the court.

Acts 1891, c. 89, § 76; Acts 1963, c. 64.

§ 3-9-9. Other unlawful acts at polling places; penalties

No officer of election may disclose to any person the name of any candidate for whom a voter has voted. No officer of election may do any electioneering on election day. No person may do any electioneering on election day within any polling place, or within three hundred feet of the outside entrance to the building housing the polling place. No person may apply for or receive any ballot in any polling place, other than that in which he is entitled to vote, nor may any person examine a ballot which any voter has prepared for voting, or solicit the voter to show the same, nor ask, nor make any arrangement, directly or indirectly, with any voter, to vote an open ballot. No person, except a commissioner of election, may receive from any voter a ballot prepared by him for voting. No voter may receive a ballot from any person other than one of the poll clerks; nor may any person other than a poll clerk deliver a ballot to a commissioner of election to be voted by such commissioner. No voter may deliver any ballot to a commissioner of election to be voted, except the one he receives from the poll clerk. No voter may place any mark upon his ballot, or suffer or permit any other person to do so, by which it may be afterward identified as the ballot voted by him. Whoever violates any provision of this section shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars, or confined in jail for not more than one year, or both fined and confined.

Acts 1891, c. 89, §§ 77, 79; Acts 1963, c. 64; Acts 1986, c. 73.

§ 3-9-10. Disorder at polls; prevention; failure to assist in preventing disorder; penalties

Any person who shall, by force, menace, fraud or intimidation, prevent or attempt to prevent any officer whose duty it is by law to assist in holding an election, or in counting the votes cast thereat, and certifying and returning the result thereof, from discharging his duties according to law; or who shall, by violence, threatening gestures, speeches, force, menace or intimidation, prevent or attempt to prevent an election being held; or who shall in any manner obstruct or attempt to obstruct the holding of an election, or who shall, by any manner of force, fraud, menace or intimidation, prevent or attempt to prevent any voter from attending any election, or from freely exercising his right of suffrage at any election at which he is entitled to vote, shall be guilty of a misdemeanor, and, upon conviction, fined not more than one thousand dollars, or confined in the county jail for not more than one year, or both, in the discretion of the court.

Any person who, being thereto commanded by the commissioners of election, or either of them, shall fail or refuse to assist to the utmost of his power, in whatever may be necessary or proper to prevent intimidation, disorder or violence at the polls, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than one hundred dollars.

Acts 1872-3, c. 118; Acts 1882, c. 139, § 7; Acts 1891, c. 89; Acts 1963, c. 64.

§ 3-9-11. Failure to make returns; penalties

Any election officer who shall wilfully fail, neglect or refuse to prepare and return certificates of the result of the election in the manner provided, within twelve hours after the completion of the count, tabulation and declaration of the results, shall be guilty of a misdemeanor, and, upon conviction, fined not more than one thousand dollars, or confined in the county jail for not more than one year, or both, in the discretion of the court.

Acts 1917, c. 37, § 6; Acts 1963, c. 64.

§ 3-9-12. Improper influence and bribery by candidates; penalties

Whoever, being a candidate for any office, loans or gives, directly or indirectly, or offers or promises to loan, or give, any money, or other thing of value, to any elector, for the purpose of influencing or retaining the vote of such elector, or inducing such elector to work or labor for the election of such candidate, or to refrain from working or laboring for the election of any other candidate; or to any person to secure or to retain the influence or vote of such elector, in his behalf as such candidate, or to be used by such person in any way to influence the vote of any elector, or of electors generally, for himself or any candidate or ticket, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars, or confined in the county jail for not more than one year, or both, in the discretion of the court.

Acts 1890, c. 16, § 2; Acts 1963, c. 64.

§ 3-9-13. Buying or selling vote unlawful; penalties

(a) It is unlawful for any person to offer or to pay money or any other thing of value to any person as consideration for the vote of the offeree or payee, as the case may be, to be cast for or against any candidate or issue in any election held in the state. Any person who violates the provisions of this subsection shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than five thousand dollars or imprisoned for a period of not less than one year, nor more than five years, or both.

(b) It is likewise unlawful for any person to accept or agree to accept money or other thing of value as consideration for the vote of the acceptee, to be cast for or against any candidate or issue in any election held in the state. Any person who violates the provisions of this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than one thousand dollars or imprisoned in the county jail not more than one year, or both.

Acts 1890, c. 16; Acts 1905, c. 43; Acts 1908, c. 22; Acts 1915, c. 27, § 14; Acts 1963, c. 64; Acts 1978, c. 43.

§ 3-9-14. Repealed by Acts 2010, c. 76, eff. June 11, 2010

§ 3-9-15. Unlawful acts by employers; penalties

Any employer or agent of any employer or corporation, who prints or authorizes to be printed upon any pay envelope or who distributes directly or indirectly, or gives directly to any employee any statement intended or calculated to influence the political action of his employees for any candidate for public office, or posts or exhibits in the establishment, any posters, placards, or handbills, or delivers verbally any message to any such employees, containing any threat, notice or information that if any such candidate is elected or defeated, work in the establishment will cease, in whole or in part, or other threats expressed or implied, intended to influence the political opinions or votes of his employees, shall be guilty of corrupt practices, and, upon conviction, shall be fined not less than one thousand dollars nor more than twenty thousand dollars or be imprisoned in jail not more than one year, or both.

Acts 1937, c. 36; Acts 1963, c. 64.

§ 3-9-16. Receiving or soliciting bribes by voters; penalties

Any voter who shall, before or during any election, directly or indirectly, by himself, or by any other person on his behalf, solicit, demand, receive, agree or contract for any money, gift, loan, or valuable consideration, office, place of employment, or solicit any endorsement on a note or other paper, public or private, for himself or for any other person, for voting or agreeing to vote, or for voting for any person or candidate or object, or agreeing so to vote, or from refraining or agreeing to refrain from voting at any election; or any person who shall, after any election, directly or indirectly, by himself, or by any other person on his behalf, solicit, demand or receive any money or valuable consideration on account of any person having voted or refrained from

voting, or having induced any other person to vote or refrain from voting at any election, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars, or confined in jail for not more than one year, or both, in the discretion of the court.

Acts 1905, c. 43; Acts 1908, c. 22; Acts 1915, c. 27, § 14; Acts 1963, c. 64.

§ 3-9-17. Illegal voting; deceiving voters; penalties

If any person knowingly votes when not legally entitled; or votes more than once in the same election; or knowingly votes or attempts to vote more than one ballot for the same office, or on the same question; or procures or assists in procuring an illegal vote to be admitted, or received, at an election, knowing the same to be illegal; or a legal vote to be rejected, knowing the same to be legal; or, with intent to deceive, alters the ballot of a voter by marking out the name of any person for whom such voter desires to vote; or, with like intent, writes the name of any person on such ballot other than those directed by the voter; or with like intent, makes any alteration thereof, whether such ballot be voted or not; or defrauds any voter at any election, by deceiving and causing him to vote for a different person for any office than he intended or desired to vote for, he shall be guilty of a misdemeanor, and, on conviction thereof, shall for each offense be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both, in the discretion of the court.

Acts 1863, c. 100; Acts 1882, c. 139; Acts 1887, c. 57, § 5; Acts 1963, c. 64.

§ 3-9-18. Unlawful voting in primary elections; penalties

Any person voting, in any primary election, any ticket of a party other than that of which he is registered as a member, and any election officer receiving the vote of any such person, knowing, or having reason to believe, that such voter is not a member of the party the ticket of which he is voting, shall, at the primary election to be held to nominate candidates for the same office, vote at such primary election; shall in each instance be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars, or be confined in the county jail for not more than one year, or both, in the discretion of the court.

Acts 1915, c. 26; Acts 1915, c. 28; Acts 1916 3rd Ex. Sess., c. 5; Acts 1916 3rd Ex. Sess., c. 6; Acts 1963, c. 64; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 3-9-19. Violations concerning absent voters' ballots; penalties

Any person who, having procured an absent voter's official ballot or ballots, shall wilfully neglect or refuse to return the same as provided in article three of this chapter, or who shall otherwise wilfully violate any of the provisions of said article three of this chapter, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than two hundred and fifty dollars, or confined in the county jail for not more than three months. If the clerk of the circuit court of any county, or any member

of the board of ballot commissioners, or any member of the board of canvassers shall refuse or neglect to perform any of the duties required of him by any of the provisions of articles three, five and six of this chapter relating to voting by absentees or shall disclose to any other person or persons how any absent voter voted, he shall, in each instance, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five hundred dollars, or confined in the county jail for not more than six months.

Acts 1921, c. 55, § 14; Acts 1963, c. 64.

§ 3-9-20. Obstructing employees' freedom to vote; penalties

Any corporation violating any provision of section forty-two of article one of this chapter or preventing or attempting to prevent any voter in its employ from attending any election, or from freely exercising his right of suffrage, at any election, at which he is entitled to vote, by any threat, direct or indirect, express or implied, to discharge such voter or deprive him of his employment, or shall discharge such voter or deprive him of his employment because of any vote he may cast, or refuse to cast, at any election at which he is entitled to vote, under the provisions of this chapter, shall, in each instance, be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than one thousand dollars. Any employer, other than a corporation, whether an individual or member of an association or partnership, and any officer, agent or manager of any corporation violating any provision of this section or of section forty-two of article one of this chapter shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not exceeding five hundred dollars or imprisoned in the county jail for a period not exceeding six months, or, in the discretion of the court, be subject to both such fine and imprisonment.

Acts 1882, c. 139, § 7; Acts 1891, c. 89, § 52; Acts 1963, c. 64.

§ 3-9-21. Repealed by Acts 2003, c. 100, eff. 90 days after March 7, 2003

§ 3-9-22. Wagering or betting on elections; penalties

It shall be unlawful to bet or wager money or other thing of value on any election held in this state. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, he shall forfeit the value of the money or thing so bet or wagered and shall be fined not more than fifty dollars.

Acts 1872-3, c. 118; Acts 1882, c. 139; Acts 1963, c. 64.

§ 3-9-23. Punishment where penalty not prescribed or where failure to perform duty not specifically made an offense

Any person who shall commit any act made an offense by any provision of this chapter, for which no penalty or punishment is prescribed by any other provision contained therein, or any person who shall fail to perform any duty prescribed therein which has not been specifically made an offense, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or, in the discretion of the court, be confined in jail for not more than one year.

Acts 1882, c. 139; Acts 1887, c. 57; Acts 1891, c. 89; Acts 1963, c. 64.

§ 3-9-24. Limitations on prosecutions

No person shall be prosecuted for any crime or offense under any provision of this chapter, unless upon an indictment found and presentment made within five years after the date of the commission of the crime or offense.

Acts 1908, c. 18, § 1; Acts 1963, c. 64; Acts 1978, c. 43.

ARTICLE 10

FILLING VACANCIES

Section

3-10-1. Elections to fill vacancies.

3-10-2. Vacancy in office of Governor.

3-10-3. Vacancies in offices of state officials, United States senators and judges.

3-10-3a. Judicial Vacancy Advisory Commission.

3-10-4. Vacancies in representation in Congress.

3-10-4a. Special Senate vacancy election.

3-10-5. Vacancies in State Legislature.

3-10-6. Vacancy in office of circuit court clerk.

3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.

§ 3-10-1. Elections to fill vacancies

Except as provided in sections three and four of this article, elections to fill vacancies shall be conducted to fill any unexpired term when more than one year of the term of office remains at the time of such election. When less than one year of the term of office remains at the time of the election, the person appointed to fill the vacancy shall continue in office until the completion of the term. Elections to fill vacancies shall be held at the same places, and superintended, conducted and returned, and the result ascertained, certified and declared, in the same manner, and by the same officers, as in general elections. The persons elected, having first duly qualified, shall enter upon the duties of their respective offices.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1872-3, c. 177; Acts 1875, c.

66; Acts 1881, c. 10, § 1; Acts 1963, c. 64; Acts 1991, c. 68.

§ 3-10-2. Vacancy in office of Governor

(a) In case of the death, conviction on impeachment, failure to qualify, resignation or other disability of the Governor, the President of the Senate shall act as Governor until the vacancy is filled or the disability removed; and if the President of the Senate, for any of the above-named causes, shall be or become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House of Delegates; and in all other cases where there is no one to act as Governor, one shall be chosen by the joint vote of the Legislature. Whenever a vacancy shall occur in the office of Governor before the first three years of the term shall have expired, a new election for Governor shall take place to fill the vacancy. The new election shall consist of a special primary election and a special general election, and shall occur at such time as will permit the person elected as Governor in the new election to assume office within one year of the date the vacancy occurred: *Provided,* That the special general election provided in this section may not apply to section eight, article one of this chapter. Within thirty days from the date the vacancy occurs, the person acting as Governor pursuant to the state constitution shall issue a proclamation fixing the time for a new statewide election to fill the vacancy in the office of Governor, which shall be published prior to such election as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county of the state. The proclamation issued by the person acting as Governor pursuant to the state constitution shall provide for a special primary election to nominate candidates for the special general election. The special primary election shall take place no less than ninety days after the proclamation and no later than one hundred forty days from the date that the vacancy in the office occurs. The proclamation issued by the person acting as Governor pursuant to the state constitution shall also provide for a special general election to take place no sooner than ninety days after the special primary election and no later than two hundred eighty days from the date that the vacancy in the office occurs.

(b) The compensation of election officers, cost of printing ballots and all other reasonable and necessary expenses in holding and making the return of the new election provided in this section to fill a vacancy in the office of Governor are obligations of the state incurred by the ballot commissioners, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of the new election are to be audited by the Secretary of State. The Secretary of State shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of the new election provided in this section to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the State Treasurer and shall mail the warrants directly to the vendors of the new election services, supplies and facilities.

(c) Notwithstanding the provisions of subsection (a) of this section to the contrary, for purposes of filling the vacancy that occurred in the office of Governor on November 15, 2010, a new election shall occur as follows:

(1) Upon the effective date of this subsection, the person acting as Governor pursuant to the state constitution shall immediately issue a proclamation calling for a special primary and general election as provided for in this subsection. For purposes of this subsection, the new elections so provided in the proclamation mean the special primary and general elections as set forth in this subsection.

(2) The special primary election shall be held on May 14, 2011 and the special general election shall be held on October 4, 2011.

(3) The proclamation for the special primary election and special general election shall be published prior to the special primary election and special general elections, respectively, as a Class II-0 legal advertisement in accordance with article three, chapter fifty-nine of this code and the publication area for the publication is each county of the state. The notice shall be filed with the Secretary of State who shall cause the document to be published within each county in accordance with this section.

(4) The provisions of this chapter apply to the special primary election and special general election to the extent that those provisions are consistent with the provisions of this section. Statutory time deadlines for the purpose of the new election provided in this subsection are modified as follows:

(A) A notarized declaration of candidacy and filing fee shall be filed and received in hand by the Secretary of State by 5:00 p.m. on the fifth calendar day following the proclamation of the special primary election. The declaration of candidacy may be filed in person, by United States mail, electronic means or any other means authorized by the Secretary of State;

(B) The Secretary of State may issue emergency administrative orders to undertake other ministerial actions that are otherwise authorized pursuant to this code when necessary to assure the preservation of the voting rights of the citizens of this state and avoid fraudulent voting and election activities and otherwise assure the orderly and efficient conduct of the new election provided in this subsection: *Provided,* That emergency administrative orders may not contravene the provisions of this section;

(C) For petition in lieu of payment of filing fees, a candidate seeking nomination for the vacancy in the office of Governor may utilize the process set forth in section eight-a, article five of this chapter: *Provided,* That the minimum number of signatures required is one thousand five hundred;

(D) Drawing for special primary election ballot position will take place at the Secretary of State's office twenty-four hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by four clerks of the county commission chosen by the West Virginia Association of County Clerks, with no more than two clerks representing a single political party. Ballot position for the special general election shall be determined pursuant to subdivision (3), subsection (c), section two, article six of this chapter;

(E) A registered voter who has not reached eighteen years of age may vote in

the May 14, 2011 special primary election: *Provided,* That the voter will attain eighteen years of age at the time of the special general election provided in this subsection;

(F) When paper or optical scan ballots are the primary voting method used at any county, the total number of regular official ballots printed shall equal at a minimum fifty percent of the number of registered voters eligible to vote that ballot;

(G) When paper ballots are used in conjunction with a direct recording electronic voting system, the total number of regular official ballots printed shall equal at a minimum thirty percent of the registered voters eligible to vote that ballot;

(H) Regularly scheduled locations of polling places may not be changed, except for situations as provided in sections seven-e and seven-f, article one of this chapter: *Provided,* That if multiple precincts voted in one polling location for the November 2, 2010, regularly scheduled general election, these precincts may be consolidated into a single precinct. Locations for consolidated precincts shall provide Internet access, insofar as possible, for the sole purpose of utilizing the statewide Voter Registration System (SVRS) as an electronic poll book. However, constitutionally mandated redistricting may not take effect until the special primary election and special general election provided in this subsection are complete; and

(I) Citizens having no party organization or affiliation may nominate candidates as provided by sections twenty-three and twenty-four of article five of this chapter: *Provided,* That the number of signatures required to be submitted shall be equal to not less than one-quarter of one percent of the entire vote cast at the last preceding general election for governor. Notwithstanding the provisions of sections twenty three and twenty four of article five of this chapter, the signatures, notarized declaration of candidacy, and filing fee must be submitted no later than seven calendar days following the special primary election provided in this subsection.

(J) For the special primary election to be held pursuant to this subsection, early voting will also be conducted from 9 a.m. to 5 p.m. on the Saturday immediately prior to the end of early voting.

(5) The provisions of this subsection shall expire upon the election and qualification of the Governor following the October 4, 2011 special general election.

(d) The Secretary of State shall by January 10, 2012 report to the Joint Committee on Government and Finance findings regarding of the operation of the new election undertaken pursuant to subsection (c) of this section. This report shall provide analysis of the direct and indirect costs to the state associated with the conduct of the new election.

Acts 1865, c. 64; Acts 1872-3, c. 118; Acts 1872-3, c. 177; Acts 1875, c. 66; Acts 1881, c. 10, § 2; Acts 1963, c. 64; Acts 1967, c. 105; Acts 2011, c. 62, eff. Feb. 2, 2011.

§ 3-10-3. Vacancies in offices of state officials, United States senators and

judges

Any vacancy occurring in the office of secretary of state, auditor, treasurer, attorney general, commissioner of agriculture, United States senator, judge of the supreme court of appeals or in any office created or made elective to be filled by the voters of the entire state, judge of a circuit court or judge of a family court is filled by the governor of the state by appointment. If the unexpired term of a judge of the supreme court of appeals, a judge of the circuit court or judge of a family court is for less than two years or if the unexpired term of any other office named in this section is for a period of less than two years and six months, the appointment to fill the vacancy is for the unexpired term. If the unexpired term of any office is for a longer period than above specified, the appointment is until a successor to the office has timely filed a certificate of candidacy, has been nominated at the primary election next following such timely filing and has thereafter been elected and qualified to fill the unexpired term. Proclamation of any election to fill an unexpired term is made by the governor of the state and, in the case of an office to be filled by the voters of the entire state, must be published prior to the election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication is each county of the state. If the election is to fill a vacancy in the office of judge of a circuit court or judge of a family court, the proclamation must be published prior to the election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication is each county in the judicial or family court circuit.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1872-3, c. 177; Acts 1875, c. 66; Acts 1881, c. 10, §§ 3, 4; Acts 1921, c. 101, § 1; Acts 1963, c. 64; Acts 1967, c. 105; Acts 1990, c. 79; Acts 2001, 5th Ex. Sess., c. 5, eff. Sept. 19, 2001.

§ 3-10-3a. Judicial Vacancy Advisory Commission

(a) The Judicial Vacancy Advisory Commission is hereby established to assist the Governor in filling judicial vacancies. The commission shall meet and submit a list of no more than five nor less than two best qualified persons to the Governor within ninety days of the occurrence of a vacancy in the office of justice of the Supreme Court of Appeals, judge of an intermediate appellate court, judge of a circuit court, or judge of a family court.

(b) The commission shall consist of eight appointed members. Four public members shall be appointed by the Governor for six-year terms, except for the initial appointments which shall be staggered in accordance with subsection (c) of this section. Four attorney members shall be appointed by the Governor for six-year terms, except as provided in subsection (c) of this section, from a list of nominees provided by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than twenty nor less than ten best qualified attorneys for appointment to the commission whenever there is a vacancy in the membership of the commission reserved for attorney members. The commission shall choose one of its appointed members to serve as chair for a three-year term. No more than four appointed members of the commission shall belong to the same political party. No more than three appointed members of the commission shall be residents of

the same congressional district. All members of the commission shall be citizens of this state. Public members of the commission may not be licensed to practice law in West Virginia or any other jurisdiction.

(c) Of the initial appointments made to the commission, two public members and two attorney members shall be appointed for a term ending two years after the effective date of this section, one public member and one attorney member shall be appointed for a term ending four years after the effective date of this section, and one public member and one attorney member shall be appointed for a term ending six years after the effective date of this section.

(d) The Governor, or his or her designee, the President of the West Virginia State Bar, and the Dean of the West Virginia University College of Law shall serve as *ex officio* members of the commission.

(e) Members of the commission shall serve without compensation, except that commission members are entitled to reimbursement of travel and other necessary expenses actually incurred while engaged in official commission activities in accordance with the guidelines of the Travel Management Office of the Department of Administration, or its successor entity. The Governor's Office shall cooperate with the commission to ensure that all resources necessary to carrying out the official duties of the commission are provided, including staff assistance, equipment and materials.

(f) The commission shall adopt written policies that formalize and standardize all operating procedures and ethical practices of its members including, but not limited to, procedures for training commission members, publishing notice of judicial vacancies, recruiting qualified individuals for consideration by the commission, receiving applications from qualified individuals, notifying the public of judicial vacancies, notifying state or local groups and organizations of judicial vacancies, and soliciting public comment on judicial vacancies. The written policies of the commission are not subject to the provisions of chapter twenty-nine-a of this code, but shall be filed with the Secretary of State.

(g) A majority of the commission plus one shall constitute a quorum to do business.

(h) All organizational meetings of the commission shall be open to the public and subject to the requirements of article nine-a, chapter six of this code. An "organizational meeting" means an initial meeting to discuss the commission's procedures and requirements for a judicial vacancy. The commission shall hold at least one organizational meeting upon the occurrence of a judicial vacancy. All other meetings of the commission are exempt from article nine-a, chapter six of this code.

(i) The commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter twenty-nine-b of this code, except for the list of best qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection, and the written policies required to be filed with the

Secretary of State in accordance with subsection (f) of this section.

(j) The commission shall submit its list of best qualified persons to the Governor in alphabetical order. A memorandum may accompany the list of best qualified persons and state facts concerning each of the persons listed. The commission shall make copies of any list of best qualified persons and accompanying memoranda it submits to the Governor available for public inspection.

Acts 2010, c. 77, eff. June 11, 2010.

§ 3-10-4. Vacancies in representation in Congress

If there be a vacancy in the representation from this state in the house of representatives in the Congress of the United States, the governor shall, within ten days after the fact comes to his knowledge, give notice thereof by proclamation, to be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be each county in the congressional district. In such proclamation he shall appoint some day, not less than thirty nor more than seventy-five days from the date thereof, for holding the election to fill such vacancy. Nominations to fill such vacancy shall be made in the manner prescribed for nominating a candidate to fill a vacancy in the office of governor, to be voted for at a special election. The congressional district executive committee of a party shall perform the duties devolving upon the state executive committee in filling a state office.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1872-3, c. 177; Acts 1875, c. 66; Acts 1881, c. 10; Acts 1883, c. 2, § 5; Acts 1963, c. 64; Acts 1967, c. 105.

§ 3-10-4a. Special Senate vacancy election

(a) Notwithstanding the provisions of section three of this article establishing processes for the appointment and election to fill a vacancy in the office of United States Senator, for purposes of filling the vacant seat in the office of United States Senator existing on July 1, 2010, a special election shall be held to fill the unexpired term concurrent with the general election of November 2, 2010. A special primary election shall be held to nominate party candidates for the November election.

(b) For the special primary election required to be held prior to the November 2, 2010 election by operation of this section upon its enactment during the second extraordinary session of the Legislature, 2010, the Governor shall immediately issue a proclamation calling for a special primary election and general election. The special general election shall be held on November 2, 2010. The following provisions apply to these special elections:

(1) The proclamation for the special election shall be published prior to the special election as a Class II-0 legal advertisement in accordance with article three, chapter fifty-nine of this code and the publication area for the publication is each county of the state. The notice shall be filed with the Secretary of State who shall immediately transmit the document to the clerk of

the county commission of each county. The clerk of the county commission of each county shall cause the document to be published within the county in accordance with this section.

(2) The provisions of this chapter shall apply to this special primary election to the extent that those provisions are consistent with the provisions of this section. Statutory time deadlines relating to availability of absentee ballots, certification, canvassing and related election procedures that cannot be met in a timely fashion, for the purpose of this special election, are modified as follows:

(A) The special primary election is to be held August 28, 2010;

(B) A notarized declaration of candidacy and filing fee shall be filed and received in hand by the Secretary of State by 5:00 p.m. on the fourth calendar day following the proclamation of the special primary election. The declaration of candidacy may be filed in person, by United States mail, electronic means or any other means authorized by the Secretary of State;

(C) Early-in-person voting shall be conducted during regular business hours beginning on Friday, August 20, 2010 and continuing through close of business Wednesday, August 25, 2010. In addition, early-in-person voting shall be conducted from 9:00 a.m. to 5:00 p.m. on Saturday, August 21, 2010. No satellite polling locations will be utilized for the August 28, 2010 special primary election;

(D) The Secretary of State may issue emergency administrative orders to undertake other ministerial actions that are otherwise authorized pursuant to this code when necessary to assure the preservation of the voting rights of the citizens of this state and avoid fraudulent voting and election activities and otherwise assure the orderly and efficient conduct of the election: *Provided, that* such emergency administrative orders may not contravene the provisions of this section;

(E) The compensation of election officers, cost of printing ballots and all other reasonable and necessary expenses in holding and making the return of the special election to fill a vacancy in the office of United States Senator are obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of the special election are to be audited by the Secretary of State. The Secretary of State shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of these special elections to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the State Treasurer and shall mail the warrants directly to the vendors of the special election services, supplies and facilities;

(F) For petition in lieu of payment of filing fees, a candidate seeking nomination for the vacant seat in the U.S. Senate may utilize the process set forth in section eight-a, article five of this chapter: *Provided,* That the minimum number of signatures required is one thousand seven hundred and forty;

(G) Drawing for ballot position will take place at the Secretary of State's office 24 hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by four clerks of the county commission chosen by the West Virginia Association of County Clerks, with no more than two clerks representing a single political party;

(H) The clerks of the county commission shall submit the list of persons who worked in the May 11, 2010 primary election to the county commission for appointment as election officials;

(I) Election officials shall be appointed by Tuesday, August 3, 2010;

(J) The clerks of the county commission shall provide notice to all election officials of the fact of their appointment by Wednesday, August 4, 2010. Included with the notice shall be a response notice form for the appointed person to return indicating if he or she agrees to serve in the specified capacity in the August 28, 2010 special primary election;

(K) The position of any election official notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve by Tuesday, August 10, 2010 is considered vacant and the clerk of the county commission shall proceed to fill the vacancies;

(L) Election officials shall be trained by Thursday, August 19, 2010: *Provided*, That election officials who attended training for the May 11, 2010 primary election are exempt from additional training for the August 28, 2010 special primary election;

(M) A registered voter who has not reached eighteen years of age may vote in the August 28, 2010 special primary election: *Provided,* That the voter will attain eighteen years of age at the time of the special general election;

(N) When paper or optical scan ballots are the primary voting method used at any county, the total number of regular official ballots printed shall equal at a minimum fifty percent of the number of registered voters eligible to vote that ballot;

(O) When paper ballots are used in conjunction with a direct recording electronic voting system, the total number of regular official ballots printed shall equal at a minimum thirty percent of the registered voters eligible to vote that ballot;

(P) For counties in which two or more qualified newspapers publish a daily newspaper, the clerk of the county commission shall publish at least once each sample official August 28, 2010 primary ballot, on the last day on which a newspaper is published immediately preceding the August 28, 2010 special primary election, 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 West Virginia Code;

(Q) For counties having no more than one daily newspaper or having one or more qualified newspapers which publish weekly, the clerk of the county commission shall publish each sample official August 28, 2010 primary ballot, on the last day in which a newspaper is published immediately preceding the August 28, 2010 special primary election, as a Class I-0 legal advertisement in the qualified daily newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of West Virginia Code;

(R) Counties shall not be required to separately publish a certified list of candidates;

(S) If only one notice of a sample ballot is published, it shall include a statement notifying voters that this is the sole publication of the sample ballot;

(T) Before voting machines are used, the clerks of the county commission shall have the ballots, vote recording devices, and electronic poll books inspected, and automatic tabulating equipment tested to ascertain that it will accurately count the votes cast. A single notice of the place and time of the inspection and testing shall be published, no less than three days in advance, as a class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of West Virginia Code. The publication area is the county involved;

(U) Applications for absentee ballots shall be accepted from the date of proclamation, other than from voters eligible to vote under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act who may apply for an absentee ballot for all elections within a calendar year as early as the first day of January of an election year;

(V) Regularly scheduled locations of polling places shall not be changed, except for emergency situations as provided for in § 3-1-7(e) and (f): *Provided,* That if multiple precincts voted in one polling location for the May 11, 2010 regularly scheduled primary election, such precincts may be consolidated into a single precinct. Locations for consolidated precincts shall provide internet access, insofar as possible, for the sole purpose of utilizing the Statewide Voter Registration System (SVRS) as an electronic poll book; and

(W) Persons having no party affiliation may nominate candidates for the U. S. Senate vacancy under the procedures set forth in sections twenty-three and twenty-four, article five of this chapter: *Provided,* That the number of signatures required to be submitted shall be equal to not less than one-quarter of one percent of the entire vote cast at the last preceding general election for any statewide congressional or presidential candidate. Notwithstanding the provisions of sections twenty-three and twenty-four of article three of this section, the signatures, notarized declaration of candidacy, and filing fee must be submitted no later than August 23, 2010.

(c) The Secretary of State, shall by January 10, 2011, report to the Joint Committee of Government and Finance findings regarding of the operation of the special elections undertaken pursuant to subsection (b) of this section. This report shall provide analysis of: direct and indirect costs to the state associated with the conduct of the election; benefits and disadvantages of

conducting an election on a Saturday; the impact of compressed time periods on efficient election administration; and whether this election process impacted early voting and participation by military and overseas voters.

(d) Any special election, which is held under the provisions of this section and occurs concurrently with a general election, shall be a separate election from the general election.

(e) Upon the election and qualification of a United States Senator by the United States Senate following the November 2, 2010 election, the provisions of this section will expire.

Acts 2010, 2nd Ex. Sess., c. 11, eff. July 19, 2010.

§ 3-10-5. Vacancies in State Legislature

(a) Any vacancy in the office of State Senator or member of the House of Delegates shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted by the party executive committee of the party with which the person holding the office immediately preceding the vacancy was affiliated. Such list of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified person within five days after the list is received. If the list is not submitted to the Governor within the fifteen day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party as the person vacating the office.

(b) In the case of a member of the House of Delegates, the list shall be submitted by the party executive committee of the delegate district in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the House of Delegates is for the unexpired term.

(c) In the case of a State Senator, the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment. If the unexpired term in the office of the State Senator will be for less than two years and two months, the appointment is for the unexpired term. If the unexpired term will be for a period equal to or longer than two years and two months, the appointment is until the next general election and until the election and qualification of a successor to the person appointed, at which general election the vacancy shall be filled by election for the unexpired term. Notice of an election to fill a vacancy in the office of State Senator shall be given by the Governor by proclamation and shall be published before the election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be each county in the senatorial district. Nominations for candidates to fill a vacancy shall be made in the manner prescribed for nominating a candidate to fill a vacancy in the office of Governor to be voted for at a general election. The state senatorial district executive committee of the political party shall discharge the duties incident to State Senator nominations devolving upon the party state executive committee in nominating a candidate for a state office.

Acts 1863, c. 100; Acts 1872-3, c. 118; Acts 1881, c. 10, § 7; Acts 1925, c. 56, §§ 1, 2; Acts 1963, c. 64; Acts 1964, 1st Ex. Sess., c. 2; Acts 1967, c. 105; Acts 1975, c. 132; Acts 2010, c. 78, eff. June 11, 2010.

§ 3-10-6. Vacancy in office of circuit court clerk

When a vacancy occurs in the office of clerk of the circuit court, the circuit court by a majority vote of the judges, or the chief judge thereof in vacation, shall fill the same by appointment of a person of the same political party as the officeholder vacating the office until the next general election, or until the completion of the term if the term ends on the thirty-first day of December following the next general election. The person so appointed shall hold office until his or her successor is elected and qualified. At the general election, a clerk shall be elected for the unexpired term if the unexpired term is greater than one year. The circuit court, or the chief judge thereof in vacation, shall cause a notice of the election to be published prior to the election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for the publication shall be the county. If the vacancy occurs no later than the eighty-fourth day before the primary election held to nominate candidates to be voted for at the general election, at which any vacancy is to be filled, candidates to fill the vacancy shall be nominated at the primary election in accordance with the time requirements and the provisions and procedures prescribed in section eleven, article five of this chapter. If the vacancy occurs after the eighty-fourth day before the primary but not later than the eighty-fourth day before the general election, they shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

Acts 1863, c. 100; Acts 1864, c. 34; Acts 1872-3, c. 118; Acts 1872-3, c. 177; Acts 1875, c. 66; Acts 1881, c. 10, § 8; Acts 1953, c. 94; Acts 1963, c. 64; Acts 1967, c. 105; Acts 1991, c. 68; Acts 2005, c. 101, eff. 90 days after April 9, 2005.

§ 3-10-7. Vacancies in offices of county commissioner and clerk of county commission

Any vacancy in the office of county commissioner or clerk of county commission shall be filled by the county commission of the county, unless the number of vacancies in a county commission deprive that body of a quorum, in which case the Governor of the state shall fill any vacancy in the county commission necessary to create a quorum thereof. Persons appointed shall be of the same political party as the officeholder vacating the office and shall continue in office until the next general election is certified, or until the completion of the term if the term ends on the thirty-first day of December following the next general election: *Provided,* That in the event a quorum of the county commission cannot agree upon a person to fill a vacancy in the office of county commissioner within thirty days of the date the vacancy first occurred, the county executive committee of the vacating county commissioner's political party shall select and name a person to fill the vacancy from the membership of

the vacating county commissioner's political party.

Notice of the election shall be given by order of the county commission and published as prescribed in section six of this article. Nomination of candidates to fill the office for an unexpired term in the office of county commissioner or clerk of the county commission shall be made in the manner prescribed for making nominations to fill a vacancy in the office of the clerk of the circuit court.

In the event that the election for an unexpired term is held at the same time as the election for a full term for county commissioner, the full term shall be counted first and the unexpired term shall be counted second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

Acts 1863, c. 100; Acts 1864, c. 34; Acts 1872-3, c. 118; Acts 1872-3, c. 177; Acts 1875, c. 66; Acts 1881, c. 10; Acts 1891, c. 17, § 9; Acts 1929, c. 87; Acts 1955, c. 65; Acts 1963, c. 64; Acts 1976, c. 27; Acts 1991, c. 68; Acts 2003, c. 100, eff. 90 days after March 7, 2003; Acts 2007, c. 108, eff. June 6, 2007.

§ 3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor

Any vacancy occurring in the office of prosecuting attorney, sheriff, assessor or county surveyor shall be filled by the county commission by appointment of a person of the same political party as the officeholder vacating the office. The appointed person shall hold the office until the next general election is certified, or until the completion of the term if the term ends on the thirty-first day of December following the next general election. Notice of an election to fill a vacancy in any of the offices named in this section shall be given by the county commission, or by the president thereof in vacation, and published or posted in the manner prescribed in section six of this article. Nomination of candidates to fill any vacancy shall be made in the manner prescribed in section six of this article for nominating candidates to fill a vacancy in the office of the clerk of the circuit court.

Acts 1863, c. 100; Acts 1864, c. 34; Acts 1872-3, c. 118; Acts 1872-3, c. 177; Acts 1875, c. 66; Acts 1881, c. 10; Acts 1915, c. 88, § 10; Acts 1963, c. 64; Acts 1991, c. 68; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

ARTICLE 11

AMENDMENTS TO THE STATE CONSTITUTION

Section

3-11-1. Proposing amendments to state constitution; withdrawal of proposed amendments.

3-11-2. Title and summary of amendment; position on ballot; designation of

election for submission of amendment.

3-11-3. Publication of proposed amendment by secretary of state.

3-11-4. Form of ballot; conduct of election.

3-11-5. Certificates of election commissioners; canvass of vote; certifying result.

3-11-6. Proclamation of result of election by secretary of state; effective date of amendment ratified.

§ 3-11-1. Proposing amendments to state constitution; withdrawal of proposed amendments

Any amendment to the constitution of the state may be proposed in either house of the Legislature by a joint resolution.

When an amendment as proposed is agreed to as provided by section two, article fourteen of the constitution, the question of ratification or rejection of such amendment shall be submitted to the voters of the state.

The Legislature may, by concurrent resolution adopted by a two-thirds vote of the members elected to each house, withdraw from consideration the question of ratification or rejection by the voters of such amendment in any session prior to the election at which it is to be submitted to the voters.

Acts 1972, c. 52.

§ 3-11-2. Title and summary of amendment; position on ballot; designation of election for submission of amendment

In any joint resolution proposing an amendment to the West Virginia constitution, for ratification or rejection by the voters, the Legislature shall for convenience of reference thereto, assign a title to such proposed amendment and shall set forth a summary of the purpose of such proposed amendment. If the Legislature shall fail in any such resolution to include a title and summary, or either, the secretary of state shall supply such omission or omissions, and certify the same to the ballot commissioners of each county. Whether set forth in such resolution or certified by the secretary of state, it shall be the duty of the ballot commissioners in each county to place upon the official ballot at the election at which such proposed amendment is to be voted upon, or upon the ballot label in counties where voting machines are used, the title and summary of such proposed constitutional amendment.

The Legislature may, in the joint resolution, give a proposed amendment a number. If this is done, and if there is more than one amendment submitted at the same election, the position of such amendment on the ballot shall be in accordance with the number so designated. When numbers are not so designated by the Legislature, the secretary of state, in certifying the election ballot, shall number the amendments consecutively in accordance with the dates of their final submission by the Legislature.

The Legislature shall, in the joint resolution, designate the election at which

the proposed constitutional amendment shall be submitted to the voters.

Acts 1972, c. 52.

§ 3-11-3. Publication of proposed amendment by secretary of state

The secretary of state shall cause each proposed amendment, with its title and summary of purpose, to be published as a Class I legal advertisement at least three months before such election in some newspaper in every county in the state in which a newspaper is printed. The cost of such publication, determined in accordance with the provisions of section three, article three, chapter fifty-nine of this code, shall be paid out of funds appropriated to the office of secretary of state.

Acts 1972, c. 52.

§ 3-11-4. Form of ballot; conduct of election

For the purpose of enabling the voters of the state to vote on the question of proposed amendments to the constitution at the election at which they are to be submitted, the board of ballot commissioners of each county shall place upon, and at the foot of, the official ballot to be voted at that election, under the heading "Ballot on Constitutional Amendments," as to each proposed amendment, the following:

No. .....

(title of amendment)

.....

.....

(summary of purpose)

☐ For

☐ Against

The election on each proposed amendment at each place of voting shall be superintended, conducted and returned, and the result thereof ascertained by the same officers and in the same manner as the election of officers to be voted for at said election, and all the provisions of the law relating to general elections, including all duties to be performed by any officer or board, as far as practicable, and not inconsistent with anything herein contained, shall apply to an election held under the provisions of this article. The ballots cast on the question of any proposed amendment shall be counted as other ballots cast at said election.

Acts 1972, c. 52.

§ 3-11-5. Certificates of election commissioners; canvass of vote; certifying result

As soon as the result is ascertained as to an amendment to the constitution, the commissioners, or a majority of them, and the canvassers (if there be any), or a majority of them, at each place of voting, shall make out and sign two certificates thereof as to each separate amendment, which certificates shall be in the following form or to the following effect:

"We, the undersigned, who acted as commissioners (or canvassers, as the case may be), of the election held at Precinct No....., in the district of ....., in the county of ....., on the ... day of ..., one thousand nine hundred ..., upon the question of ratification or rejection of the proposed constitutional amendment, do hereby certify that the result of said election was as follows:

"Amendment No. .....

(title of amendment)

"For ratification ... votes.

"Against ratification ... votes.

"Given under our hands this ... day of ..., one thousand nine hundred ....."

The said two certificates shall correspond with each other in all respects and contain the full and true returns in said election at each place of voting on said question. The said commissioners, or any one of them (or said canvassers, or any one of them, as the case may be), shall, within four days, excluding Sunday, after that on which said election was held, deliver one of said certificates to the clerk of the county court of his county, together with the ballots, and the other to the clerk of the circuit court of the county.

The said certificates, together with the ballots cast on the question of said proposed amendment, shall be laid before the commissioners of the county court within such time as will enable the commissioners of the county court to convene as a board of canvassers on the fifth day (Sundays excepted) after such election for the purpose of ascertaining the result of said election. As soon as the result of said election in the county upon the question of such ratification or rejection is ascertained, two certificates of such result shall be made out and signed by said commissioners as a board of canvassers, in the following form or to the following effect:

"We, the board of canvassers of the county of ..... having carefully and impartially examined the returns of the election held in said county, in each district thereof, on the ... day of ..., one thousand nine hundred ....., do certify that the result of the election in said county, on the question of the ratification or rejection of the proposed amendment is as follows:

"Amendment No. .....

(title of amendment)

"For ratification ... votes.

"Against ratification ... votes.

"Given under our hands this ... day of ..., one thousand nine hundred ..."

Separate certificates shall be made as to each constitutional amendment.

One of the certificates shall be filed in the office of the clerk of the county court and the other forwarded by registered mail to the secretary of state, who shall file and preserve the same until the day on which the result of said election in the state is to be ascertained, as provided in section six of this article.

Acts 1972, c. 52.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 3-11-6. Proclamation of result of election by secretary of state; effective date of amendment ratified

On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the secretary of state shall ascertain from said certificates the result of the election in the state, and declare the same by proclamation published as a Class I-0 legal advertisement in two newspapers printed at the seat of government. The cost of such publication, determined in accordance with the provisions of section three, article three, chapter fifty-nine of this code, shall be paid out of funds appropriated to the office of secretary of state. If a majority of the votes cast at said election upon said question be for ratification of an amendment, the amendment so ratified shall be in force and effect from the date of such ratification, as part of the constitution of the state.

Acts 1972, c. 52.

ARTICLE 12

WEST VIRGINIA SUPREME COURT OF APPEALS PUBLIC CAMPAIGN FINANCING PILOT PROGRAM

Section

3-12-1. Short title.

3-12-2. Legislative findings and declarations.

3-12-3. Definitions.

3-12-4. Alternative public campaign financing option.

3-12-5. Supreme Court of Appeals Public Campaign Financing Fund.

3-12-6. Sources of revenue for the fund.

3-12-7. Declaration of intent.

3-12-8. Exploratory period; contributions; expenditures.

3-12-9. Qualifying contributions.

3-12-10. Certification of candidates.

3-12-11. Schedule and amount of Supreme Court of Appeals Public Campaign Financing Fund payments; additional funds.

3-12-12. Restrictions on contributions and expenditures.

3-12-13. Reporting requirements.

3-12-14. Duties of the State Election Commission; Secretary of State.

3-12-15. Criminal penalties.

3-12-16. Civil penalties.

3-12-17. Expiration of article.

§ 3-12-1. Short title

This article is known as the "West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program." The pilot program begins with the exploratory period for the 2012 primary election and continues through the 2012 general election.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-2. Legislative findings and declarations

The Legislature finds and declares the following:

(1) Current campaign finance laws permit candidates to spend unlimited amounts of money raised from private sources;

(2) Current campaign finance laws permit certain independent parties to raise and spend unlimited amounts of money to influence the outcome of elections;

(3) Over the last decade, fundraising and campaign expenditures in elections for a seat on the Supreme Court of Appeals have dramatically increased in West Virginia;

(4) In 2000, candidates running for a seat on the Supreme Court of Appeals raised a total of $1.4 million;

(5) In 2004, candidates running for a seat on the Supreme Court of Appeals raised a total of $2.8 million;

(6) In 2008, candidates running for a seat on the Supreme Court of Appeals raised a total of $3.3 million;

(7) As spending by candidates and independent parties increases, so does the

perception that contributors and interested third parties hold too much influence over the judicial process;

(8) The detrimental effects of spending large amounts by candidates and independent parties are especially problematic in judicial elections because impartiality is uniquely important to the integrity and credibility of courts;

(9) An alternative public campaign financing option for candidates running for a seat on the Supreme Court of Appeals will ensure the fairness of democratic elections in this state, protect the Constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections, protect the impartiality and integrity of the judiciary, and strengthen public confidence in the judiciary; and

(10) Funding the "West Virginia Supreme Court of Appeals Public Campaign Financing Pilot Program" from a wide range of revenue sources furthers important state interests in protecting the integrity of judicial elections and serves to protect the public interest.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-3. Definitions

As used in this article, the following terms and phrases have the following meanings:

(1) "Candidate's committee" means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(2) "Certified candidate" means an individual seeking election to the West Virginia Supreme Court of Appeals who has been certified in accordance with section ten of this article as having met all of the requirements for receiving public campaign financing from the fund.

(3) "Contribution" means a gift subscription, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: *Provided,* That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

(4) "Exploratory contribution" means a contribution of no more than $1,000 made by an individual adult, including a participating candidate and members of his or her immediate family, during the exploratory period. Exploratory

contributions may not exceed $20,000 in the aggregate.

(5) "Exploratory period" means the period during which a participating candidate may raise and spend exploratory contributions to examine his or her chances of election and to qualify for public campaign financing under this article. The exploratory period begins on January 1 the year before the primary in which the candidate may run for Justice of the Supreme Court of Appeals and ends on the last Saturday in January of the election year.

(6) "Financial agent" means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

(7) "Fund" means the Supreme Court of Appeals Public Campaign Financing Fund created by section five of this article.

(8) "General election campaign period" means the period beginning the day after the primary election and ending on the day of the general election.

(9) "Independent expenditure" means an expenditure by a person:

(A) Expressly advocating the election or defeat of a clearly identified candidate; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee or a political party committee or its agents.

Supporting or opposing the election of a clearly identified candidate includes supporting or opposing the candidates of a political party. An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

(10) "Immediate family" or "immediate family members" means the spouse, parents, step-parents, siblings and children of the participating candidate.

(11) "Nonparticipating candidate" means a candidate who is:

(A) Seeking election to the Supreme Court of Appeals;

(B) Is neither certified nor attempting to be certified to receive public campaign financing from the fund; and

(C) Has an opponent who is a participating or certified candidate.

(12) "Participating candidate" means a candidate who is seeking election to the Supreme Court of Appeals and is attempting to be certified in accordance with section ten of this article to receive public campaign financing from the fund.

(13) "Person" means an individual, partnership, committee, association and any other organization or group of individuals.

(14) "Primary election campaign period" means the period beginning on the first day of the primary election filing period, as determined under section seven, article five of this chapter, and ending on the day of the subsequent primary election.

(15) "Qualifying contribution" means a contribution received from a West Virginia registered voter of not less than $1 nor more than $100 in the form of cash, check or money order, made payable to a participating candidate or the candidate's committee, or in the form of an electronic payment or debit or credit card payment, received during the qualifying period.

(16) "Qualifying period" means the period during which participating candidates may raise and spend qualifying contributions in order to qualify to receive public campaign financing.

(A) For candidates seeking nomination on the primary election ballot, the qualifying period begins on September 1 preceding the election year and ends on the last Saturday in January of the election year.

(B) For candidates, other than those nominated during the primary election, seeking to be placed on the general election ballot, the qualifying period begins on June 1 of the election year and ends on October 1 of the election year.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-4. Alternative public campaign financing option

This article establishes an alternative public campaign financing option available to candidates for election to the office of Justice of the West Virginia Supreme Court of Appeals for the 2012 primary and general elections. Candidates electing the alternative public campaign financing option shall comply with all other applicable election and campaign laws and rules.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-5. Supreme Court of Appeals Public Campaign Financing Fund

There is established within the State Treasury a special revenue fund to be known as the "Supreme Court of Appeals Public Campaign Financing Fund" for the dual purpose of providing public financing for the election campaigns of certified candidates under the provisions of this article and of paying the administrative and enforcement costs of the Secretary of State and State Election Commission related to this article. All moneys collected under the provisions of this article shall be deposited in the fund, which shall be administered by the State Election Commission. Funds may also be accepted from any gift, grant, bequest, endowment fund or donation which may be received by the State Election Commission from any person, firm, foundation or corporation. Any balance, including accrued interest or other earnings in the fund at the end of any fiscal year do not revert to the General Revenue Fund, but shall remain in the fund. Expenditures may be made from the fund only for the purposes set forth in this article and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-6. Sources of revenue for the fund

Revenue from the following sources shall be deposited in the fund:

(1) All exploratory and qualifying contributions in excess of the established maximums;

(2) Money returned by participating or certified candidates who fail to comply with the provisions of this article;

(3) Unspent or unobligated moneys allotted to certified candidates and remaining unspent or unobligated on the date of the general election for which the money was distributed;

(4) If a certified candidate loses, all remaining unspent or unobligated moneys after the primary election;

(5) Civil penalties levied by the State Election Commission against candidates for violations of this article;

(6) Civil penalties levied by the Secretary of State pursuant to section seven, article eight of this chapter;

(7) Voluntary donations made directly to the fund;

(8) Interest income;

(9) On or before July 1, 2010, and for two successive years thereafter, the State Auditor shall authorize the transfer of the amount of $1 million from the Purchasing Card Administration Fund established in section ten-d, article three, chapter twelve of this code to the fund created by this article; and

(10) Money appropriated to the fund.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-7. Declaration of intent

A candidate desiring to receive campaign financing from the fund shall first file a declaration of intent before the end of the qualifying period and prior to collecting any qualifying contributions. The declaration shall be on a form prescribed by the State Election Commission and shall contain a statement that the candidate is qualified to be placed on the ballot, and, if elected, to hold the office sought and has complied with and will continue to comply with all requirements of this article, including contribution and expenditure restrictions. Contributions made prior to the filing of the declaration of intent are not qualifying contributions. Any contributions received by a candidate during any precandidacy period which preceded the exploratory period which remain unexpended at the time of the declaration of intent shall be considered exploratory funds and subject to the limits and provisions of section eight of this article.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-8. Exploratory period; contributions; expenditures

(a) A participating candidate or his or her committee may not accept, spend or obligate exploratory contributions exceeding $20,000 in the aggregate, during the exploratory period. At the time the participating candidate formally declares his or her intent to qualify for public campaign financing, in accordance with section five of this article, any unexpended or undedicated contributions received during any precandidacy period which preceded the exploratory period shall be deemed to be exploratory contributions for that candidate. The maximum individual exploratory contribution which may be accepted from any person including immediate family members is $1,000. A participating candidate may loan, contribute or obligate up to $1,000 of his or her own money for exploratory purposes. Any exploratory contributions received by the participating candidate in excess of $20,000 in the aggregate shall be sent to the Election Commission for deposit in the fund.

(b) Each exploratory contribution shall be acknowledged by a written receipt. Receipts for exploratory contributions of $250 or more during an election cycle shall include the contributor's name, residence and mailing address, business affiliation and occupation. Receipts for exploratory contributions of less than $250 shall include the contributor's name and the amount of the contribution, and otherwise comport with the disclosure and reporting requirements of section five-a, article eight of this chapter.

(c) An exploratory contribution from one person may not be made in the name of another person.

(d) At the beginning of each month a participating or certified candidate or his or her financial agent shall report all exploratory contributions, expenditures and obligations along with all receipts for contributions received during the prior month to the Secretary of State. Such reports shall be filed electronically: *Provided*, That a committee may apply for an exemption in case of hardship pursuant to subsection (c) of section five-b, article eight of this chapter. If the candidate decides not to run for office all unspent or unobligated exploratory contributions shall be sent to the State Election Commission for deposit in the fund. If the candidate decides to run for office as a nonparticipating candidate the unspent or unobligated exploratory contributions shall be used in accordance with articles eight and twelve of this chapter.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-9. Qualifying contributions

(a) A participating candidate or his or her candidate's committee may not accept more than one qualifying contribution from a single individual. A qualifying contribution may not be less than $1 nor more than $100. To be considered as a proper qualifying contribution, the qualifying contribution must be made by a registered West Virginia voter. A participating candidate shall collect qualifying contributions which in the aggregate are not less than $35,000 nor more than $50,000. Qualifying contributions in excess of $50,000

shall be sent to the State Election Commission for deposit in the fund.

(b) Each qualifying contribution shall be acknowledged by a written receipt that includes:

(1) The printed name of the participating candidate on whose behalf the contribution is made and the signature of the person who collected the contribution for the candidate or his or her candidate's committee;

(2) For qualifying contributions of $25 or more, the contributor's signature, printed name, street address, zip code, telephone number, occupation and name of employer; and for qualifying contributions of less than $25, the contributor's signature, printed name, street address and zip code;

(3) A statement above the contributor's signature that:

(A) The contributor understands the purpose of the contribution is to assist the participating candidate in obtaining public campaign financing;

(B) The contribution was made without coercion;

(C) The contributor has not been reimbursed, received or promised anything of value for making the contribution; and

(4) One copy of the receipt shall be given to the contributor, one copy shall be retained by the candidate and one copy shall be sent by the candidate to the Secretary of State. A contribution which is not acknowledged by a written receipt in the form required by this subsection is not a qualifying contribution.

(c) During the qualifying period, a participating candidate or his or her candidate's committee must obtain at least five hundred qualifying contributions from registered West Virginia voters. A minimum of ten percent of the total number of qualifying contributions received by the candidate must be from each of the state's congressional districts.

(d) A participating candidate and each member of the candidate's immediate family who is a registered voter in this state may each make one qualifying contribution. A participating candidate may not use any other personal funds to satisfy the qualifying contributions requirements.

(e) A participating candidate may not reimburse, give or promise anything of value in exchange for a qualifying contribution.

(f) At the beginning of each month, a participating or certified candidate or his or her financial agent or committee shall report all qualifying contributions, expenditures and obligations along with all receipts for contributions received during the prior month to the Secretary of State. Such reports shall be filed electronically: *Provided*, That a committee may apply for an exemption in case of hardship pursuant to subsection (c) of section five-b, article eight of this chapter. If the candidate decides not to run for office, all unspent or unobligated qualifying contributions shall be sent to the State Election Commission for deposit in the fund. If the candidate decides to run for office as a nonparticipating candidate, the unspent or

unobligated qualifying contributions shall be used in accordance with articles eight and twelve of this chapter.

(g) All qualifying contributions collected and all expenditures by a participating candidate or his or her committee shall be reported to the Secretary of State no later than two business days after the close of the qualifying period.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-10. Certification of candidates

(a) To be certified, a participating candidate shall apply to the State Election Commission for public campaign financing from the fund and file a sworn statement that he or she has complied and will comply with all requirements of this article throughout the applicable campaign.

(b) Upon receipt of a notice from the Secretary of State that a participating candidate has received the required number and amount of qualifying contributions, the State Election Commission shall determine whether the candidate or candidate's committee:

(1) Has signed and filed a declaration of intent as required by section seven of this article;

(2) Has obtained the required number and amount of qualifying contributions as required by section nine of this article;

(3) Has complied with the contribution restrictions of this article;

(4) Is eligible, as provided in section nine, article five of this chapter, to appear on the primary or general election ballot; and

(5) Has met all other requirements of this article.

(c) The State Election Commission shall process applications in the order they are received and shall verify a participating candidate's compliance with the requirements of subsection (b) of this section by using the verification and sampling techniques approved by the State Election Commission.

(d) The State Election Commission shall determine whether to certify a participating candidate as eligible to receive public campaign financing no later than three business days after the candidate or the candidate's committee makes his or her final report of qualifying contributions or, if a challenge is filed under subsection (g) of this section, no later than six business days after the candidate or the candidate's committee makes his or her final report of qualifying contributions. A certified candidate shall comply with the provisions of this article through the general election campaign period.

(e) No later than two business days after the State Election Commission certifies that a participating candidate is eligible to receive public campaign financing under the provisions of this section, the State Election Commission, acting in concert with the State Auditor's office and the State Treasurer's office, shall cause a check to be issued to the candidate's campaign depository

account an amount equal to the initial public campaign financing benefit for which the candidate qualifies under section eleven of this article, minus the candidate's qualifying contributions, and shall notify all other candidates for the same office of its determination.

(f) If the candidate desires to receive public financing benefits by electronic transfer, the candidate shall include in his or her application sufficient information and authorization for the State Treasurer to transfer payments to his or her campaign depository account.

(g) Any person may challenge the validity of any contribution listed by a participating candidate by filing a written challenge with the State Election Commission setting forth any reason why the contribution should not be accepted as a qualifying contribution. If a contribution is challenged under this subsection, the State Election Commission shall decide the validity of the challenge no later than the end of the next business day after the day that the challenge is filed, unless the State Election Commission determines that the candidate whose contribution is challenged has both a sufficient qualifying number and amount of qualifying contributions to be certified as a candidate under this section without considering the challenge. Within five business days of a challenge, the candidate or candidate's committee who listed any contribution that is the subject of a challenge may file a report with the State Election Commission of an additional contribution collected pursuant to section nine of this article for consideration as a qualifying contribution.

(h) A candidate's certification and receipt of public campaign financing may be revoked by the State Election Commission, if the candidate violates any of the provisions of this article. A certified candidate who violates the provisions of this article shall repay all moneys received from the fund to the State Election Commission.

(i) The determination of any issue before the State Election Commission is the final administrative determination. Any meetings conducted by the State Elections Commission to certify a candidate's initial eligibility to receive funds under this article, or their eligibility to receive supplemental funds or rescue funds under section eleven of this article shall not be subject the public notice and open meeting requirements of article nine-a, chapter six of this Code, but the Commission shall concurrently provide public notice of any decision and determination it makes which impacts the candidate's eligibility to receive initial funds or supplemental funds pursuant to the provisions of this article. Any person adversely affected by a decision of the State Election Commission under the provisions of this article may appeal that decision to the circuit court of Kanawha County.

(j) A candidate may withdraw from being a certified candidate and become a nonparticipating candidate at any time with the approval of the State Election Commission. Any candidate seeking to withdraw shall file a written request with the State Election Commission, which shall consider requests on a case-by-case basis. No certified candidate may withdraw until he or she has repaid all moneys received from the fund: *Provided,* That the State Election Commission may, in exceptional circumstances, waive the repayment requirement. The State Election Commission may assess a penalty not to exceed $10,000 against any candidate who withdraws without approval.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-11. Schedule and amount of Supreme Court of Appeals Public Campaign Financing Fund payments; additional funds

(a) The State Election Commission, acting in concert with the State Auditor's office and the State Treasurer's office, shall have a check issued within two business days after the date on which the candidate is certified, to make payments from the fund for the 2012 primary election campaign period available to a certified candidate.

(1) In a contested primary election, a certified candidate shall receive $200,000 in initial campaign financing from the fund, minus the certified candidate's qualifying contributions.

(2) In an uncontested primary election, a certified candidate shall receive $50,000 from the public campaign financing fund, minus the certified candidate's qualifying contributions.

(b) Within two business days after the primary election results are certified by the Secretary of State, the State Election Commission, acting in concert with the State Auditor's office and the State Treasurer's office, shall cause a check to be issued to make initial payments from the fund for the 2012 general election campaign period available to a certified candidate.

(1) In a contested general election, a certified candidate may receive from the fund an amount not to exceed $350,000.

(2) In an uncontested general election, a certified candidate shall receive $35,000 from the public campaign financing fund.

(c) The State Election Commission shall authorize the distribution of initial campaign financing moneys to certified candidates in equal amounts. The commission shall propose a legislative rule on distribution of funds.

(d) The State Election Commission may not authorize or direct the distribution of moneys to certified candidates in excess of the total amount of money deposited in the fund pursuant to section six of this article. If the commission determines that the money in the fund is insufficient to totally fund all certified candidates, the commission shall authorize the distribution of the remaining money proportionally, according to each candidate's eligibility for funding. Each candidate may raise additional money in the same manner as a nonparticipating candidate for the same office up to the unfunded amount of the candidate's eligible funding.

(e) If the commission determines from any reports filed pursuant to this chapter or by other reliable and verifiable information obtained through investigation that a nonparticipating candidate's campaign expenditures or obligations, in the aggregate, have exceeded by twenty percent the initial funding available under this section any certified candidate running for the same office, the commission shall authorize the release of additional funds in the amount of the reported excess to any opposing certified candidate for the same office.

(f) If the State Election Commission determines from any reports filed pursuant to this chapter or by other reliable and verifiable information obtained through investigation that independent expenditures on behalf of a nonparticipating candidate, either alone or in combination with the nonparticipating candidate's campaign expenditures or obligations, have exceeded by twenty percent the initial funding available under this section to any certified candidate running for the same office, the commission shall authorize the release of additional funds in the amount of the reported excess to any certified candidate who is an opponent for the same office.

(g) If the commission determines from any reports filed pursuant to this chapter or by other reliable and verifiable information obtained through investigation that independent expenditures on behalf of a certified candidate, in combination with the certified candidate's campaign expenditures or obligations, exceed by twenty percent the initial funding available under this section to any certified candidate running for the same office, the State Election Commission shall authorize the release of additional funds in the amount of the reported excess to any other certified candidate who is an opponent for the same office.

(h) Additional funds released under this section to a certified candidate may not exceed $400,000 in a primary election and $700,000 in a general election.

(i) In the event the commission determines that additional funds beyond the initial distribution are to be released to a participating candidate pursuant to the provisions of the section, the commission, acting in concert with the State Auditor's office and the State Treasurer's office, shall cause a check for any such funds to be issued to the candidate's campaign depository within two business days.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-12. Restrictions on contributions and expenditures

(a) A certified candidate or his or her committee may not accept loans or contributions from any private source, including the personal funds of the candidate and the candidate's immediate family, during the primary or general election campaign periods except as permitted by this article.

(b) After filing the declaration of intent and during the qualifying period, a participating candidate may not spend or obligate more than he or she has collected in exploratory and qualifying contributions. After the qualifying period and through the general election campaign period, a certified candidate may spend or obligate any unspent exploratory or qualifying contributions and the moneys he or she receives from the fund under the provisions of section eleven of this article.

(c) A participating or certified candidate may expend exploratory and qualifying contributions and funds received from the fund only for lawful election expenses as provided in section nine, article eight of this chapter. Moneys distributed to a certified candidate from the fund may be expended only during the primary and general election campaign period for which funds were dispersed. Money from the fund may not be used:

(1) In violation of the law;

(2) To repay any personal, family or business loans, expenditures or debts; or

(3) To help any other candidate.

(d) A certified candidate or his or her committee shall return to the fund any unspent and unobligated exploratory contributions, qualifying contributions or moneys received from the fund within forty-eight hours after:

(1) The date on which the candidate ceases to be certified; or

(2) The date on which the individual loses the primary election or otherwise ceases to be a candidate.

(e) Funds remaining unspent or unobligated after the close of the primary election campaign period may be retained by the candidate for use during the general election campaign period but shall be deducted from the amount the candidate is eligible to receive under subsection (b), section eleven of this article.

(f) A certified candidate or his or her committee shall return to the fund any unspent or unobligated public campaign financing funds no later than five business days after the general election.

(g) A contribution from one person may not be made in the name of another person.

(h) A participating or certified candidate or his or her committee receiving qualifying contributions or exploratory contributions from a person not listed on the receipt required by sections eight and nine of this article is liable to the State Election Commission for the entire amount of that contribution and any applicable penalties.

(i) A certified candidate accepting any benefits under the provisions of this article shall continue to comply with all of its provisions throughout the primary election campaign period and general election campaign period.

(j) A participating or certified candidate or his or her financial agent shall provide the Secretary of State with all requested campaign records, including all records of exploratory and qualifying contributions received and campaign expenditures and obligations, and shall fully cooperate with any audit of campaign finances requested or authorized by the State Election Commission.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-13. Reporting requirements

(a) Participating candidates, certified candidates and nonparticipating candidates shall comply with the provisions of this section in addition to any other reporting required by the provisions of this chapter.

(b) During the exploratory and qualifying periods, a participating candidate or his or her financial agent shall submit, on the first of each month, a report

of all exploratory and qualifying contributions along with their receipts and an accounting of all expenditures and obligations received during the immediately preceding month. The reports shall be on forms or in a format prescribed by the Secretary of State. Such reports shall be filed electronically: *Provided,* That a committee may apply for an exemption, in case of hardship, pursuant to subsection (c) of section five-b, article eight of this chapter.

(c) No later than two business days after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the Secretary of State on appropriate forms a summary of:

(1) All exploratory contributions received and funds expended or obligated during the exploratory period together with copies of any receipts not previously submitted for exploratory contributions; and

(2) All qualifying contributions received and funds expended or obligated during the qualifying period together with copies of any receipts not previously submitted for qualifying contributions.

(d) A certified candidate or his or her financial agent shall file periodic financial statements in accordance with section five, article eight of this chapter, detailing all funds received, expended or obligated during the specified periods. The reports shall be on forms approved by the Secretary of State.

(e) In addition to any other reporting required by this chapter, a nonparticipating candidate or his or her financial agent shall report to the Secretary of State on approved forms an itemized summary of his or her campaign expenditures or obligations, according to the following provisions and guidelines:

(1) On the first Saturday in March or within six days thereafter, listing the nonparticipating candidate's expenditures and obligations prior to March 1, if the nonparticipating candidate's campaign expenditures or obligations, in the aggregate, exceed the initial funding available under section eleven of this article to any certified candidate for the same office.

(2) On the first Saturday in April, listing any expenditures or obligations, in the aggregate, that exceed the initial funding available under section eleven of this article to any certified candidate running for the same office and which have taken place subsequent to those reported on the financial statement required to be filed by a candidate for public office pursuant to subdivision (1), subsection (b), section five, article eight of this chapter. Thereafter, any additional expenditures or obligations, in the aggregate, that exceed the initial funding available under section eleven of this article to any certified candidate running for the same office made prior to the fifteenth day before the primary election shall be reported to the Secretary of State within forty-eight hours.

(3) On the first Saturday in July or within six days thereafter, listing the nonparticipating candidate's expenditures and obligations prior to July 1 subsequent to the primary election, if the nonparticipating candidate's expenditures or obligations, in the aggregate, exceed the initial funding

available under section eleven of this article to any certified candidate running for the same office.

(4) On the first Saturday in October, listing any expenditures or obligations, in the aggregate, that exceed the initial funding available under section eleven of this article to any certified candidate running for the same office and which have taken place subsequent to those reported on the financial statement required to be filed by a candidate for public office pursuant to subdivision (4), subsection (b), section five, article eight of this chapter. Thereafter, any additional expenditures or obligations, in the aggregate, that exceed the initial funding available under section eleven of this article to any certified candidate running for the same office made prior to the fifteenth day before the general election shall be reported to the State Election Commission within forty-eight hours.

(5) During the last fifteen days before the primary or general elections in 2012, the nonparticipating candidate or his or her financial agent shall report to the State Election Commission within twenty-four hours thereof every additional expenditure or obligation, in the aggregate, that exceeds the initial funding available under section eleven of this article to any certified candidate running for the same office.

(f) Any person, organization or entity making independent expenditures advocating the election or defeat of a certified candidate or the nomination or election of any candidate who is opposed by a certified candidate in excess of $1,000, in the aggregate, shall report these expenditures to the State Election Commission on approved forms within forty-eight hours of the expenditure.

(g) During the last fifteen days before the primary or general election in 2012, any person, organization or entity making independent expenditures advocating the election or defeat of any candidate, including the election or defeat of a certified candidate or the nomination or election of any candidate who is opposed by a certified candidate, shall continue to file reports as required pursuant to subsection (b), section two, article eight of this chapter.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-14. Duties of the State Election Commission; Secretary of State

(a) In addition to its other duties, the State Election Commission shall carry out the duties of this article and complete the following as applicable:

(1) Prescribe forms for reports, statements, notices and other documents required by this article;

(2) Make an annual report to the Legislature accounting for moneys in the fund, describing the State Election Commission's activities and listing any recommendations for changes of law, administration or funding amounts;

(3) Propose emergency and legislative rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, as may be necessary for the proper administration of the provisions of this article;

(4) Enforce the provisions of this article to ensure that moneys from the fund are placed in candidate campaign accounts and spent as specified in this article;

(5) Monitor reports filed pursuant to this article and the financial records of candidates to ensure that qualified candidates receive matching funds promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund;

(6) Cause an audit of the fund to be conducted by independent certified public accountants ninety days after a general election. The State Election Commission shall cooperate with the audit, provide all necessary documentation and financial records to the auditor and maintain a record of all information supplied by the audit;

(7) In consultation with the State Treasurer and the State Auditor, develop a rapid, reliable method of conveying funds to certified candidates. In all cases, the commission shall distribute funds to certified candidates in a manner that is expeditious, ensures accountability and safeguards the integrity of the fund; and

(8) Regularly monitor the receipts, disbursements, obligations and balance in the fund to determine whether the fund will have sufficient moneys to meet its obligations and sufficient moneys available for disbursement during the general election campaign period.

(b) In addition to his or her other duties, the Secretary of State shall carry out the duties of this article and complete the following as applicable:

(1) Prescribe forms for reports, statements, notices and other documents required by this article;

(2) Prepare and publish information about this article and provide it to potential candidates and citizens of this state;

(3) Prepare and publish instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with this article and to explain the duties of candidates and others participating in elections under the provisions of this article;

(4) Propose emergency and legislative rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary for the proper administration of the provisions of this article;

(5) Enforce the provisions of this article to ensure that moneys from the fund are placed in candidate campaign accounts and spent as specified in this article;

(6) Monitor reports filed pursuant to this article and the financial records of candidates to ensure that qualified candidates receive matching funds promptly and to ensure that moneys required by this article to be paid to the fund are deposited in the fund;

(7) Ensure public access to the campaign finance reports required pursuant to this article, and whenever possible, use electronic means for the reporting, storing and display of the information; and

(8) Prepare a voters' guide for the general public listing the names of each candidate seeking election to the Supreme Court of Appeals. Both certified and nonparticipating candidates shall be invited by the State Election Commission to submit a statement, not to exceed five hundred words in length, for inclusion in the guide. The guide shall identify the candidates that are certified candidates and the candidates that are nonparticipating candidates. Copies of the guide shall be posted on the website of the Secretary of State, as soon as may be practical.

(c) To fulfill their responsibilities under this article, the State Election Commission and the Secretary of State may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require, by subpoena, the production of any books, papers, records or other items material to the performance of their duties or the exercise of their powers.

(d) The State Election Commission may also propose and adopt procedural rules to carry out the purposes and provisions of this article and to govern procedures of the State Election Commission as it relates to the requirements of this article.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-15. Criminal penalties

(a) A participating or certified candidate who, either personally or through his or her committee, knowingly accepts contributions or benefits in excess of those allowed under this article, spends or obligates funds in excess of the public campaign financing funding to which he or she is entitled or uses the benefits or funding for a purpose other than those permitted under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500, or confined in jail for up to thirty days or both.

(b) A participating or certified candidate who, either personally or through his or her committee or financial agent, provides false information to, or conceals or withholds information from, the State Election Commission or the Secretary of State is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $10,000, or confined in jail for up to one year or both.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-16. Civil penalties

(a) If a participating or certified candidate or his or her committee or financial agent unintentionally accepts contributions from a private source in violation of the provisions of this article or spends or obligates to spend more than the amount of public financing money he or she is eligible to receive

from the fund pursuant to section eleven of this article, the State Election Commission may order the candidate to pay to the State Election Commission an amount equal to the amount of the contribution, expenditure or obligation.

(b) If a participating or certified candidate or his or her committee or financial agent intentionally accepts contributions from a private source in violation of this article or spends or obligates more than the amount of public campaign financing he or she is eligible to receive from the fund, the State Election Commission shall order the candidate to pay to the State Election Commission an amount equal to ten times the amount of the contribution, expenditure or obligation. The candidate shall pay the civil penalty authorized under this subsection within seven days of receipt of written notice from the State Election Commission of the imposition of the penalty.

(c) If a participating or certified candidate fails to pay any moneys required to be paid to the State Election Commission or returned to the fund under this article, the State Election Commission may order the candidate to pay an amount equal to three times the amount that should have been paid to the State Election Commission or returned to the fund.

(d) In addition to any other penalties imposed by law, the State Election Commission may impose a civil penalty for a violation by or on behalf of any candidate of any reporting requirement imposed by this article in the amount of $100 a day. The penalty shall be doubled if the amount not reported for a specific election exceeds ten percent of the initial amount of public financing available to a certified candidate in a primary or general election pursuant to section eleven of this article.

(e) All penalties collected by the State Election Commission pursuant to this section shall be deposited into the fund. The candidate and the candidate's campaign account are jointly and severally responsible for the payment of any penalty imposed pursuant to this section.

Acts 2010, c. 72, eff. June 11, 2010.

§ 3-12-17. Expiration of article

The provisions of this article shall have no force or effect on or after July 1, 2013. Any moneys remaining in the fund on July 1, 2013, shall be transferred to the General Revenue Fund.

Acts 2010, c. 72, eff. June 11, 2010.

CHAPTER 6

GENERAL PROVISIONS RESPECTING OFFICERS

Article

1. Oaths of Office.

5. Terms of Office; Matters Affecting the Right to Hold Office.

6. Removal of Officers.

14. Uniform Facsimile Signatures of Public Officials Act.

ARTICLE 1

OATHS OF OFFICE

Section

6-1-8. List of county officers to be furnished secretary of state.

§ 6-1-8. List of county officers to be furnished secretary of state

The clerk of the county court of each county, within thirty days after the qualification of officers chosen at each general election in his county, shall transmit to the secretary of state a certified list of all county officers, showing the name of the officer and the title of the office.

Acts 1866, c. 41, § 1; Acts 1872-3, c. 120, § 7.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

ARTICLE 5

TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO HOLD OFFICE

Section

6-5-1. When terms of office to begin.

6-5-5. Disqualification by conviction of treason, felony, or bribery.

§ 6-5-1. When terms of office to begin

The terms of officers, except when elected or appointed to fill vacancies, shall begin respectively as follows: That of governor, secretary of state, state superintendent of free schools, treasurer, auditor, attorney general and commissioner of agriculture, on the first Monday after the second Wednesday of January next after their election; that of a member of the Legislature, on the first day of December next after his election; and that of the judges of the supreme court of appeals, the judges of the several circuit courts, the judges of the criminal, intermediate, common pleas and other inferior courts, the county commissioners, prosecuting attorneys, surveyors of land, assessors, sheriffs, clerks of the circuit, criminal, intermediate, common pleas, or other inferior courts, clerks of the county courts, justices of the peace and constables, on the first day of January next after their election.

Whenever a person is elected or appointed to fill a vacancy, his term shall be as prescribed by chapter three of this code.

Acts 1863, c. 46, § 6; Acts 1863, c. 100, § 8; Acts 1882, c. 42, § 1; Acts 1885, c. 6, § 1; Acts 1939, c. 149.

Acts 1976, c. 33, provided that all references to "justice of the peace" in the Code of West Virginia mean "magistrate." See § 50-1-17.

Acts 1976, c. 33, abolished the office of the constable and transferred all duties and powers of the constables to deputy sheriffs. See § 50-1-17.

Acts 1998, c. 126, stated that state superintendent means state superintendent of free schools. See § 18-1-1.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 6-5-5. Disqualification by conviction of treason, felony, or bribery

No person convicted of treason, felony, or bribery in any election, before any court in or out of this state, shall, while such conviction remains unreversed, be elected or appointed to any office under the laws of this state; and, if any person, while holding such office, be so convicted, the office shall be thereby vacated.

Acts 1882, c. 42, § 4.

ARTICLE 6

REMOVAL OF OFFICERS

Section

6-6-7. Procedure for removal of county, school district and municipal officers having fixed terms; appeal; grounds.

§ 6-6-7. Procedure for removal of county, school district and municipal officers having fixed terms; appeal; grounds

(a) Any person holding any county, school district or municipal office, including the office of a member of a board of education and the office of magistrate, the term or tenure of which office is fixed by law, whether the office be elective or appointive, except judges of the circuit courts, may be removed from such office in the manner provided in this section for official misconduct, malfeasance in office, incompetence, neglect of duty or gross immorality or for any of the causes or on any of the grounds provided by any other statute.

(b) Charges may be preferred:

(1) In the case of any county officer, member of a district board of education or magistrate, by the county commission, or other tribunal in lieu thereof, any other officer of the county, or by any number of persons other than such county officers, which number shall be the lesser of fifty or one percent of the total number of voters of the county participating in the general election next preceding the filing of such charges.

(2) In the case of any municipal officer, by the prosecuting attorney of the county wherein such municipality, or the greater portion thereof, is located,

any other elected officer of the municipality, or by any number of persons other than the prosecuting attorney or other municipal elective officer of the municipality who are residents of the municipality, which number shall be the lesser of twenty-five or one percent of the total number of voters of the municipality participating in the election at which the governing body was chosen which election next preceded the filing of the petition.

(3) By the chief inspector and supervisor of public offices of the state where the person sought to be removed is entrusted by law with the collection, custody and expenditure of public moneys because of any misapplication, misappropriation or embezzlement of such moneys.

(c) The charges shall be reduced to writing in the form of a petition duly verified by at least one of the persons bringing the same, and shall be entered of record by the court, or the judge thereof in vacation, and a summons shall thereupon be issued by the clerk of such court, together with a copy of the petition, requiring the officer or person named therein to appear before the court, at the courthouse of the county where such officer resides, and answer the charges on a day to be named therein, which summons shall be served at least twenty days before the return day thereof in the manner by which a summons commencing a civil suit may be served.

The court, or judge thereof in vacation, or in the case of any multi-judge circuit, the chief judge thereof, shall, without delay forward a copy of the petition to the supreme court of appeals and shall ask for the impaneling or convening of a three-judge court consisting of three circuit judges of the state. The chief justice of the supreme court of appeals shall without delay designate and appoint three circuit judges within the state, not more than one of whom shall be from the same circuit in which the petition is filed and, in the order of such appointment, shall designate the date, time and place for the convening of such three-judge court, which date and time shall not be less than twenty days from the date of the filing of the petition.

Such three-judge court shall, without a jury, hear the charges and all evidence offered in support thereof or in opposition thereto and upon satisfactory proof of the charges shall remove any such officer or person from office and place the records, papers and property of his office in the possession of some other officer or person for safekeeping or in the possession of the person appointed as hereinafter provided to fill the office temporarily. Any final order either removing or refusing to remove any such person from office shall contain such findings of fact and conclusions of law as the three-judge court shall deem sufficient to support its decision of all issues presented to it in the matter.

(d) An appeal from an order of such three-judge court removing or refusing to remove any person from office pursuant to this section may be taken to the supreme court of appeals within thirty days from the date of entry of the order from which the appeal is taken. The supreme court of appeals shall consider and decide the appeal upon the original papers and documents, without requiring the same to be printed and shall enforce its findings by proper writ. From the date of any order of the three-judge court removing an officer under this section until the expiration of thirty days thereafter, and, if an appeal be taken, until the date of suspension of such order, if suspended by the three-judge court and if not suspended, until the final adjudication of the matter by the supreme court of appeals, the officer, commission or body having

power to fill a vacancy in such office may fill the same by a temporary appointment until a final decision of the matter, and when a final decision is made by the supreme court of appeals shall fill the vacancy in the manner provided by law for such office.

(e) In any case wherein the charges are preferred by the chief inspector and supervisor of public offices against the county commission or any member thereof or any county district or municipal officer, the proceedings under this section shall be conducted and prosecuted by the prosecuting attorney of the county in which the officer proceeded against resides, and on any appeal from the order of the three-judge court in any such case, the attorney general of the state shall represent the people. When any municipal officer is proceeded against the solicitor or municipal attorney for such municipality may assist in the prosecution of the charges.

Acts 1863, c. 78, § 13; Acts 1863, c. 89, § 9; Acts 1863, c. 118, § 16; Acts 1872-3, c. 121, § 2; Acts 1882, c. 42, § 7; Acts 1895, c. 46, § 7; Acts 1897, c. 48, § 7; Acts 1901, c. 102, § 7; Acts 1919, c. 94, § 7; Acts 1985, c. 144.

ARTICLE 14

UNIFORM FACSIMILE SIGNATURES OF PUBLIC OFFICIALS ACT

Section

6-14-1. Definitions.

6-14-2. Facsimile signature; use; legal effect.

6-14-3. Facsimile seal; use; legal effect.

6-14-4. Use with intent to defraud; penalty.

6-14-5. Construction.

6-14-6. Citation.

6-14-7. Severability provision.

6-14-8. Inconsistent articles repealed.

§ 6-14-1. Definitions

As used in this article:

(a) "Public security" means a bond, note, certificate of indebtedness or other obligation for the payment of money issued by this state or by any of its departments, agencies, boards, commissions or other instrumentalities or by any of its public corporations, political subdivisions, municipal corporations or other governmental units.

(b) "Instrument of payment" means a check, draft, warrant or order for the payment, delivery or transfer of funds.

(c) "Authorized officer" means any official of this state or of any of its departments, agencies, boards, commissions or other instrumentalities or of any of its public corporations, political subdivisions, municipal corporations or other governmental units whose signature to a public security or instrument of payment is required or permitted.

(d) "Facsimile signature" means a reproduction by engraving, imprinting, stamping or other means of the manual signature of an authorized officer.

Acts 1965, c. 78.

§ 6-14-2. Facsimile signature; use; legal effect

Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) Any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed. If a public security is required to be manually signed by a trustee, issuing agent, fiscal agent, registrar, or other agent or custodian, the signature of any or all authorized officers may be executed by facsimile; and

(b) Any instrument of payment.

Upon compliance with this article by the authorized officer, his facsimile signature shall have the same legal effect as his manual signature.

Acts 1965, c. 78; Acts 1985, c. 145.

§ 6-14-3. Facsimile seal; use; legal effect

When the seal of this state or of any of its departments, agencies, boards, commissions or other instrumentalities or of any of its public corporations, political subdivisions, municipal corporations or other governmental units is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. The facsimile seal shall have the same legal effect as the impression of the seal.

Acts 1965, c. 78.

§ 6-14-4. Use with intent to defraud; penalty

Any person who with intent to defraud uses on a public security or an instrument of payment:

(a) A facsimile signature of any authorized officer or any reproduction of such facsimile signature, or

(b) Any facsimile seal of this state or of any of its departments, agencies, boards, commissions or other instrumentalities or of any of its public corporations, political subdivisions, municipal corporations or other

governmental units, or any reproduction of such facsimile seal is guilty of a felony and shall be imprisoned in the penitentiary not less than one nor more than ten years.

Acts 1965, c. 78.

§ 6-14-5. Construction

This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Acts 1965, c. 78.

§ 6-14-6. Citation

This article may be known and cited as the "Uniform Facsimile Signatures of Public Officials Act."

Acts 1965, c. 78.

§ 6-14-7. Severability provision

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application and to that end the provisions of this article are severable.

Acts 1965, c. 78.

§ 6-14-8. Inconsistent articles repealed

All articles and parts of articles inconsistent with the provisions of this article are, to the extent of such inconsistency only, hereby repealed.

Acts 1965, c. 78.

CHAPTER 7

COUNTY COMMISSIONS AND OFFICERS

Article

1. County Commissions Generally.

3. County Property.

4. Prosecuting Attorney, Rewards and Legal Advice.

7. Compensation of Elected County Officials.

14B. Civil Service for Correctional Officers.

ARTICLE 1

COUNTY COMMISSIONS GENERALLY

Section

7-1-1. County commissions corporations; how constituted; election of president.

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

7-1-3nn. Election on ordinance for program for transfer of development rights; form of ballots or ballot labels; procedure.

§ 7-1-1. County commissions corporations; how constituted; election of president

(a) The county commission, formerly the county court, tribunal or county council in lieu thereof, of every county within the State of West Virginia shall be a corporation by the name of "The County Commission of ..... County", or "The County Council of ..... County" by which name it may sue and be sued, plead and be impleaded and contract and be contracted with.

(b) A county commission shall consist of three commissioners as provided in section nine, article IX of the Constitution of the State of West Virginia, any two of whom shall constitute a quorum for the transaction of business.

(c) A county council, created on or after the first day of July, two thousand eight, as an alternative to a county commission pursuant to section thirteen, article IX of the Constitution of West Virginia, shall consist of four or more members, a majority of whom shall constitute a quorum for the transaction of business.

(d) Unless provided otherwise in an alternative form of government, each county commission or council shall annually, at its first session in each year, or as soon thereafter as practicable, elect one of its commissioners or council members as president of the county commission or council.

(e) Throughout this chapter and the code, the term "county commission" or any reference to a county commission shall include all county councils created in lieu of the county commission.

Acts 1863, c. 78, § 1; Acts 1863, c. 91, § 4; Acts 1881, c. 5, §§ 1, 2, 3; Acts 1971, c. 23; Acts 2008, c. 42, eff. June 7, 2008.

§ 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.

Acts 2009, c. 47, eff. Aug. 25, 2009.

§ 7-1-3nn. Election on ordinance for program for transfer of development rights; form of ballots or ballot labels; procedure

(a) A county commission which has been designated as a growth county may submit a proposed ordinance to establish a program for the transfer of development rights pursuant to section three-mm of this article to the qualified voters residing within the county for approval or rejection at any regular primary or general election. Notice of the election shall be provided and the ballots shall be printed as set forth in subsection (b) of this section. The ordinance may be adopted if it is approved by a majority of the legal votes cast thereon in that county. If the ordinance is rejected, no election on the issue shall be held thereafter for a period of one hundred four weeks.

(b) On the election ballots shall be printed the following:

Shall the County Commission of (name of county) be authorized to adopt an ordinance to establish a program for the transfer of development rights in accordance with Section three-mm, Article one, Chapter seven of the Code of West Virginia?

☐ Yes

☐ No

(c) If a majority of the legal votes cast upon the question be for the ordinance, the provisions of the ordinance become effective upon the date the results of the election are declared. If a majority of the legal votes cast upon the question be against the ordinance, the ordinance shall not take effect.

(d) Subject to the provisions of subsection (c) of this section, an election permitted by this section may be conducted at any regular primary or general election as the county commission in its order submitting the same to a vote may designate.

(e) Notice of an election pursuant to this section shall be given by publication of the order calling for a vote on the question as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the county in which the election is to be conducted.

(f) Any election permitted by this section shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws of this state applicable to primary or general elections not inconsistent with the provisions of this section shall apply to voting and elections authorized by this section.

Acts 2003, c. 81, eff. 90 days after March 8, 2003.

ARTICLE 3

COUNTY PROPERTY

Section

7-3-3a. Sale of county or district property; local option election; petition, election procedure; form of ballot; effect of such election.

7-3-13. Limitation on amount of debt; increase of levies.

§ 7-3-3a. Sale of county or district property; local option election; petition, election procedure; form of ballot; effect of such election

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether specific real property belonging to the county or held by it for the use of any district thereof shall be conveyed or whether the buildings and improvements thereon shall be demolished.

A petition for such local option election shall be in the form hereinafter specified and shall be signed by qualified voters residing within said county equal to at least ten percent of the persons qualified to vote within said county at the last general election. For the purpose of this article, the term "qualified voters" shall mean those actually voting at the last general election and not those registered to vote. Said petition may be in any number of counterparts and shall be sufficient if substantially in the following form:

PETITION CONVEYANCE OF COUNTY PROPERTY
AND/OR DEMOLITION OF COUNTY BUILDINGS
OR IMPROVEMENTS

Each of the undersigned certifies that he or she is a person residing in ..... county, West Virginia, and is duly qualified to vote in said county under the laws of the State, and that his or her name, address and the date of signing this petition are correctly set forth below.

The undersigned petition said county commission to call and hold a local option election upon the following question: Shall the county commission of

..... county, West Virginia, be authorized to convey (or demolish buildings and improvements located on) the following described real property belonging to the county or held by it for the use of a district thereof:

(here insert property description)

NAME ADDRESS DATE

....

....

(Each person signing must specify either his post-office address or his street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county commission shall enter an order calling a local option election and providing that the same shall be held at the same time and as a part of the next primary or general election to be held in said county. Said county commission shall give notice of such local option election by publication in two newspapers of opposite politics and of general circulation within said county. Said notice shall be given at least once each week for two successive weeks prior to the date of said election. If there is only one newspaper published in said county, publication of said notice therein shall be sufficient.

Each person qualified to vote in said county at said primary or general election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at said primary or general election shall conduct said local option election in connection with and as a part of said primary or general election. The ballots in said local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county commission which shall canvass the ballots, all in accordance with the laws of the State of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

The ballot to be used in said local option election shall have printed thereon substantially the following:

"Shall the county commission of ..... county be authorized to convey (or demolish buildings and improvements located on) the following described real property belonging to the county? (insert description)

☐ YES ☐ NO

(Place a cross mark in the square opposite your choice.)"

If a majority of the voters voting at any such local option election vote "no" on the foregoing question, the county commission shall not thereafter be permitted to convey said real property or demolish the buildings and improvements thereon, as the case may be, unless thereafter authorized so to do.

Nothing herein shall prohibit the county commission from altering, improving and maintaining such real property or the buildings and improvements thereon in any manner whatsoever which does not demolish the building or improvements which were subject to the referendum.

The county commission of any county wherein a majority of the voters have refused permission to convey or demolish specific real property or buildings or improvements pursuant to this section may on its own motion initiate an election pursuant to this section at any primary or general election held in such county after the voters have refused such permission and may restate the description of property or action desired to be taken in such manner as the commission shall determine.

Acts 1978, c. 22.

§ 7-3-13. Limitation on amount of debt; increase of levies

Notwithstanding the provisions of general law, any county court authorized by this act to issue bonds, may become indebted for the purposes in this act authorized, to any amount, including all other indebtedness, up to but not exceeding five percent of the value of the taxable property in such county as shown by the last assessment thereof for State and county purposes next prior to the authorization of such bonds, subject to the levy limitations as provided in the Constitution. For the purpose of effectuating the provisions and purposes of this act and for the purpose of obtaining revenue to pay said bonds and their interest, or for the purpose of redeeming said bonds in whole or in part, such court may and is authorized to increase the levies on each class of property not to exceed fifty percent of the rates authorized by section ten, article eight, chapter sixty-seven, acts of the legislature, second extraordinary session, one thousand nine hundred thirty-three, not to exceed three years, and may submit to the voters of the county the question of authorizing such increase, not to exceed three years, at the same time and as a part of the scheme to issue said bonds and provide for the payment thereof. Such increase of levies shall not continue for more than three years without submission to the voters, but the question of future levy increases for such purposes may be again submitted to the voters.

Upon the question of issuance of such bonds, providing for the payment thereof, the increase of said levies, at least sixty percent of the votes cast shall be in favor thereof, as provided by general law.

Acts 1937, c. 25, § 9.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

ARTICLE 4

PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE

Section

7-4-1. Duties of prosecuting attorney; further duties upon request of attorney

general.

§ 7-4-1. Duties of prosecuting attorney; further duties upon request of attorney general

It shall be the duty of the prosecuting attorney to attend to the criminal business of the State in the county in which he is elected and qualified, and when he has information of the violation of any penal law committed within such county, he shall institute and prosecute all necessary and proper proceedings against the offender, and may in such case issue or cause to be issued a summons for any witness he may deem material. Every public officer shall give him information of the violation of any penal law committed within his county. It shall also be the duty of the prosecuting attorney to attend to civil suits in such county in which the State, or any department, commission or board thereof, is interested, and to advise, attend to, bring, prosecute or defend, as the case may be, all matters, actions, suits and proceedings in which such county or any county board of education is interested.

It shall be the duty of the prosecuting attorney to keep his office open in the charge of a responsible person during the hours polls are open on general, primary and special county-wide election days, and the prosecuting attorney, or his assistant, if any, shall be available for the purpose of advising election officials. It shall be the further duty of the prosecuting attorney, when requested by the attorney general, to perform or to assist the attorney general in performing, in the county in which he is elected, any legal duties required to be performed by the attorney general, and which are not inconsistent with the duties of the prosecuting attorney as the legal representative of such county. It shall also be the duty of the prosecuting attorney, when requested by the attorney general, to perform or to assist the attorney general in performing, any legal duties required to be performed by the attorney general, in any county other than that in which such prosecuting attorney is elected, and for the performance of any such duties in any county other than that in which such prosecuting attorney is elected he shall be paid his actual expenses.

Upon the request of the attorney general the prosecuting attorney shall make a written report of the state and condition of the several causes in which the State is a party, pending in his county, and upon any matters referred to him by the attorney general as provided by law.

Acts 1867, c. 33, § 1; Acts 1872-3, c. 54, § 5; Acts 1875, c. 102, § 5; Acts 1881, c. 5; Acts 1881, c. 24; Acts 1881, c. 25, § 49; Acts 1882, c. 125, § 49; Acts 1882, c. 133, §§ 6, 8; Acts 1883, c. 47, § 49; Acts 1887, c. 72, § 49; Acts 1895, c. 30, § 49; Acts 1901, c. 36, § 49; Acts 1903, c. 24, § 49; Acts 1909, c. 32, § 49; Acts 1913, c. 32, § 49; Acts 1937, c. 68; Acts 1971, c. 26.

ARTICLE 7

COMPENSATION OF ELECTED COUNTY OFFICIALS

Section

7-7-2. Establishment of county in-service training programs; further

additional duties for prosecuting attorney in any county in excess of two hundred thousand.

7-7-3. Classification of counties for purpose of determining compensation of elected county officials.

7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

§ 7-7-2. Establishment of county in-service training programs; further additional duties for prosecuting attorney in any county in excess of two hundred thousand

(a) There is hereby established county in-service training programs as hereinafter set forth.

(b) The Attorney General is hereby authorized and directed to establish such in-service training programs as in his or her opinion will do most to assist the prosecuting attorneys in the performance of their duties. The Attorney General is authorized to accept any federal aid which may be made available or any financial assistance which may be available from any private nonprofit organization for the purposes of this section. The prosecuting attorney in any county having a population in excess of two hundred thousand shall also discharge the additional duties imposed upon him or her by the provisions of section thirteen-a, article five, chapter forty-nine of this code.

(c) The State Auditor is hereby authorized and directed to establish such in-service training programs for county commissioners, county clerks, sheriffs and their assistants and employees as in his or her opinion will do most to modernize and improve the services of their respective offices. The State Auditor in conjunction with the West Virginia Supreme Court of Appeals is authorized and directed to establish such in-service training programs for circuit clerks and their assistants and employees. The State Tax Commissioner is authorized and directed to establish such in-service training programs for assessors and their assistants and employees. The State Tax Commissioner, State Auditor and the West Virginia Supreme Court of Appeals are authorized to accept any federal aid which may be made available or any financial assistance which may be available from any private nonprofit organization for the purpose of this article.

(d) Each of the county officials mentioned in this section, and, at is or her option, one or more of his or her assistants, deputies and employees, shall participate in the programs established under this section.

(e) The county commission is authorized and directed to expend funds for the purpose of reimbursing such officials and employees for the actual amount expended by them for food, lodging and registration while in attendance at authorized training for the purpose of this section.

Acts 1971, c. 23; Acts 1972, c. 21; Acts 2011, c. 31, eff. July 1, 2011.

§ 7-7-3. Classification of counties for purpose of determining compensation of elected county officials

(a) Effective July 1, 1996, and thereafter, for the purpose of determining the compensation of elected county officials, the counties of the State of West Virginia will be grouped into ten classes based on their assessed valuation of property, all classes. These ten classes and the minimum and maximum valuation of property, all classes, established to determine the classification of each county are as follows:

Class All Classes	Minimum Assessed Valuation of Property All Classes	Maximum Assessed Valuation of Property All Classes
Class I	$ 2,000,000,000	No Limit
Class II	$ 1,500,000,000	$ 1,999,999,999
Class III	$ 1,000,000,000	$ 1,499,999,999
Class IV	$ 700,000,000	$ 999,999,999
Class V	$ 600,000,000	$ 699,999,999
Class VI	$ 500,000,000	$ 599,999,999
Class VII	$ 400,000,000	$ 499,999,999
Class VIII	$ 300,000,000	$ 399,999,999
Class IX	$ 200,000,000	$ 299,999,999
Class X	$-0-	$ 199,999,999

(b) The assessed valuation of property, all classes, that shall be used as the base to determine the class of a county shall be the assessed valuation of property, all classes, of the county as certified by the county assessor, State Auditor and county clerk prior to March 29, 1996.

(c) Prior to March 29, 1998, and each second year thereafter, the county commission of each county, shall determine if the assessed valuation of property, all classes, of the county, as certified by the county assessor, State Auditor and county clerk is within the minimum and maximum limits of a class above or below the class in which the county then is. If the county commission so determines, it shall record the new classification of the county with the State Auditor and State Tax Commissioner and record its action on its county commission record.

(d) The classification of each county shall be subject to review by State Auditor. He or she shall determine if the classification of each county is correct based on the final assessed valuation of property, all classes, certified to him or her by the county assessor, State Auditor and county clerk. If he or she finds that a county is incorrectly classified, he or she shall

notify the county commission of that county promptly of his or her finding and in any case shall notify the county prior to June 30 of that current fiscal year. Any county commission so notified shall correct its classification immediately and make any necessary corrections in the salaries of its elected county officials for the next fiscal year.

(e) Notwithstanding the provisions of this article, whenever any other provision of this code refers to classifications of counties for purposes of imposing any right, duty or responsibility, the classification system set forth in subsection (a) of this section shall be utilized for determining the classification of a particular county.

Acts 1971, c. 23; Acts 1972, c. 21; Acts 1974, c. 18; Acts 1996, c. 96, eff. 90 days after March 9, 1996; Acts 2011, c. 31, eff. July 1, 2011.

§ 7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date

(1) The increased salaries to be paid to the county commissioners and the other elected county officials described in this subsection on and after July 1, 2006, are set out in subdivisions (5) and (7) of this subsection. Every county commissioner and elected county official in each county, whose term of office commenced prior to or on or after July 1, 2006, shall receive the same annual salary by virtue of legislative findings of extra duties as set forth in section one of this article.

(2) Before the increased salaries, as set out in subdivisions (5) and (7) of this subsection, are paid to the county commissioners and the elected county officials, the following requirements must be met:

(A) The Auditor has certified that the proposed annual county budget for the fiscal year beginning the first days of July, 2006, has increased over the previous fiscal year in an amount sufficient for the payment of the increase in the salaries, set out in subdivisions (5) and (7) of this subsection, and the related employment taxes: *Provided,* That the Auditor may not approve the budget certification for any proposed annual county budget containing anticipated receipts which are unreasonably greater or lesser than that of the previous year. For purposes of this subdivision, the term "receipts" does not include unencumbered fund balance or federal or state grants; and

(B) Each county commissioner or other elected official described in this subsection in office on the effective date of the increased salaries provided by this subsection who desires to receive the increased salary has prior to that date filed in the office of the clerk of the county commission his or her written agreement to accept the salary increase. The salary for the person who holds the office of county commissioner or other elected official described in this subsection who fails to file the written agreement as required by this paragraph shall be the salary for that office in effect immediately prior to the effective date of the increased salaries provided by this subsection until the person vacates the office or his or her term of office expires, whichever first occurs.

(3) If there is an insufficient projected increase in revenues to pay the increased salaries and the related employment taxes, then the salaries of that

county's elected officials and commissioners shall remain at the level in effect at the time certification was sought.

(4) In any county having a tribunal in lieu of a county commission, the county commissioners of that county may be paid less than the minimum salary limits of the county commission for that particular class of the county.

(5) COUNTY COMMISSIONERS

Class I $36,960

Class II $36,300

Class III $35,640

Class IV $34,980

Class V $34,320

Class VI $28,380

Class VII $27,720

Class VIII $25,080

Class IX $24,420

Class X $19,800

(6) For the purpose of determining the salaries to be paid to the elected county officials of each county, the salaries for each county office by class, set out in subdivision (7) of this subsection, are established and shall be used by each county commission in determining the salaries of each of their county officials other than salaries of members of the county commission.

(7) OTHER ELECTED OFFICIALS

	County Sheriff	Circuit Clerk	Clerk assessor	Prosecuting Attorney
Class I	$44,880	$55,440	$55,440	$44,880	$ 96,600
Class II	$44,220	$54,780	$54,780	$44,220	$ 94,400
Class III	$43,890	$53,460	$53,460	$43,890	$ 92,200
Class IV	$43,560	$53,154	$53,154	$43,560	$ 90,000

Class V $43,230 $52,800 $52,800 $43,230 $ 87,800

Class VI $42,900 $49,500 $49,500 $42,900 $ 59,400

Class VII $42,570 $48,840 $48,840 $42,570 $ 56,760

Class VIII $42,240 $48,180 $48,180 $42,240 $ 54,120

Class IX $41,910 $47,520 $47,520 $41,910 $ 50,160

Class X $38,280 $42,240 $42,240 $38,280 $ 46,200

(8) Any county clerk, circuit clerk, county assessor or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: *Provided,* That any public official, whose term of office begins when his or her county's classification imposes no restriction on his or her outside activities, may not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.

Acts 1971, c. 23; Acts 1971, 1st Ex. Sess., c. 13; Acts 1972, c. 21; Acts 1974, c. 18; Acts 1975, c. 122; Acts 1980, c. 31; Acts 1984, c. 48; Acts 1991, c. 33; Acts 1995, c. 198, eff. 90 days after March 9, 1995; Acts 1996, c. 96, eff. 90 days after March 9, 1996; Acts 2002, c. 82, eff. 90 days after March 9, 2002; Acts 2006, c. 44, eff. 90 days after March 11, 2006; Acts 2011, c. 31, eff. July 1, 2011.

Class I $20,000

Class II $15,500

Class III $14,000

Class IV $10,000

Class V $ 7,000

Class VI $ 4,000

County Circuit Prosecuting

Sheriff Clerk Clerk Assessor Attorney

Class I $24,200 $31,300 $31,300 $24,200 $41,500

Class II $24,200 $28,000 $28,000 $24,200 $39,500

Class III $24,200 $28,000 $28,000 $24,200 $30,000

Class IV $22,300 $24,000 $24,000 $22,300 $26,500

Class V $20,400 $22,000 $22,000 $20,400 $23,500

Class VI $17,200 $17,200 $17,200 $17,200 $17,000

Class I $24,000

Class II $18,600

Class III $16,800

Class IV $12,000

Class V $ 8,400

County Circuit Prosecuting

Sheriff Clerk Clerk Assessor Attorney

Class I $29,040 $37,560 $37,560 $29,040 $59,500

Class II $29,040 $33,600 $33,600 $29,040 $59,500

Class III $29,040 $33,600 $33,600 $29,040 $36,000

Class IV $26,760 $28,800 $28,800 $26,760 $31,800

Class V $24,480 $26,400 $26,400 $24,480 $28,200

Class VI $24,480 $26,400 $26,400 $24,480 $28,200

Class I $28,000

Class II $27,500

Class III $27,000

Class IV $26,500

Class V $26,000

Class VI $21,500

Class VII $21,000

Class VIII $19,000

Class IX $18,500

Class X $15,000

County Circuit Prosecuting

Sheriff Clerk Clerk Assessor Attorney

Class I $34,000 $42,000 $42,000 $34,000 $76,000

Class II $33,500 $41,500 $41,500 $33,500 $74,000

Class III $33,250 $40,500 $40,500 $33,250 $72,000

Class IV $33,000 $40,250 $40,250 $33,000 $70,000

Class V $32,750 $40,000 $40,000 $32,750 $68,000

Class VI $32,500 $37,500 $37,500 $32,500 $45,000

Class VII $32,250 $37,000 $37,000 $32,250 $43,000

Class VIII $32,000 $36,500 $36,500 $32,000 $41,000

Class IX $31,750 $36,000 $36,000 $31,750 $38,000

Class X $29,000 $32,000 $32,000 $29,000 $35,000

Class I $30,800

Class II $30,250

Class III $29,700

Class IV $29,150

Class V $28,600

Class VI $23,650

Class VII $23,100

Class VIII $20,900

Class IX $20,350

Class X $16,500

County Circuit Prosecuting

Sheriff Clerk Clerk Assessor Attorney

Class I $37,400 $46,200 $46,200 $37,400 $83,600

Class II $36,850 $45,650 $45,650 $36,850 $81,400

Class III $36,575 $44,550 $44,550 $36,575 $79,200

Class IV $36,300 $44,295 $44,295 $36,300 $77,000

Class V $36,025 $44,000 $44,000 $36,025 $74,800

Class VI $35,750 $41,250 $41,250 $35,750 $49,500

Class VII $35,475 $40,700 $40,700 $35,475 $47,300

Class VIII $35,200 $40,150 $40,150 $35,200 $45,100

Class IX $34,925 $39,600 $39,600 $34,925 $41,800

Class X $31,900 $35,200 $35,200 $31,900 $38,500

ARTICLE 14B

CIVIL SERVICE FOR CORRECTIONAL OFFICERS

Section

7-14B-21. County commission of counties with a population of less than twenty-five thousand may place correctional officers under civil service; protest and election with respect thereto.

§ 7-14B-21. County commission of counties with a population of less than twenty-five thousand may place correctional officers under civil service; protest and election with respect thereto

The county commission of any county having a population of less than twenty-five thousand may by order entered of record provide that the provisions of this article providing civil service for correctional officers shall apply to such county on and after the effective date of this article. A copy of such order, together with a notice advising the qualified voters of such county of their right to protest the placing of correctional officers of such county under civil service, shall be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county.

In the event fifteen percent of the qualified voters of such county protest such order, by petition duly signed by them in their own handwriting (which petition may be signed in any number of counterparts) and filed with the county clerk of such county within sixty days after publication of such copy and notice, such order shall not become effective unless and until it is ratified by a majority of the legal votes cast with respect to the question of civil service coverage for the correctional officers of such county by the qualified voters of such county at a regular or special election. Any such election shall be conducted and superintended and the results thereof ascertained as provided by law for regular or special elections, as the case may be.

Whenever the correctional officers of any county are placed under civil service pursuant to the provisions of this section, such civil service system for the

correctional officers of such county shall thereupon become mandatory and all of the provisions of this article shall apply to the correctional officers of such county with like effect as if said county had a population of twenty-five thousand or more.

Acts 1983, c. 47.

CHAPTER 8

MUNICIPAL CORPORATIONS

Article

1. Purpose and Short Title; Definitions; General Provisions; Construction.

2. Creation of Municipalities.

3. Framing and Adopting an Original Charter Following Incorporation of a City; Revising or Amending a Charter; Expenses of Incorporation.

4. Framing and Adopting a Charter Other Than Immediately Following Incorporation; Revising or Amending a Charter; Elections and Expenses.

5. Election, Appointment, Qualification and Compensation of Officers; General Provisions Relating to Officers and Employees; Elections and Petitions Generally; Conflict of Interest.

6. Annexation

9. Proceedings of Governing Bodies

12. General and Specific Powers, Duties and Allied Relations of Municipalities, Governing Bodies and Municipal Officers and Employees; Suits Against Municipalities.

14. Law and Order; Police Force or Departments; Powers, Authority and Duties of Law-Enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments.

15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.

24. Planning and Zoning [Repealed].

35. Dissolution of Municipalities.

ARTICLE 1

PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION

Part I—Purpose and Short Title.

Section

8-1-1. Purpose and short title.

Part II—Definitions.

8-1-2. Definitions of terms.

Part III—General Provisions.

8-1-3. Classification of municipal corporations.

PART I—PURPOSE AND SHORT TITLE

§ 8-1-1. Purpose and short title

The purpose of this chapter is to effect a recodification of the basic municipal law of this State and of various statutory provisions relating to certain intergovernmental relations involving municipalities, counties and other units of government, to provide as much uniformity as possible between the powers, authority, duties and responsibilities of special legislative charter municipalities and all other municipalities, and to give effect to the "Municipal Home Rule Amendment" to the Constitution of this State, being section thirty-nine-(a), article six of said Constitution.

For convenience of reference, this chapter may be known and cited as the "Municipal Code of West Virginia."

Acts 1937, c. 56; Acts 1969, c. 86.

PART II—DEFINITIONS

§ 8-1-2. Definitions of terms

(a) For the purpose of this chapter:

(1) "Municipality" is a word of art and shall mean and include any Class I, Class II and Class III city and any Class IV town or village, heretofore or hereafter incorporated as a municipal corporation under the laws of this State;

(2) "City" is a word of art and shall mean, include and be limited to any Class I, Class II and Class III city, as classified in section three of this article (except in those instances where the context in which used clearly indicates that a particular class of city is intended), heretofore or hereafter incorporated as a municipal corporation under the laws of this State, however created and whether operating under (i) a special legislative charter, (ii) a home rule charter framed and adopted or revised as a whole or amended under the provisions of former chapter eight-a of this code or under the provisions of article three or article four of this chapter, (iii) general law, or (iv) any combination of the foregoing; and

(3) "Town or village" is a term of art and shall, notwithstanding the provisions of section ten, article two, chapter two of this code, mean, include and be limited to any Class IV town or village, as classified in section three of this article, heretofore or hereafter incorporated as a municipal

corporation under the laws of this State, however created and whether operating under (i) a special legislative charter, (ii) general law, or (iii) a combination of the foregoing.

(b) For the purpose of this chapter, unless the context clearly requires a different meaning:

(1) "Governing body" shall mean the mayor and council together, the council, the board of directors, the commission, or other board or body of any municipality, by whatever name called, as the case may be, charged with the responsibility of enacting ordinances and determining the public policy of such municipality; and in certain articles dealing with intergovernmental relations shall also mean the county court of any county or governing board of other units of government referred to in said articles;

(2) "Councilmen" shall mean the members of a governing body, by whatever name such members may be called;

(3) "Mayor" shall mean the individual called mayor unless as to a particular municipality a commissioner (in a commission form of government) or the city manager (in a manager form of government) is designated or constituted by charter provision as the principal or chief executive officer or chief administrator thereof, in which event the term "mayor" shall mean as to such municipality such commissioner or city manager unless as to any particular power, authority, duty or function specified in this chapter to be exercised, discharged or fulfilled by the mayor it is provided by charter provision or ordinance that such particular power, authority, duty or function shall be exercised, discharged or fulfilled by the individual called mayor and not by a commissioner or city manager, in which event such particular power, authority, duty or function shall in fact be exercised, discharged or fulfilled in and for such municipality by the individual called mayor: Provided, That in the exercise and discharge of the ex officio justice of the peace, conservator of the peace and mayor's court functions specified in this chapter, the term "mayor" shall always mean the individual called mayor;

(4) "Recorder" shall mean the recorder, clerk or other municipal officer, by whatever name called, charged with the responsibility of keeping the journal of the proceedings of the governing body of the municipality and other municipal records;

(5) "Treasurer" shall mean the treasurer or other municipal officer, by whatever name called, exercising the power and authority commonly exercised by a treasurer;

(6) "Administrative authority" shall mean the officer, commission or person responsible for the conduct and management of the affairs of the municipality in accordance with the charter, general law and the ordinances, resolutions and orders of the governing body thereof;

(7) "Charter" shall mean, except where specific reference is made to a particular type of charter, either a special legislative charter (whether or not amended under the provisions of former chapter eight-a of this code or under article four of this chapter, and although so amended, such special legislative charter shall, for the purposes of this chapter, remain a special

legislative charter), or a home rule charter framed and adopted or revised as a whole or amended by a city under the provisions of former chapter eight-a of this code or under the provisions of article three or article four of this chapter;

(8) "Ordinance" shall mean the ordinances and laws enacted by the governing body of a municipality in the exercise of its legislative power, and in one or more articles of this chapter, ordinances enacted by a county court;

(9) "Inconsistent or in conflict with" shall mean that a charter or ordinance provision is repugnant to the Constitution of this State or to general law because such provision (i) permits or authorizes that which the Constitution or general law forbids or prohibits, or (ii) forbids or prohibits that which the Constitution or general law permits or authorizes;

(10) "Qualified elector," "elector," "qualified voter" or "legal voter" shall mean any individual who, at the time he offers to vote or at the time he participates in any event or activity (such as signing a petition) under the provisions of this chapter for which he must be a qualified elector, elector, qualified voter or legal voter, is a resident within the corporate limits of the municipality or within the boundaries of a territory referred to in this chapter, as the case may be, and who (i) has been a resident of the State for one year and of the municipality or territory in question for at least sixty days next preceding such election or date pertinent to any such event or activity, and (ii) in the case of a regular municipal election, special municipal election, municipal public question election or any such municipal event or activity, is duly registered on the municipal registration books set up in the office of the clerk of the county court of the county in which the municipality or the major portion of the territory thereof is located under the integration of the municipal registration of voters with the "permanent registration system" of the State, or, in the event there be no such integration of the municipal registration of voters, is duly registered in the county in which he resides to vote in state-county elections, or (iii) in the case of a territory election, general election or any such territory event or activity, is duly registered in the county in which he resides to vote in state-county elections; and any charter provision or ordinance establishing a voting residency requirement different than that in this definition provided shall be of no force and effect; and in any case where a particular percentage of the qualified electors, electors, qualified voters or legal voters is required under the provisions of this chapter in connection with any such event or activity as aforesaid, the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters or legal voters, as of the time of such event or activity, unless it is impracticable to determine such percentage as of such time and it is provided by ordinance, resolution or order that the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters or legal voters, as of the date of the last preceding election (whether a general election, regular municipal election or special municipal election and whether or not they voted at such election) held in such municipality or territory, as the case may be;

(11) "Public question" shall mean any issue or proposition required to be submitted to the qualified voters of a municipality or of a territory referred to in this chapter for decision at an election, as the case may be;

(12) "Inhabitant" shall mean any individual who is a resident within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be;

(13) "Resident" shall mean any individual who maintains a usual and bona fide place of abode within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be;

(14) "Freeholder" shall mean any person (and in the case of an individual one who is sui juris and is not under a legal disability) owning a "freehold interest in real property";

(15) "Freehold interest in real property" shall mean any fee, life, mineral, coal or oil or gas interest in real property, whether legal or equitable, and whether as a joint tenant or a tenant in common, but shall not include a leasehold interest (other than a mineral, coal or oil or gas leasehold interest), a dower interest, or an interest in a right-of-way or easement, and the freehold interest of a church or other unincorporated association shall be considered as one interest and not as an individual interest of each member thereof;

(16) "County court" shall mean the governmental body created by section 22, article VIII [correct reference should be "section 9, article IX"] of the Constitution of this State, or any existing tribunal created in lieu of a county court;

(17) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as heretofore and hereafter amended; and

(18) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint-stock association, or any other entity or organization of whatever character or description.

(c) The term "intergovernmental relations" is used in this chapter to mean undertakings and activities which may be undertaken or engaged in by two or more units of government acting jointly, and in certain headings in this chapter to call attention to the fact that the provisions under such headings apply to units of government in addition to municipalities.

(d) For the purpose of this chapter, unless the context clearly indicates to the contrary, words importing the masculine gender shall include both the masculine and feminine gender, and the phrase "charter framed and adopted or revised as a whole or amended (or words of like import) under the provisions of former chapter eight-a of this code" shall include a charter framed and adopted or revised as a whole or amended under the provisions of former article two of former chapter eight of this code.

Acts 1937, c. 56; Acts 1969, c. 86.

Acts 1976, c. 33, provided that all references to "justice of the peace" in the Code of West Virginia mean "magistrate." See § 50-1-17.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

PART III—GENERAL PROVISIONS

§ 8-1-3. Classification of municipal corporations

Pursuant to the mandate of the "Municipal Home Rule Amendment" to the Constitution of this State, all municipal corporations are hereby classified by population into four classes, as follows:

(1) Every municipal corporation with a population in excess of fifty thousand shall be a Class I city;

(2) Every municipal corporation with a population in excess of ten thousand but not in excess of fifty thousand shall be a Class II city;

(3) Every municipal corporation with a population in excess of two thousand but not in excess of ten thousand shall be a Class III city; and

(4) Every municipal corporation with a population of two thousand or less shall be a Class IV town or village.

Transition from one to another class shall occur automatically when the requisite population qualification has been met, effective as of the effective date of the census, as specified in section four of this article.

The legislature hereby declares its interpretation of the said "Municipal Home Rule Amendment" to be that a single classification by population of municipal corporations in this State is required which shall exclude any other classification of municipal corporations by population for any purpose. It is, therefore, the intention of the legislature that the classification established in this section shall give effect to the constitutional mandate and shall be the only classification by population applying to municipal corporations in this State. It is the further intention of the legislature that subsequent legislation affecting municipal corporations in this State shall treat municipal corporations differently upon the basis of population, only in accordance with the general classification established in this section.

Acts 1937, c. 56; Acts 1969, c. 86.

ARTICLE 2

CREATION OF MUNICIPALITIES

Part I—General.

Section

8-2-1. Requirements for incorporation; size and character of territory; population.

8-2-4. Census; bond; appointment and duties of enumerators.

Part II—Election.

8-2-5. Special election—Voting precincts; time for election; supplies; commissioners and clerks; notice.

8-2-6. Same—Qualified electors; form of ballot or ballot label; election officials; certification; canvass; declaration of results; recount.

Part III—Judicial Review.

8-2-8. Judicial review.

PART I—GENERAL

§ 8-2-1. Requirements for incorporation; size and character of territory; population

(a) Any part of a county or counties may be incorporated as a city, depending upon the population, either as a Class I, Class II or Class III city, or as a Class IV town or village, as classified in section three, article one of this chapter if the area proposed for incorporation meets the following conditions:

(1) The area is not currently within any municipality urban in character;

(2) For areas that are more than one square mile there must be an average of not less than five hundred inhabitants or freeholders per square mile;

(3) For areas less than one square mile there must be at least one hundred inhabitants or freeholders;

(4) The total area to be incorporated must not include an amount of territory disproportionate to its number of inhabitants; and

(5) The proponents of incorporation shall provide to the county commission a proposal which shall include:

(A) A map or maps of the area to be incorporated showing the following information:

(i) The present boundaries of nearby municipalities and the proposed boundaries of the area to be incorporated; and

(ii) The proposed extensions of water mains and sewer outfalls to serve the incorporated area, if such utilities are to be operated by the municipality. The water and sewer map must bear the seal of a registered professional engineer or a licensed surveyor.

(B) A statement that the area to be incorporated meets the applicable requirements of this article.

(C) A statement setting forth the plans of the proposed municipality for providing to the area to be incorporated each major municipal service and whether the service will be provided by the municipality or by contract with a public or private entity. The plan shall:

(i) Provide for police protection, fire protection, solid waste collection,

public water and sewer services and street maintenance services to the area to be incorporated on the date of incorporation;

(ii) A statement of the impact of the incorporation on any rural fire department providing service in the area to be incorporated and a statement of the impact of the incorporation on fire protection and fire insurance rates in the area to be incorporated; and

(iii) A statement showing how the proposed incorporation will affect the proposed municipalities finances and services.

(b) The creation of any new municipality is prohibited if:

(1) The area to be incorporated is within close proximity to an existing municipality and the existing municipality is capable of more effectively and efficiently providing services to the area; or

(2) The creation of a new municipality is not in the best interest of the county as a whole.

(c) It is within the reasonable discretion of the county commission to determine the exact area or portions thereof to be included or excluded in the new municipality, considering the following:

(1) The topography of the area;

(2) The benefits of incorporation;

(3) The amount of uninhabited land required for parks and recreational use; and

(4) Normal growth and development and the present and possible future uses so as to prevent hardships and inequities.

Acts 1951, c. 131; Acts 1969, c. 86; Acts 2001, c. 209, eff. July 1, 2001.

§ 8-2-4. Census; bond; appointment and duties of enumerators

If the court shall determine after hearing that the requirements of sections one and two of this article have been met, the petitioners shall provide bond in penalty prescribed by the court, with good and sufficient surety thereon, conditioned to pay all costs of taking a census, determining the qualification of electors, holding an election and ascertaining the results thereof, in the event a majority of the qualified electors vote against incorporation; and thereupon the court shall fix a day or days for taking a census of the inhabitants and for determining those who are qualified electors of said territory. For the purpose of taking said census, and determining the qualifications of the electors, said court shall appoint four enumerators for each five hundred inhabitants of said territory based upon the most reliable estimate obtainable: Provided, That if the territory contains less than one square mile and the county court believes the territory contains fewer than five hundred inhabitants, two enumerators shall be appointed. It shall be the duty of the enumerators so appointed to enumerate all of the inhabitants of said territory and to visit each house or dwelling therein, and to obtain the name of each known resident thereof. It shall also be the duty of the

enumerators to examine the permanent registration records of the county or counties in which the territory is situate to determine which of such inhabitants are qualified electors therein and to compile and file with the county court a list of such qualified electors. Each enumerator shall receive for his services a sum per day, to be fixed by the county court, but not to exceed ten dollars per day, together with all reasonable and necessary expenses actually incurred in the discharge of such duties, which sum and expenses shall be paid by the county court and reimbursed to it by the city, town or village if and when the city, town or village shall become incorporated, as hereinafter provided; otherwise by the petitioners. The county court shall provide an opportunity for all qualified individuals residing in such territory, who have not been previously registered to vote, to become registered prior to the election hereinafter provided for. Upon the completion of said census and the listing of qualified electors, said enumerators shall make a report under oath to the county court that said enumeration and listing are correct, true and accurate, and do not contain the name of any individual who is not a resident of the territory, and that the list of qualified electors is true and correct, which report shall be filed with the county court within the following number of days after the appointment of said enumerators: Forty days if it is to be a Class I city, twenty days if it is to be a Class II city, ten days if it is to be a Class III city and ten days if it is to be a Class IV town or village.

Acts 1951, c. 131; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

PART II—ELECTION

§ 8-2-5. Special election—Voting precincts; time for election; supplies; commissioners and clerks; notice

Upon receiving such a report from said enumerators, the county court shall forthwith fix a date for a special election, not later than thirty days thereafter, on which all qualified electors of the territory shall vote upon the question of incorporation between such hours as may be fixed by order of said court. For the purpose of holding and conducting said election, the county court shall divide the territory into one or more precincts, consisting of not more than five hundred qualified voters in each precinct; shall arrange for and provide at its expense polling places, registration books, challenges and other election supplies as provided for by law in general elections; shall appoint three commissioners of election and two clerks from the qualified electors of said territory for each precinct so established, dividing the election officials as nearly as possible equally between those favoring incorporation and those opposed to incorporation; and shall give notice of the date and place or places of election and hours for voting by publication of such notice as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the territory sought to be incorporated.

Acts 1951, c. 131; Acts 1967, c. 105; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as

county commission.

§ 8-2-6. Same—Qualified electors; form of ballot or ballot label; election officials; certification; canvass; declaration of results; recount

On the date named in such notice for the taking of the vote, each qualified elector of the territory sought to be incorporated shall have the right to cast his vote for or against such incorporation at the precinct in which he resides, by depositing a ballot in a ballot box, or by use of a voting machine, to be provided by the county court for that purpose. Each ballot, or ballot label where voting machines are used, shall be without party designation and shall have written or printed thereon the following words:

- ☐ For Incorporation
- ☐ Against Incorporation

The ballot or ballot label shall be a separate, special ballot or ballot label.

Such election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county court as aforesaid and shall be conducted as nearly as may be in accordance with the laws of this State governing general elections. The results of such election shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county court. In the event any commissioner or clerk designated to serve in said election shall fail or refuse to serve, such vacancy may be filled in like manner as vacancies in such positions are filled in general elections under the laws of this State governing general elections. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the county court that he or they will pay all costs of such recount.

Acts 1951, c. 131; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

PART III—JUDICIAL REVIEW

§ 8-2-8. Judicial review

A writ of error shall lie to the circuit court in accordance with the provisions of article three, chapter fifty-eight of this code from any order of a county court determining that the requirements of sections one and two of this article have been met and ordering a census or enumeration to be taken. Upon the filing of a petition for a writ of error, all proceedings shall be suspended or stayed pending final adjudication of the matters involved.

Acts 1951, c. 131; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

ARTICLE 3

FRAMING AND ADOPTING AN ORIGINAL CHARTER FOLLOWING INCORPORATION OF A CITY; REVISING OR AMENDING A CHARTER; EXPENSES OF INCORPORATION

Part I—Framing and Adopting Charter—General.

Section

8-3-1. Charter board for cities—Number of members; qualifications of members; nominations; ballots and ballot labels; dismissal of proceeding.

8-3-6. Same—Special election; time for election; notice; voting precincts; supplies; officials; certification; canvass; declaration of results; recount.

8-3-7. Same—Approval; effective date; certification; judicial notice; recordation.

8-3-8. Same—Rejection; rewriting or altering draft; new charter board.

Part III—Expenses of Incorporation.

8-3-10. Expenses of incorporation.

PART I—FRAMING AND ADOPTING CHARTER—GENERAL

§ 8-3-1. Charter board for cities—Number of members; qualifications of members; nominations; ballots and ballot labels; dismissal of proceeding

At every election on the question of incorporation of a city, under article two of this chapter, each qualified voter entitled to vote shall also be entitled to vote for a charter board consisting of eleven members if it is to be a Class I or Class II city, and of seven members if it is to be a Class III city. Members shall be elected at large and shall receive no compensation for their services, but shall be reimbursed by the city for all reasonable and necessary expenses actually incurred in the discharge of their duties. Any individual who has been a resident of the territory sought to be incorporated for at least two years prior to the date of said election and who shall have been qualified to vote in state-county elections for at least two years prior to the date of said election shall be eligible for membership on said charter board. Nominations for said charter board shall be made by petition to the county court bearing the signatures, written in their own handwriting, of not less than two hundred qualified voters of the territory. All nominating petitions shall be filed with the county court at least twenty days prior to the date of the election on the question of incorporation. In the event of a vacancy in the nominations which shall reduce the number of candidates below the number of members to be elected, the vacancy shall be filled by the county court. The ballots, or ballot labels where voting machines are used, shall be prepared by or at the direction of the clerk of the county court. The ballots or ballot labels for members of the charter board shall be separate from the ballots or ballot labels on the question of incorporation. Such ballots or ballot labels for members of the charter board shall be special ballots or ballot labels without party designation. The position of the names of the candidates upon the ballots or voting machines shall be interchanged, as provided in the

general election laws of this State. The ballots or voting machine directions shall bear instructions specifying the number of candidates to be voted for, and each qualified voter entitled to vote on the question of framing a charter may cast as many votes for members of the charter board as there are members to be elected. He may cumulate all of his votes for one candidate, or distribute them among several candidates as he sees fit. The ballots or voting machine directions shall bear advice to this effect. Any voter who shall vote against incorporation may, nevertheless, vote for members of the charter board, and the ballots or voting machine directions shall bear advice to this effect.

If on the returns being canvassed on the question of incorporation, such canvassing to be done by the county court, a majority of the legal votes cast be against incorporation, the proceeding shall be dismissed as specified in section seven, article two of this chapter, and no subsequent proceeding for incorporation of the same territory or any portion thereof shall be considered or election thereon had within a period of three years thereafter.

Acts 1951, c. 131; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-3-6. Same—Special election; time for election; notice; voting precincts; supplies; officials; certification; canvass; declaration of results; recount

The proposed charter shall be submitted to the qualified voters of the incorporated territory for approval or rejection at a special election ordered by the county court to be held not less than thirty days nor more than ninety days following the date on which the two copies of the completed charter were filed with the clerk of the county court, at which election the officers provided for by said proposed charter and to be elected shall be voted upon in the manner provided in said proposed charter. The county court shall cause notice of the date, hours, place and purpose of such election to be given by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the incorporated territory. The first of said publications shall be made not less than thirty days prior to the date fixed for the election. Each such notice of election shall state that upon request any qualified voter and any freeholder of the incorporated territory may obtain a copy of the proposed charter from a designated person at a designated place.

For the purpose of holding and conducting said election, the county court shall divide the incorporated territory into one or more precincts, consisting of not more than five hundred qualified voters in each precinct; shall arrange for and provide at its expense polling places, registration books, challenges and other election supplies as provided for by law in general elections; and shall appoint three commissioners of election and two clerks from the qualified voters of said incorporated territory for each precinct so established, subject, however, to the provisions of section eleven, article four of this chapter. Such election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county court as aforesaid and shall be conducted as nearly as may be in accordance with the

laws of this State governing general elections. The results of such election, both as to approval or rejection of the proposed charter and the election of officers, shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county court. In the event any commissioner or clerk designated to serve in said election shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this State governing general elections. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the county court that he or they will pay all costs of such recount.

Acts 1951, c. 131; Acts 1967, c. 105; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-3-7. Same—Approval; effective date; certification; judicial notice; recordation

If the proposed charter shall be approved by a majority of the legal votes cast at the election thereon, the charter shall take effect on July first next after the date of the election, if the interim exceeds sixty days; otherwise on July first of the second fiscal year after its approval. If approved as aforesaid, one of the signed copies of the charter on file with the clerk of the county court, together with a certified copy of the declaration of the results of the election showing the total legal votes cast for and against approval, shall be certified forthwith by the clerk of the county court to the clerk of the house of delegates, in his capacity as keeper of the rolls. The same shall be preserved by said clerk of the house of delegates as an authentic public record. After the effective date of a charter so filed, all courts shall take judicial notice of its provisions.

The clerk of the county court shall certify to the county court the other signed copy of the charter previously filed with him, which copy so certified shall be spread upon the records of said court for public examination.

Acts 1951, c. 131; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-3-8. Same—Rejection; rewriting or altering draft; new charter board

If the proposed charter shall be rejected by a majority of the legal votes cast at the election thereon, the election of officers shall be void, except that the candidate who shall receive the highest number of legal votes cast for the office of mayor, if a mayor is to be elected, otherwise the candidate for any city office who shall receive the highest number of legal votes cast at the election, shall, within ten days thereafter, require such charter board to reconvene for the purpose of rewriting or altering the draft of the rejected charter in such manner as to it shall seem proper. Any three hundred qualified voters of said incorporated territory may, however, within ten days after the determination of the results of the election at which such charter is rejected, petition the clerk of the county court for the election of a new charter board,

in which case the court shall thereupon call a new election for members of the charter board in the same manner as the original election and with nominations to be made and any vacancies to be filled in the same manner as in the first instance, as provided in section one of this article. The duties of the new charter board shall be the same as those of the former board, and as many successive charter boards may be elected as may be necessary until a charter for such territory is framed and approved by the qualified voters of the incorporated territory. The rewritten or altered proposed charter or the charter draft of a new or any succeeding charter board, as the case may be, shall be submitted to the attorney general and the qualified voters of said incorporated territory in the same manner and with like notice and proceedings as required in the first instance, and such proceedings shall continue until the qualified voters of said incorporated territory have by a majority vote approved a charter.

Acts 1951, c. 131; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

PART III—EXPENSES OF INCORPORATION

§ 8-3-10. Expenses of incorporation

The first governing body of any municipality incorporated under the provisions of article two of this chapter shall provide for reimbursement to the county court of all costs of incorporation, including, but not limited to, the cost of publishing notices, of taking the enumeration of inhabitants, of ascertaining the qualification of electors, and of holding, conducting and superintending the elections called for thereunder and the returning, certifying and canvassing of the results thereof. The first governing body of any city incorporated under said article two shall also provide for reimbursement of the charter board or boards and the members thereof for all reasonable and necessary expenses actually incurred in the performance of its and their duties.

Acts 1951, c. 131; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

ARTICLE 4

FRAMING AND ADOPTING A CHARTER OTHER THAN IMMEDIATELY FOLLOWING INCORPORATION; REVISING OR AMENDING A CHARTER; ELECTIONS AND EXPENSES

Part I—Framing and Adopting Charter—General.

Section

8-4-1. Initiation of proceedings for framing a charter.

8-4-2. Charter board; number of members; qualifications of members; nominations; notice; ballots and ballot labels; election of a charter board;

effect of vote on question as to charter board.

8-4-3. Provisions of article three made applicable; duties and responsibilities of county court under article three placed upon governing body under this article; duties and responsibilities of charter board; exceptions.

8-4-4. Submission of proposed charter to qualified voters.

8-4-5. Approval of charter; effective date; certification; judicial notice; recordation; effect of rejection.

8-4-6. New charter supersedes existing charter; effect on ordinances and administrative law.

Part II—Revising or Amending a Charter.

8-4-7. Revising or amending a charter—Generally.

8-4-8. Same—An alternate plan.

8-4-9. Submission of alternative provisions.

Part III—Elections; Expenses.

8-4-10. Conduct of elections; general provisions concerning canvass and declaration of results; election supplies; election officials.

8-4-11. Special election and special municipal election officials.

8-4-12. Expenses.

PART I—FRAMING AND ADOPTING CHARTER—GENERAL

§ 8-4-1. Initiation of proceedings for framing a charter

(a) The governing body of a city may provide by ordinance for the submission to the qualified voters of the city at a general election or at a regular municipal election, or at a special municipal election if the governing body by the affirmative vote of two thirds of its members shall determine and specify that a special municipal election is necessary, of the question, "Shall a charter be framed by representatives of the people?".

(b) The governing body of a city shall, upon petition therefor bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters of the city, if a Class I or Class II city, or ten percent of the qualified voters of the city, if a Class III city, provide by ordinance for the submission to the qualified voters of the city at a general election or at a regular municipal election of the question, "Shall a charter be framed by representatives of the people?".

(c) The governing body of a city shall provide by ordinance for a special municipal election on said question if a petition bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters of the city, if a Class I or Class II city, or ten percent of the qualified voters

of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose be presented to the governing body more than one hundred twenty days prior to the date of the next general election or next regular municipal election.

(d) If the question is to be submitted at a general election or a regular municipal election and not a special municipal election, then in determining the general election or regular municipal election at which the question shall be submitted, the following provisions of this subsection (d) shall govern and control:

(1) If the question is to be submitted under the provisions of subsection (a) of this section, the question shall be submitted at the next general election or next regular municipal election, whichever first occurs after the ordinance is adopted under the provisions of said subsection (a); or

(2) If the question is to be submitted under the provisions of subsection (b) of this section, the question shall be submitted at the next general election or next regular municipal election, whichever first occurs after the petition is filed under the provisions of said subsection (b), if there is at least one hundred twenty days between the filing of the petition and the date of the election, and otherwise, at the next general election or next regular municipal election occurring after said interval of at least one hundred twenty days after the filing of said petition.

(e) Any special municipal election held in accordance with the provisions of subsection (a) of this section shall be held not less than thirty nor more than sixty days after the ordinance providing for same shall have been adopted, and any special municipal election held in accordance with the provisions of subsection (b) of this section shall be held not less than thirty nor more than sixty days after the petition shall have been presented to the governing body.

Acts 1937, c. 56; Acts 1947, Ex. Sess., c. 4; Acts 1969, c. 86.

§ 8-4-2. Charter board; number of members; qualifications of members; nominations; notice; ballots and ballot labels; election of a charter board; effect of vote on question as to charter board

The ordinance providing for submission to the qualified voters of the city of the question of whether a charter shall be framed shall make provision for voting for a charter board concurrently with the voting on the question of whether a charter shall be framed. A charter board shall consist of eleven members in a Class I or Class II city and seven members in a Class III city. Members shall be elected at large and shall receive no compensation for their services, but shall be reimbursed by the city for all reasonable and necessary expenses actually incurred in the discharge of their duties. Any individual who has been a resident and qualified voter of the city for at least two years prior to the date of election of members shall be eligible for membership on said charter board.

In the initiatory ordinance, the governing body of a Class I or Class II city may nominate five candidates, and that of a Class III city three candidates, for membership on the charter board. Other nominations, or all of the nominations if the governing body does not make any, shall be made by petition

to the governing body bearing the signatures, written in their own handwriting, of not less than two hundred qualified voters of the city. Nominating petitions may be filed at any time after the adoption of the initiatory ordinance and not less than twenty days prior to the date of the election. In the event of a vacancy in the nominations which shall reduce the number of candidates below the number of members to be elected, the vacancy shall be filled by the governing body.

Notice of any election at which the question of whether a charter shall be framed shall be voted upon shall consist of the initiatory ordinance and a brief prefatory statement setting out the date and hours of the election, naming the candidates, if any, nominated by the governing body for membership on the charter board as above provided and stating how and within what time limit other nominations may be made. The governing body shall cause such notice to be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. The first publication shall be made not less than thirty days prior to the date of the election.

Each qualified voter entitled to vote on the question of framing a charter may cast as many votes for members of the charter board as there are members to be elected. He may cumulate all his votes for one candidate or distribute them among the several candidates as he sees fit.

The ballots, or ballot labels where voting machines are used, pertaining to the question of framing a charter shall be separate from the ballots or ballot labels for members of the charter board. The position of the names of the candidates upon the ballots or voting machines shall be interchanged, as provided in the general election laws of this State. A voter who shall vote "No" on the question may, nevertheless, vote for such candidates. The ballots or voting machine directions shall bear instructions to this effect, and also instructions which shall indicate the number of candidates for which the voter may vote (which shall be the same as the number of members to be elected), and that cumulative voting is permitted. Special ballots or ballot labels without party designation shall be used at every election held under this article even though the election is held at the same time as some other election. The ballots or ballot labels shall be prepared by or at the direction of the recorder of the city.

After such an election, the legal votes on the question shall be counted and canvassed. If a majority of the legal votes cast on the question be in the negative, the proceeding shall be at an end, and the question shall not be submitted again, without a petition of the qualified voters as provided for in subsection (b), section one of this article, for at least two years. If a majority of the legal votes cast on the question be in the affirmative, the legal votes cast for members of the charter board shall be counted and canvassed and the candidates, in the number to be chosen, who receive the highest number of votes shall be declared elected.

Acts 1937, c. 56; Acts 1939, c. 94; Acts 1967, c. 105; Acts 1969, c. 86.

§ 8-4-3. Provisions of article three made applicable; duties and responsibilities of county court under article three placed upon governing body under this article; duties and responsibilities of charter board; exceptions

All of the pertinent provisions of article three of this chapter pertaining to the charter drafting and adoption process for a newly incorporated city shall be as fully applicable to proceedings under this article four as if such provisions were set forth in extensor herein, except that (1) the publication area for all notices required to be published shall be the city, and (2) the duties and responsibilities placed upon the county court in said article three shall be performed and discharged under this article four by the governing body of the city. A charter board elected in accordance with the provisions of this article four for the purpose of framing a charter, and the members thereof, shall be governed by the provisions of said article three relating to a charter board for a newly incorporated city, and the members thereof, and it and the members thereof shall carry out all of the duties and responsibilities imposed upon a charter board, and the members thereof, elected in accordance with the provisions of said article three, except that (1) the board, under the provisions of this article four, shall file one signed copy of the proposed charter with the clerk of the county court of the county in which the city or the major portion of the territory thereof is located and two signed copies of the proposed charter with the recorder of the city, and (2) if the proposed charter under the provisions of this article four is rejected by a majority of the legal votes cast at the election thereon, the duties and responsibilities of such board shall be at an end, nor shall a new charter board be then elected.

Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-4-4. Submission of proposed charter to qualified voters

The proposed charter shall be submitted to the qualified voters of the city in like fashion and with like notice as provided for a proposed charter of a newly incorporated city as set forth in article three of this chapter, except that the proposed charter shall be submitted at the next regular municipal election instead of a special election, unless (1) the governing body by the affirmative vote of two thirds of its members shall determine and specify that a special municipal election is necessary, or (2) a petition bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters of the city, if a Class I or Class II city, or ten percent of the qualified voters of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose be presented to the governing body more than one hundred twenty days prior to the date of the next regular municipal election.

Acts 1937, c. 56; Acts 1967, c. 105; Acts 1969, c. 86.

§ 8-4-5. Approval of charter; effective date; certification; judicial notice; recordation; effect of rejection

If the proposed charter shall be approved by a majority of the legal votes cast at the election thereon, the charter shall take effect on July first next after the date of the election. If approved as aforesaid, one of the signed copies of the charter on file with the recorder of the city, together with a certified

copy of the declaration of the results of the election showing the total legal votes cast for and against approval, shall be certified forthwith by such recorder to the clerk of the House of Delegates, in his capacity as keeper of the rolls. The same shall be preserved by said clerk of the House of Delegates as an authentic public record. After the effective date of a charter so filed, all courts shall take judicial notice of its provisions.

If the charter is approved as aforesaid, a certified copy of the declaration of the results of the election showing the total legal votes cast for and against approval shall be forwarded by the recorder of the city to the clerk of the county commission for filing with the signed copy of the charter previously filed with him.

Rejection of the proposed charter by a majority of the legal votes cast shall have the same effect as a majority vote against the question of framing a charter as specified in section two of this article, and no further effort shall be made to have a charter approved until the question of framing a charter is again submitted to the qualified voters of the city and is approved by a majority vote, subject to the two-year limitation set forth in said section two of this article.

Acts 1951, c. 131; Acts 1969, c. 86; Acts 1985, c. 122.

§ 8-4-6. New charter supersedes existing charter; effect on ordinances and administrative law

A new charter shall entirely supersede the prior charter of a city. All ordinances and administrative acts or rules theretofore adopted by the governing body or administrative agencies of a city which are in conflict with or are inconsistent with a new charter shall continue in force for sixty days after the effective date of the new charter, unless sooner modified or repealed by competent authority; but at the end of this period shall, to the extent of such conflict or inconsistency, be of no further force or effect.

Acts 1937, c. 56; Acts 1969, c. 86.

PART II—REVISING OR AMENDING A CHARTER

§ 8-4-7. Revising or amending a charter—Generally

A special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former chapter eight-a of this code, under article three of this chapter or under this article four, as the case may be, may be revised as a whole in like manner as a charter may be framed and adopted under the provisions of this article four, except that the question submitted shall be "Shall the charter be revised as a whole by representatives of the people?", but no such revision as a whole shall be made within four years of the effective date of such a charter or of the last preceding revision as a whole, whichever be later, as the case may be. A revision as a whole may also be initiated in the manner specified in section nine, article three of this chapter or in the manner specified in said section nine considered in pari materia with the provisions of section three of this article four. If a majority of the legal votes cast on the question be in the negative or if the proposed charter revised as a whole is rejected by a majority of the legal

votes cast at the election thereon, the provisions of sections two and three of this article relating to a negative vote on the question of framing a charter and to rejection of a proposed charter shall govern and control.

The qualified voters of a city may amend a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former chapter eight-a of this code, under article three of this chapter or under this article four, as the case may be, but no amendment shall be made within one year of the effective date of such a charter or of the last preceding revision of such charter as a whole, whichever be later, as the case may be. An amendment or amendments may be initiated in the same manner provided in this article for the framing of a charter, in the manner specified in section nine, article three of this chapter, or in the manner specified in said section nine considered in pari materia with the provisions of section three of this article four. The governing body of a city shall provide by ordinance for a special municipal election to pass upon a proposed charter amendment or amendments if (1) such governing body by the affirmative vote of two thirds of its members shall determine and specify that a special municipal election is necessary; or (2) a petition bearing the signatures, written in their own handwriting, of fifteen percent of the qualified voters of the city, if a Class I or Class II city, or ten percent of the qualified voters of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose has been filed with the governing body more than one hundred twenty days prior to the date of the next regular municipal election. In all other cases, a proposed charter amendment or amendments shall be submitted by ordinance at the next regular municipal election. Any proposed amendment or amendments shall be set out in full in the ordinance submitting same. The date of any special municipal election for the purpose shall be fixed by the ordinance providing for same, but any such special municipal election shall be held not less than thirty nor more than sixty days after such ordinance shall have been adopted. Notice of any election at which a proposed amendment or amendments shall be voted upon shall state the date and hours thereof, and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a designated person at a stated place, upon request. Such notice shall be published as in the case of a notice of an election on the question of whether a charter shall be framed, as specified in section two of this article. A charter amendment or amendments approved, or such of them as may be approved, by a majority of the legal votes cast at the election thereon shall take effect on the date that the declaration of the results showing approval by the voters has been made by the governing body and entered in the minutes of the governing body. One copy of the amendment or amendments, together with a certified copy of the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to the clerk of the house of delegates, as keeper of the rolls, and another to the clerk of the county court for recording in the office of such clerk of the county court. The same shall be preserved by said clerk of the house of delegates as an authentic public record. After the effective date of an amendment or amendments so filed, all courts shall take judicial notice of such amendment or amendments.

If a majority of the legal votes cast at the election thereon be against any amendment, such proposed amendment shall not be submitted again, without a petition of the qualified voters as provided for in subsection (b), section one of this article considered in pari materia with the provisions of this section

seven, for at least one year.

Acts 1937, c. 56; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-4-8. Same—An alternate plan

Whenever the governing body of any city shall deem it expedient to amend the charter of any such city (whether such charter be a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former chapter eight-a of this code, under article three of this chapter or under this article four, as the case may be), it shall, by ordinance, set out in its proper record book the proposed amendment or amendments in full. The governing body shall set a date, time and place for a public hearing thereon, which date shall be not less than thirty days after the date of the first publication hereinafter required. The governing body shall cause the proposed amendment or amendments, together with a notice of the date, time and place fixed for the hearing thereon, to be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. The notice shall state that the proposed amendment or amendments will be considered on the date and at the time and place fixed by the governing body and that any qualified voter or any freeholder of the city may appear and file objections, in writing, and also that if no objections are filed the said amendment or amendments shall become operative on and after a date fixed in the notice, which date shall be not less than ten days after the date of the hearing. If no objections are filed, or if objections are filed and are withdrawn at the time of the hearing, or within ten days thereafter, the governing body shall, by ordinance, adopt the amendment or amendments as an amendment or amendments to the charter, and cause a copy of the amendment or amendments, ordinance and transcript of the proceedings to be certified to the clerk of the house of delegates, as keeper of the rolls, and to be recorded in the office of the clerk of the county court. The same shall be preserved by such clerk of the house of delegates as an authentic public record. The amendment or amendments shall take effect on the effective date specified in the notice as aforesaid. After the effective date, all courts shall take judicial notice of such amendment or amendments.

If, on the date and at the time and place set for the hearing, objections to the amendment or amendments are filed and are not withdrawn then or within ten days thereafter, the governing body may abandon the proposed amendment or amendments to which objections have been filed, or it may submit the proposed amendment or amendments, either as a unit or separately, at the next regular municipal election, or at a special municipal election if such governing body by the affirmative vote of two thirds of its members shall determine and specify that a special municipal election is necessary and if the date of such regular municipal election shall be more than six months from such date, for ratification or rejection. Notice of any election at which the proposed amendment or amendments shall be voted upon shall state the date and hours thereof and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a designated person at a stated place, upon request. The

governing body shall cause such notice to be published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the city. The amendment or amendments approved, or such of them as may be approved, by a majority of the legal votes cast at the election thereon shall take effect on the date that the declaration of the results showing approval by the voters has been made by the governing body and entered in the minutes of the governing body. One copy of the amendment or amendments, together with a certified copy of the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to the clerk of the house of delegates, as keeper of the rolls, and another to the clerk of the county court for recording in the office of such clerk of the county court. The same shall be preserved by said clerk of the house of delegates as an authentic public record. After the effective date of an amendment or amendments so filed, all courts shall take judicial notice of such amendment or amendments. If a majority of the legal votes cast at the election thereon be against any proposed amendment, the same shall not be proposed again under the provisions of this section for at least one year.

The method of charter amendment provided for in this section is not in lieu of but is in addition to the other methods prescribed in this chapter.

Acts 1937, c. 56; Acts 1951, c. 142; Acts 1967, c. 105; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-4-9. Submission of alternative provisions

A charter revision as a whole or a charter amendment or amendments may be proposed with alternative provisions for submission to the qualified voters and the same may be voted upon separately without prejudice to the primary question of whether the proposed charter revision as a whole or the amendment or amendments shall be adopted and without prejudice to the other provisions thereof.

Acts 1937, c. 56; Acts 1969, c. 86.

PART III—ELECTIONS; EXPENSES

§ 8-4-10. Conduct of elections; general provisions concerning canvass and declaration of results; election supplies; election officials

The governing body of a city shall canvass the returns within relatively the same time with reference to an election held under the provisions of this article and in the same manner as county courts are required to do with respect to general elections, and shall declare the results of any such election. This requirement shall apply to any election held under the provisions of this article, whether it be a special municipal election or voting conducted in conjunction with a general election or a regular municipal election. The canvass and declaration of results shall be entered in the minutes of the governing body on the date made. Unless otherwise provided by charter provision, any such special municipal election or voting conducted in conjunction with a general election or a regular municipal election shall be

held and conducted under the supervision at each precinct of three commissioners of election and two clerks who shall be appointed by the governing body and shall be conducted as nearly as may be in accordance with the laws of this State governing general elections, subject, however, in the case of a special municipal election to the provisions of section eleven of this article. For any special municipal election or voting conducted in conjunction with a general election or a regular municipal election, in accordance with the provisions of this article, the governing body shall arrange for and provide at its expense registration books, challenges and other election supplies as provided by law in general elections, and polling places in any such special municipal election or with respect to any such voting conducted in conjunction with a regular municipal election. In the event any commissioner or clerk appointed by the governing body shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this State governing general elections, except that the governing body shall act in the place and stead of the county court. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the governing body that he or they will pay all costs of such recount.

Acts 1937, c. 56; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-4-11. Special election and special municipal election officials

In any special election upon the question of the approval or rejection of a proposed charter to be held under the provisions of article three of this chapter and in any special municipal election to be held under the provisions of this article four, the proponents and opponents of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, shall be entitled to representation among the election officials appointed to serve at each polling place. Election officials representing the proponents and opponents shall be designated as follows:

(1) The proponents and opponents, or either, of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, if organized, may, not less than fifteen days prior to the date fixed for the special election or special municipal election, as the case may be, file with the county court as to a special charter election to be held under the provisions of article three of this chapter or the governing body in all other cases a list of individuals to serve as election officials to represent their organization or organizations and if a list is so filed the county court or governing body, as the case may be, shall appoint as election officials to represent such organization or organizations the individuals so nominated: Provided, That any such organization has as members at least five percent of the qualified voters of the incorporated territory or city, and any such organization, within ten days after the official notice of such special election or special municipal election, as the case may be, was published for the first time, submitted to the county court or governing body, as the case may be, a statement showing the name, officers and members thereof: Provided,

however, That no individual shall be a member of more than one such organization; or

(2) If the proponents and opponents, or either, of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole, or the proposed charter amendment or amendments, as the case may be, are not organized as aforesaid, or if no such list is filed as aforesaid, the county court or governing body, as the case may be, shall, not less than ten days prior to the date fixed for the special election or special municipal election, as the case may be, appoint as representatives of proponents and opponents, or either, as the case may be, an equal number of persons known to be in favor of the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, and of persons known to be opposed to the proposed charter, the question of framing or revising a charter, the proposed charter revision as a whole or the proposed charter amendment or amendments, as the case may be, to act as election officials at each polling place.

Acts 1937, c. 56; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-4-12. Expenses

The governing body of a city shall make full provision for all expenses incurred in advertising, holding and conducting any election or voting under the provisions of this article and all other proper expenses incurred in complying with the provisions of this article, including the expenses of a charter board and the members thereof, as specified in section two of this article.

Acts 1937, c. 56; Acts 1969, c. 86.

ARTICLE 5

ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST

Part I—First Election of Officers.

Section

8-5-1. First election of officers of a city; terms of first officers.

8-5-2. First election of officers of a town or village; commissioners of election.

8-5-3. When first election of officers of a town or village held; notice.

8-5-4. Conducting first election of officers of a town or village; certificate of election; terms of first officers.

Part II—Regular Election of Officers.

8-5-5. Regular election of officers; establishment of longer terms.

8-5-5a. Repealed.

Part III—Charter Provisions Pertaining to Election of Officers.

8-5-6. Charter provisions concerning officers and elections, etc.; provisions of general law concerning same.

Part IV—Officers to Be Elected; Ward or Election District Representation.

8-5-7. Certain officers; wards or election districts; residency and other requirements.

Part V—Oath of Office; Terms of Office; Filling Vacancies.

8-5-8. Oath of office.

8-5-9. Terms of office.

8-5-10. Vacancies in elective offices; how filled.

Part VI—General Provisions Relating to Officers and Employees.

8-5-11. Municipal officers and employees generally.

8-5-12. Compensation of officers and employees.

8-5-12a. Public carriage for officers and employees.

Part VII—Elections and Petitions Generally.

8-5-13. Integration of municipal elections with system of permanent registration.

8-5-14. Municipal executive committees; election expenses; applicability of state primary and general election laws; election days.

8-5-15. Tie vote.

8-5-15a. Special municipal elections not otherwise provided for.

8-5-16. Judicial review.

8-5-17. Canvassing of elections; contested elections.

8-5-18. Determination as to sufficiency of a petition filed under this chapter.

Part VIII—Conflict of Interest.

8-5-19. Charter or ordinance provisions pertaining to conflict of interest;

penalties for violation thereof.

8-5-20. Triennial audits of certain associations and organizations.

PART I—FIRST ELECTION OF OFFICERS

§ 8-5-1. First election of officers of a city; terms of first officers

The first election of officers of a city shall be held, conducted, superintended, returned, certified and canvassed in such manner as is provided in article three of this chapter for the first charter election of such city. All officers elected at such first charter election, which first charter election is held after the effective date of this article, shall be elected for a term which shall expire on the thirtieth of June of the second or fourth year following such election, as the charter may provide.

Acts 1969, c. 86.

§ 8-5-2. First election of officers of a town or village; commissioners of election

At the time of ordering the issuance of the certificate of incorporation of a town or village as specified in section seven, article two of this chapter, the county court shall appoint three qualified voters of such incorporated territory who shall act as commissioners of election at the first election of officers to be held in such town or village, as hereinafter provided, and, in case they shall fail or refuse to act, such election may be held, conducted, superintended, returned and certified by any three qualified voters of such incorporated territory appointed for that purpose by the qualified voters present.

Acts 1882, c. 92, § 10; Acts 1949, c. 83; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-5-3. When first election of officers of a town or village held; notice

The first election of officers of a town or village shall be held within sixty days from the date of the certificate of incorporation issued in accordance with the provisions of section seven, article two of this chapter, and the commissioners of election appointed at the time the order is entered directing issuance of such certificate shall cause notice to be given of the date, time and place of holding such election, which notice shall specify the officers to be voted for, and shall be published within fourteen consecutive days next preceding the date appointed for such election, as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such town or village.

Acts 1882, c. 92, § 11; Acts 1949, c. 83; Acts 1967, c. 105; Acts 1969, c. 86.

§ 8-5-4. Conducting first election of officers of a town or village;

certificate of election; terms of first officers

Such commissioners, or the individuals acting as such, shall preside and act as commissioners of such election, and all of the laws applicable to the election of district officers shall apply to such election, if not inconsistent with the provisions of this article. Such commissioners shall, within five days after such election, issue a certificate to the individuals elected, which certificate shall be recorded among the records of such town or village. All officers elected at the first election of officers held by a town or village, which first election is held after the effective date of this article, shall be elected for a term which shall expire on the thirtieth of June of the second year following such election.

Acts 1882, c. 92, § 12; Acts 1969, c. 86.

PART II—REGULAR ELECTION OF OFFICERS

§ 8-5-5. Regular election of officers; establishment of longer terms

After the first election of officers of a city, town or village, the regular election of officers shall be held on the second Tuesday in June of the appropriate year, unless otherwise provided in the charter of the city or the special legislative charters of the towns or villages, as the case may be.

A municipal election date established by a charter provision may fall on the same day as the county-state primary election or general election only when the voting precinct boundaries in the municipality coincide with the voting precinct boundaries established by the county commission or when the charter provides for separate registration books. If a municipal election falls on the same day as the county-state primary or general election, the municipality and county may agree to use the county election officials in the municipal elections, if practicable, or the municipality may provide for separate election officials.

A municipal election date established by charter provision may fall within twenty-five days of a county-state primary or general election only where separate registration books are provided and maintained for the municipal election.

Any municipality which establishes its election date by charter provision must comply with the provisions of this section or the election date shall be the second Tuesday of June. The language of this section shall not be construed to prevent any city, town or village from amending the provisions of its charter or special legislative charter, as the case may be, to provide that its municipal election be held on some day other than the second Tuesday in June.

Officers of a city may be elected for a four-year term at the same election at which a proposed charter, proposed charter revision or charter amendment providing for four-year terms is voted upon. The ballots or ballot labels used for the election of officers must indicate that the officers will be elected for four-year terms if the proposed charter, revision or amendment is approved. Officers of a town or village may be elected for a four-year term upon approval by a majority of the legal votes cast at a regular municipal election of a proposition calling for four-year terms. The ballots or ballot labels used for

the election of officers must indicate that the officers will be elected for four-year terms if the proposition is approved.

Acts 1882, c. 92, § 17; Acts 1929, c. 62, § 17; Acts 1965, c. 106; Acts 1969, c. 86; Acts 1981, c. 101; Acts 1986, c. 115.

§ 8-5-5a. Repealed by Acts 1987, c. 91

PART III—CHARTER PROVISIONS PERTAINING TO ELECTION OF OFFICERS

§ 8-5-6. Charter provisions concerning officers and elections, etc.; provisions of general law concerning same

The charter of every city framed and adopted or revised as a whole under the provisions of article three or article four of this chapter, as the case may be, shall provide a method and time for the filing of certificates of candidacy, nominating candidates, conducting primary and regular municipal elections, and determining and certifying the results of such elections. Except as otherwise provided in the charter of any municipality, the provisions of general law with respect to the method and time for the filing of certificates of candidacy, nominating candidates, conducting primary and regular municipal elections, and determining and certifying the results of such elections, so far as applicable, shall apply to municipal elections: Provided, That the provisions of section thirteen of this article shall be construed as mandatory.

Acts 1937, c. 56; Acts 1941, c. 44; Acts 1969, c. 86.

PART IV—OFFICERS TO BE ELECTED; WARD OR ELECTION DISTRICT REPRESENTATION

§ 8-5-7. Certain officers; wards or election districts; residency and other requirements

(a) Unless otherwise provided in the charter of a municipality, there shall be elected a mayor, a recorder and councilmen, who together shall form the governing body of the municipality.

(b) When a municipality has not been divided into wards or election districts, there shall be at least five councilmen, but when the municipality has been divided into wards or election districts, the governing body may, by ordinance, determine the number of councilmen to be elected from each ward or election district. When it is deemed necessary, the governing body may, by ordinance, increase the number of wards or election districts and change the boundaries thereof, such wards or election districts to be made as nearly equal as may be, in population, and when the municipality shall be divided into wards or election districts, or there shall be an increase in the number of wards or election districts as aforesaid, the governing body may increase the number of councilmen and direct an election to be held at the next regular municipal election in such ward or wards or election district or districts so that each ward or election district may have its full number of councilmen residing therein and may have equal representation on the governing body. When a municipality has been divided into wards or election districts, the governing body may, by ordinance, also provide for the election of councilmen at large in addition to the councilmen to be elected from each ward or election district.

The provisions of this subsection shall be applicable to any municipality except to the extent otherwise provided in the charter of such municipality.

(c) Unless otherwise provided by charter provision or ordinance, the mayor, recorder and councilmen must be residents of the municipality and must be qualified voters entitled to vote for members of its governing body. A city manager in a manager form of government need only be a resident of the city at the time of his or her appointment.

Acts 1877, c. 45, § 13; Acts 1882, c. 92, §§ 13, 21; Acts 1889, c. 26, § 13; Acts 1897, c. 92, § 13; Acts 1947, c. 120; Acts 1969, c. 86; Acts 2005, c. 58, eff. April 6, 2005.

PART V—OATH OF OFFICE; TERMS OF OFFICE; FILLING VACANCIES

§ 8-5-8. Oath of office

Every person elected or appointed to an office in any municipality shall, unless otherwise provided in the charter thereof, within twenty days after his election or appointment and before he shall enter upon the duties of his office, take and subscribe to the oath of office prescribed for district officers, which may be done before any person authorized by law to administer oaths, or before the mayor or recorder of such municipality. The oath, together with the certificate of the officer administering the same, shall be filed, recorded and preserved in the office of the recorder of the municipality, and a certified copy of such oath and certificate shall be filed and recorded in the office of the clerk of the county court of the county in which the municipality or the major portion of the territory thereof is located.

Acts 1882, c. 92, § 18; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-5-9. Terms of office

Except as otherwise provided in the charter of any municipality, the terms of all officers elected after the first election in municipalities holding biennial elections shall commence on the first day of July following their election and shall be for two years, and in municipalities holding quadrennial elections the terms of all elected officers shall commence on the first day of July following their election and shall be for four years.

All municipal officers, whether elected at the first election of officers or at regular municipal elections, or appointed, shall hold their offices until their successors are elected or appointed and qualified according to law, unless sooner removed from office according to law. Officers in office when this article becomes effective shall hold their offices subject to the provisions of the immediately preceding sentence hereof.

Acts 1882, c. 92, §§ 15, 16; Acts 1889, c. 26, § 13; Acts 1897, c. 92, § 13; Acts 1929, c. 62, § 16; Acts 1965, c. 106; Acts 1969, c. 86.

§ 8-5-10. Vacancies in elective offices; how filled

Unless otherwise provided by charter provision or ordinance, when a vacancy shall occur from any cause in any municipal elective office, the vacancy, until the next succeeding regular municipal election and until the qualification of an elected successor, shall be filled by appointment by the governing body from among the residents of the municipality eligible under this article.

Acts 1882, c. 92, § 20; Acts 1895, c. 24, § 20; Acts 1969, c. 86.

PART VI—GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES

§ 8-5-11. Municipal officers and employees generally

Subject to the provisions of the Constitution of this State, the provisions of this article, and other applicable provisions of this chapter, any city may by charter provision, and the governing body of any municipality, consistent with the provisions of its charter, if any, may by ordinance, determine and prescribe the officers or positions which are to be filled by election, appointment or employment, the number, method of selection, tenure, qualifications, residency requirements, powers and duties of municipal officers and employees, and the method of filling any vacancies which may occur.

Acts 1937, c. 56; Acts 1969, c. 86.

§ 8-5-12. Compensation of officers and employees

Notwithstanding any charter provision to the contrary, the governing body of every municipality shall by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee: Provided, That the salary of any officer shall not be increased or diminished during his term.

The governing body of every municipality shall have plenary power and authority to provide by ordinance for the allowance of time off of officers and employees with pay for vacations and illness and for personnel management incentives, as additional consideration for their services and employment.

Acts 1882, c. 92, §§ 35, 37, 42; Acts 1917, c. 106, § 42; Acts 1937, c. 56; Acts 1943, c. 12; Acts 1945, c. 92; Acts 1951, c. 132; Acts 1953, c. 132; Acts 1955, c. 118; Acts 1957, c. 125; Acts 1959, c. 114; Acts 1965, c. 107; Acts 1968, c. 36; Acts 1969, c. 86; Acts 1981, c. 162.

§ 8-5-12a. Public carriage for officers and employees

Any municipal officer or employee may, or may not, in the discretion of the city manager, mayor or the governing body, be furnished with the use of publicly provided carriage to travel from his residence to his workplace and return: Provided, That such usage is subject to the supervision of such city manager, mayor or governing body and is directly connected with and required by the nature and in the performance of such officer's or employee's duties and responsibilities.

Acts 1981, c. 194.

PART VII—ELECTIONS AND PETITIONS GENERALLY

§ 8-5-13. Integration of municipal elections with system of permanent registration

Notwithstanding any charter provision to the contrary, it is the duty of each city by charter provision or each municipality by ordinance to make provision for integrating the conduct of all municipal elections with the system of "permanent registration of voters" as provided in article two, chapter three of this code.

Acts 1911, c. 45, § 15; Acts 1916, c. 6, § 98a(15); Acts 1933, 2nd Ex. Sess., c. 50; Acts 1941, c. 44; Acts 1969, c. 86; Acts 2002, c. 132, eff. Feb. 5, 2002.

§ 8-5-14. Municipal executive committees; election expenses; applicability of state primary and general election laws; election days

Except as otherwise provided by charter provision or ordinance or this code, municipal executive committees shall exercise similar functions and be governed by the same laws in regard to municipal primary elections and regular municipal elections as county executive committees in regard to county-state primary and general elections, so far as the same may be applicable. All expenses of conducting municipal primary elections and regular municipal elections shall be paid by the municipality. The provisions of chapter three of this code, referring more particularly to primary elections and general elections, shall, so far as the same can be applied and so far as not otherwise provided by charter provision or ordinance, govern the conduct of municipal primary elections and regular municipal elections, as the case may be. No municipal primary election shall be held on the day of the county-state primary election except as provided in section five of this article nor less than twenty-five days immediately preceding the regular municipal election, unless a shorter period of time is established by charter or ordinance.

Acts 1915, c. 26, § 28; Acts 1916, c. 5, § 28; Acts 1969, c. 86; Acts 1981, c. 101.

§ 8-5-15. Tie vote

Whenever two or more individuals shall receive an equal number of legal votes for the same office, if such number be the highest cast for such office, the individuals under whose supervision the election is held shall decide by lot which of them shall be returned as elected, and shall make their return accordingly.

Acts 1882, c. 92, § 22; Acts 1969, c. 86.

§ 8-5-15a. Special municipal elections not otherwise provided for

In any instance where there is no statutory, charter or lawful ordinance provision authorizing, relating to or requiring a special municipal election, the governing body of a municipality shall, upon receipt of a proper petition, as hereinafter in this section specified, requesting a special municipal election for a proper governmental purpose, as specified in such petition,

forthwith adopt a resolution or ordinance, where procedure by ordinance is required, calling and providing for a special municipal election for such purpose. Such petition must bear the signatures, written in their own handwriting, of not less than twenty percent of the qualified voters of such municipality. Such special municipal election shall be held, superintended and conducted, and the results thereof ascertained, certified, returned and canvassed in the same manner and by the same individuals as elections for municipal officers. In any instance where there is a statutory, charter or lawful ordinance provision authorizing, relating to or requiring a special municipal election upon petition or otherwise, the provisions of this section shall not be applicable and such statutory, charter or lawful ordinance provision shall govern and control in all respects, including without limiting the generality of the foregoing, the requisites of any petition for such special municipal election.

Acts 1974, c. 77.

§ 8-5-16. Judicial review

A writ of error shall lie to the circuit court in accordance with the provisions of article three, chapter fifty-eight of this code from any order of a county court ordering an election to be held under the provisions of this chapter. Upon the filing of a petition for a writ of error, all proceedings shall be suspended or stayed pending final adjudication of the matters involved.

The order of any municipality ordering an election to be held under the provisions of this chapter shall be reviewable by the circuit court of the county in which the municipality or the major portion of the territory thereof is located upon certiorari to the governing body thereof, in accordance with the provisions of article three, chapter fifty-three of this code. Upon the filing of a petition for a writ of certiorari, all proceedings shall be suspended or stayed pending final adjudication of the matters involved.

Acts 1951, c. 131; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-5-17. Canvassing of elections; contested elections

All elections ordered and held by a county court under the provisions of this chapter shall be canvassed by such county court. All elections ordered and held by a municipality under the provisions of this chapter shall be canvassed by the governing body of such municipality.

Any contest of a public question election ordered and held by a county court, or by a municipality, under the provisions of this chapter, shall be heard and decided by the county court or governing body of the municipality, as the case may be, and any such contest shall be conducted in the manner to be provided in article seven, chapter three of this code for contests of an election on a public question. Any such election may be contested by a qualified elector or voter or by a freeholder interested therein.

Any contest by any candidate or candidates of an election of charter board members or of the first officers of a city, which election is held under the provisions of article three of this chapter, shall be heard and decided by the county court, and any such contest shall be conducted in the manner provided in said article seven, chapter three of this code for election contests for county or district officers in general elections.

Any contest by any candidate or candidates of an election of charter board members, which election is held under the provisions of article four of this chapter, or of officers of a municipality (other than the first officers of a city) shall be heard and decided by the governing body thereof, and any such contest shall be conducted in the manner provided in said article seven, chapter three of this code for election contests for county or district officers in general elections.

Acts 1882, c. 92, § 23; Acts 1937, c. 56; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 8-5-18. Determination as to sufficiency of a petition filed under this chapter

It shall be the right and duty of the county court, the governing body of a municipality, or other body or officer, to which or to whom any petition is presented under the provisions of this chapter, as the case may be, to determine the sufficiency of any such petition, and where no time limit is prescribed for the making of such determination, the same shall be accomplished within a reasonable period of time. Any such determination, where there is no other express right of judicial review provided, shall be reviewable by the circuit court of the county upon certiorari to the county court, governing body, or other body or officer, as the case may be, in accordance with the provisions of article three, chapter fifty-three of this code; and in the case of a governing body, the appropriate circuit court shall be the circuit court of the county in which the municipality or the major portion of the territory thereof is located.

Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

PART VIII—CONFLICT OF INTEREST

§ 8-5-19. Charter or ordinance provisions pertaining to conflict of interest; penalties for violation thereof

Every city shall have plenary power and authority to provide by charter provision, and every municipality shall have plenary power and authority to provide by ordinance, that it shall be unlawful for the governing body, or any member thereof, or other officer or officers thereof, to be interested personally, either directly or indirectly, or as a member, manager, officer or stockholder of any partnership, business, firm or corporation, in any contract furnishing material, services or supplies to the municipality, or to any

contractor, or workmen for the municipality, or in any manner whatsoever, whereby the taxpayers of such municipality shall become the paymaster, either directly or indirectly, or to adopt any other provisions, deemed appropriate, pertaining to conflict of interest or possible conflict of interest. Any violation of any such charter or ordinance provisions by any member of the governing body or other officer or officers thereof, shall be a misdemeanor, and, upon conviction thereof, such member or officer shall be fined not less than fifty nor more than five hundred dollars, and shall automatically be removed from office.

Acts 1917, c. 108, § 59; Acts 1969, c. 86.

§ 8-5-20. Triennial audits of certain associations and organizations

(a) Any voluntary association or other membership organization, whether nonprofit or for profit, the majority of the membership of which is comprised of municipalities of this state or of persons who hold elected or appointed municipal offices in this state, and which annually receives more than five thousand dollars in public moneys from the various municipalities of this state to pay the membership dues of municipalities or elected or appointed municipal officials, shall file with the secretary of tax and revenue on a triennial basis, beginning the first day of July, one thousand nine hundred ninety-seven, an audit of the receipt and disbursement of funds. The period covered by the audit shall be the previous three years or for the years since the last such audit.

(b) Any audit required by the provisions of this section shall be performed by an independent certified public accountant.

(c) Any voluntary association or membership organization subject to the provisions of this section which fails or refuses to file an audit shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars.

Acts 1997, c. 224, eff. 90 days after April 12, 1997.

ARTICLE 6

ANNEXATION

Part I—General.

Section

8-6-1. Annexation of unincorporated territory.

Part II—Annexation by Election.

8-6-2. Petition for annexation.

PART I—GENERAL

§ 8-6-1. Annexation of unincorporated territory

(a) Unincorporated territory may be annexed to and become part of a municipality contiguous thereto only in accordance with the provisions of this article.

(b) Any farmlands or operations as described in article nineteen, chapter nineteen of this code which may be annexed into a municipality shall be protected in the continuation of agricultural use after being annexed.

(c) Any new imposition of a tax or any increase in the rate of tax upon any business, occupation or privilege following annexation shall be applied in accordance with the provisions of section five, article thirteen, chapter eight of this code.

Acts 1937, c. 56; Acts 1969, c. 86; Acts 1989, c. 132; Acts 2001, c. 210, eff. 90 days after April 12, 2001.

PART II—ANNEXATION BY ELECTION

§ 8-6-2. Petition for annexation

(a) Five percent or more of the freeholders of a municipality desiring to have territory annexed thereto may file a petition in writing with the governing body thereof setting forth the change proposed in the metes and bounds of the municipality and asking that a vote be taken upon the proposed change. The petition shall be verified and shall be accompanied by an accurate survey map showing the territory to be annexed to the corporate limits by the proposed change.

(b) The petitioners shall obtain a surety bond in an amount set by the governing body sufficient to cover the cost of the election. The bond shall be forfeited if a majority of the votes cast are against the proposed annexation.

(c) The governing body shall, upon receipt of the bond, order a vote of the qualified voters of the municipality to be taken upon the proposed annexation on a date and at a time and place to be named in the order.

(d) The governing body shall, at the same time, order a vote of all of the qualified voters of the additional territory and of all of the freeholders of the additional territory whether they reside or have a place of business therein or not, to be taken upon the question on the same day at some convenient place in or near the additional territory.

(e) The governing body shall cause the order for the election to be published, at the cost of the municipality, as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the municipality and the additional territory. The first publication must be at least fourteen days prior to the date upon which the vote is to be taken. The order for the election shall contain an accurate description by metes and bounds of the additional territory proposed to be annexed to the corporate limits by the proposed change, a summary of the municipality's plan for providing services to the additional territory and, if practicable, shall also contain a popular description of the additional territory.

(f) The election shall be held, superintended and conducted and the results thereof ascertained, certified, returned and canvassed in the same manner by the same individuals as elections for municipal officers. The election is reviewable by the circuit court of the county in which the municipality or the major portion thereof, including the area proposed to be annexed, is located. The order may be reviewed by the circuit court as an order of a county commission ordering an election may be reviewed under section sixteen, article five of this chapter.

(g) The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:

☐ For Annexation

☐ Against Annexation

(h) Any freeholder which is a firm or corporation may vote by its manager, president or executive officer duly designated in writing by the firm or corporation.

(i) An individual who is a qualified voter and freeholder of the municipality or the additional territory shall be entitled to vote only once.

(j) For purposes of this section, the term "qualified voter of the additional territory" includes a firm or corporation in the additional territory regardless of whether the firm or corporation is a freeholder. A firm or corporation may vote by its manager, president, or executive officer duly designated in writing by the firm or corporation. In any instance where a freeholder leases or rents real property to a firm or corporation the freeholder and the firm or corporation shall determine which entity will be entitled to vote in the annexation election.

(k) When an election is held in any municipality in accordance with the provisions of this section, another election relating to the same proposed change or any part thereof shall not be held for a period of one year.

(l) If a majority of all of the legal votes cast in the municipality and a majority of all the legal votes cast in the territory are in favor of the proposed annexation, then the governing body shall proceed as specified in the immediately succeeding section of this article.

Acts 1937, c. 56; Acts 1951, c. 131; Acts 1961, c. 97; Acts 1963, c. 120; Acts 1965, c. 105; Acts 1967, c. 105; Acts 1967, c. 120; Acts 1969, c. 86; Acts 1989, c. 132; Acts 2001, c. 210, eff. 90 days after April 12, 2001; Acts 2003, c. 100, eff. 90 days after March 7, 2003.

ARTICLE 9

PROCEEDINGS OF GOVERNING BODIES

Section

8-9-2. Mayor and recorder may vote; tie vote.

§ 8-9-2. Mayor and recorder may vote; tie vote

The mayor and recorder shall, unless otherwise provided by charter provision, have votes as members of the governing body, and, in case of a tie, the presiding officer at the time shall cast the tie-breaking vote, unless he has previously voted.

Acts 1882, c. 92, § 27; Acts 1969, c. 86.

ARTICLE 12

GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES

Part II—Home Rule Powers for Cities.

Section

8-12-4. Power to provide by charter for initiative, referendum and recall.

PART II—HOME RULE POWERS FOR CITIES

§ 8-12-4. Power to provide by charter for initiative, referendum and recall

Any city may by charter provision provide for any or all of the following:

(1) The initiation of ordinances by petition bearing the signatures, written in their own handwriting, of not less than ten percent of the qualified voters of such city;

(2) The submission to the qualified voters of such city of a proposed ordinance at a regular municipal election or special municipal election upon petition bearing the signatures, written in their own handwriting, of not less than ten percent of the qualified voters of such city or upon resolution of the governing body of such city; and

(3) The holding of a special municipal election to submit to the qualified voters of such city the question of the recall of an elected officer upon petition bearing the signatures, written in their own handwriting, of not less than twenty percent of the qualified voters of such city. Not more than one recall election shall be held with respect to an officer during his term of office.

Acts 1937, c. 56; Acts 1969, c. 86.

ARTICLE 14

LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS

Part V—Civil Service for Certain Police Departments.

Section

8-14-19. Political activities of members prohibited; exceptions.

PART V—CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS

§ 8-14-19. Political activities of members prohibited; exceptions

(a) A member of a paid police department may not:

(1) Solicit any assessment, subscription or contribution for any political party, committee or candidate from any person who is a member or employee of the municipality by which they are employed;

(2) Use any official authority or influence, including, but not limited to, the wearing by a municipal police officer of his or her uniform for the purpose of interfering with or affecting the nomination, election or defeat of any candidate or the passage or defeat of any ballot issue: *Provided*, That this subdivision shall not be construed to prohibit any municipal police officer from casting his or her vote at any election while wearing his or her uniform;

(3) Coerce or command anyone to pay, lend or contribute anything of value to a party, committee, organization, agency or person for the nomination, election or defeat of a ballot issue; or

(4) Be a candidate for or hold any other public office in the municipality in which he or she is employed: *Provided*, That any municipal police officer that is subject to the provisions of 5 U.S.C. § 1501, *et seq.*, may not be a candidate for elective office.

(b) Other types of partisan or nonpartisan political activities not inconsistent with the provisions of subsection (a) of this section are permissible political activities for municipal police officers.

(c) No person may be appointed or promoted to or demoted or dismissed from any position held by a municipal police officer or in any way favored or discriminated against because of his or her engagement in any political activities authorized by the provisions of this section. Any elected or appointed official who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be punished by the penalties contained in section twenty-six, article fifteen of this chapter.

(d) Any member of any such paid police department violating the provisions of this section shall have his appointment vacated and he shall be removed, in accordance with the pertinent provisions of this section.

(e) Any three residents of any such city may file their written petition with the policemen's civil service commission thereof setting out therein the grounds upon which a member of the paid police department of such city should be removed for a violation of subsection (a) of this section. Notice of the filing of such petition shall be given by said commission to the accused member, which notice shall require the said member to file a written answer to the charges set out in the petition within thirty days of the date of said

notice. The said petition and answer thereto, if any, shall be entered upon the records of the commission. If such answer is not filed within the time stated, or any extension thereof for cause which in the discretion of the commission may be granted, an order shall be entered by the commission declaring the appointment of said member vacated; if such answer is filed within the time stated, or any extension thereof for cause which in the discretion of the commission may be granted, the accused member may demand within such period a public hearing on the charges, or the commission may, in its discretion and without demand therefor, set a time for a public hearing on said charges, which hearing shall be within thirty days of the filing of said answer, subject, however, to any continuances which may in the discretion of the commission be granted. A written record of all testimony taken at such hearing shall be kept and preserved by the commission, which record shall be sealed and not be open to public inspection, if no appeal be taken from the action of the commission. The commission at the conclusion of the hearing, or as soon thereafter as possible, shall enter an order sustaining, in whole or in part, the charges made or shall dismiss the charges as unfounded. In the event the charges are sustained in whole or in part, the order shall also declare the appointment of said member to be vacated and thereupon the proper municipal authorities shall immediately remove said member from the police force and from the payroll of said city. Notice of the action of the commission shall be given by registered letter to the mayor and chief of police of the city; and for failure to immediately comply with the order of the commission such officer or officers shall be punished for contempt, upon application of the commission to the circuit court of the county in which the city or the major portion of the territory thereof is located.

(f) An appeal from the ruling of the commission may be had in the same manner and within the same time as specified in section twenty of this article for an appeal from a ruling of a commission after hearing held in accordance with the provisions of said section.

Acts 1937, c. 57; Acts 1939, c. 95; Acts 1969, c. 86; Acts 2007, c. 149, eff. June 8, 2007.

ARTICLE 15

FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS

Part IV—Civil Service for Paid Fire Departments.

Section

8-15-24. Political activities of members prohibited; exceptions.

PART IV—CIVIL SERVICE FOR PAID FIRE DEPARTMENTS

§ 8-15-24. Political activities of members prohibited; exceptions

(a) No member of any paid fire department may:

(1) Solicit any assessment, subscription or contribution for any political party, committee or candidate from any person who is a member or employee of

the same fire department by which they are employed;

(2) Use any official authority or influence, including, but not limited to, the wearing by a member of a paid fire department of his or her uniform, for the purpose of interfering with or affecting the nomination, election or defeat of any candidate or the passage or defeat of any ballot issue: Provided, That this subdivision shall not be construed to prohibit any member of a paid fire department from casting his or her vote at any election while wearing his or her uniform;

(3) Coerce or command anyone to pay, lend or contribute anything of value to a party, committee, organization, agency or person for the nomination, election or defeat of a ballot issue; or

(4) Be a candidate for or hold any other public office in the municipality in which he or she is employed: Provided, That any paid member of a fire department that is subject to the provisions of 15 U.S.C. § 1501 *et seq.*, may not be a candidate for elective office.

(b) Other types of partisan or nonpartisan political activities not inconsistent with the provisions of subsection (a) of this section are permissible political activities for members of paid fire departments.

(c) No person shall be appointed or promoted to or demoted or dismissed from any position in a paid fire department or in any way favored or discriminated against because of his or her engagement in any political activities authorized by the provisions of this section. Any elected or appointed official who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by the penalties contained in section twenty-six, article fifteen, chapter eight of this code.

Acts 1933, c. 60; Acts 1937, c. 54; Acts 1949, c. 88; Acts 1969, c. 86; Acts 1993, c. 103; Acts 2002, c. 223, eff. 90 days after March 9, 2002.

ARTICLE 24

PLANNING AND ZONING [REPEALED]

§ 8-24-48. Repealed by Acts 2004, c. 153, eff. 90 days after March 13, 2004

ARTICLE 35

DISSOLUTION OF MUNICIPALITIES

Part I—Forfeiture of Charter or Certificate of Incorporation.

Section

8-35-1. Forfeiture of charter or certificate of incorporation; notice; dissolution of municipality.

Part II—Voluntary Dissolution of Class III City or Class IV Town or Village.

8-35-2. Voluntary dissolution of Class III city or Class IV town or village.

PART I—FORFEITURE OF CHARTER OR CERTIFICATE OF INCORPORATION

§ 8-35-1. Forfeiture of charter or certificate of incorporation; notice; dissolution of municipality

Any municipality heretofore incorporated or which shall hereafter be incorporated and which has no substantial indebtedness, and which shall fail for one year to exercise its corporate powers and privileges, or which has not twenty qualified voters, or in which there were not twenty legal votes cast at its last election, or the population of which shall be reduced below one hundred persons and so remain for six consecutive months, shall in either event have its charter or certificate of incorporation and all rights, powers and privileges so conferred upon such municipality forfeited.

The county court of the county wherein any such municipality or the major portion of the territory thereof is located shall have jurisdiction to hear and determine all matters relating to the forfeiture of such charter or certificate of incorporation, upon the petition of one or more of its inhabitants, and to dissolve such municipal corporation. Ten days' notice of the filing of such petition with the clerk of the county court of such county, served upon the mayor and recorder or on the last mayor or recorder thereof, shall be sufficient notice upon which such county court shall so act, and upon the proper proof of the allegations of such petition, any such charter or certificate of incorporation shall be declared forfeited and the municipal corporation dissolved and all debts of such municipality shall be ordered paid and the forfeiture and dissolution shall not become effective until such debts have been paid. Upon such forfeiture and dissolution all interest of such municipality in corporate funds, if any, in excess of the amounts required to pay corporate debts shall be and the same is hereby transferred to and vested in the State of West Virginia to be controlled by the state auditor. If the territory so incorporated, or a major part thereof, either in area or in population, shall, however, within one year next after such declaration of forfeiture and dissolution by the county court be reincorporated under this chapter, then the auditor of the State of West Virginia shall convey unto such new municipality all of the rights of the State of West Virginia in and to the corporate property, moneys, claims, demands and taxes collected or uncollected, of the former municipal corporation so dissolved.

Acts 1951, c. 131; Acts 1969, c. 86.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

PART II—VOLUNTARY DISSOLUTION OF CLASS III CITY OR CLASS IV TOWN OR VILLAGE

§ 8-35-2. Voluntary dissolution of Class III city or Class IV town or village

Upon petition of twenty-five or more percent of the legal voters of any Class III city or Class IV town or village, the governing body thereof shall submit to the qualified voters of such municipal corporation at the next regular municipal election, or at a special municipal election called for that purpose, the question of continuing or dissolving such municipal corporation. It shall be the responsibility of the governing body to verify the total number of

eligible petitioners and to determine whether the required percentage of petitioners has been obtained. The ballots, or ballot labels where voting machines are used, shall have written or printed on them the words:

☐ For Continuance of Municipal Corporation

☐ For Dissolution of Municipal Corporation

If a majority of the legal votes cast be for dissolution, then such municipal corporation shall by operation of law be dissolved upon termination of the term of the governing body then in office: Provided, That all debts or other obligations outstanding against such municipal corporation shall be settled in full. If a majority of the legal votes cast be for continuance, then such municipal corporation shall continue in existence unless and until dissolved at some later date under the provisions of section one of this article or this section two: Provided, however, That another election under the provisions of this section two shall not be held within two years of the last such election. Any election under the provisions of this section two shall be held, conducted and superintended and the result thereof ascertained, certified, returned and canvassed in the same manner and by the same persons as an election for municipal officers of such municipal corporation.

Acts 1951, c. 131; Acts 1953, c. 130; Acts 1969, c. 86.

CHAPTER 8A

LAND USE PLANNING

ARTICLE 7

ZONING ORDINANCE

Section

8A-7-7. Election on a zoning ordinance.

§ 8A-7-7. Election on a zoning ordinance

(a) The governing body of a municipality or a county may submit a proposed zoning ordinance for approval or rejection at any primary election, general election or special election, to the qualified voters residing:

(1) Within the entire jurisdiction of the governing body, if the proposed zoning ordinance is for the entire jurisdiction; or

(2) In the specific area to be zoned by the proposed zoning ordinance, if the proposed zoning ordinance only applies to part of the governing body's jurisdiction.

(b) The election laws of this state apply to any election on a proposed zoning ordinance.

(c) If a petition for an election on a zoning ordinance is filed with the clerk of a governing body within ninety days after the enactment of a zoning

ordinance by a governing body without an election, then a zoning ordinance does not take effect until an election is held and a majority of the voters approves it. At least ten percent of the total eligible voters in the area to be affected by the proposed zoning ordinance must sign, in their own handwriting, the petition for an election on a zoning ordinance.

(d) Notice for an election on a proposed zoning ordinance must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

(e) The ballots for an election on a zoning ordinance shall have the following:

☐ For Zoning

☐ Against Zoning

(f) The zoning ordinance is adopted if it is approved by a majority of the voters and is effective on the date the results of an election are declared. If a zoning ordinance is rejected, the zoning ordinance does not take effect. The governing body may submit the zoning ordinance to the voters again at the next primary or general election.

Acts 2004, c. 153, eff. 90 days after March 13, 2004; Acts 2008, c. 231, eff. March 7, 2008.

CHAPTER 11

TAXATION

ARTICLE 8

LEVIES

Section

11-8-16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

11-8-16a. Immediate levies authorized pursuant to Better Schools Amendment.

11-8-17. Special levy elections; notices; election officers; conduct of election; supplies; canvass of returns; form of ballot.

11-8-18. Tax commissioner to furnish forms for statements and attorney general to furnish forms for elections.

§ 11-8-16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds

A local levying body may provide for an election to increase the levies by entering on its record of proceedings an order setting forth:

(1) The purpose for which additional funds are needed;

(2) The amount for each purpose;

(3) The total amount needed;

(4) The separate and aggregate assessed valuation of each class of taxable property within its jurisdiction;

(5) The proposed additional rate of levy in cents on each class of property;

(6) The proposed number of years, not to exceed five, to which the additional levy applies;

(7) The fact that the local levying body will or will not issue bonds, as provided by this section, upon approval of the proposed increased levy.

The local levying body shall submit to the voters within their political subdivision the question of the additional levy at either a primary, general or special election. If at least sixty percent of the voters cast their ballots in favor of the additional levy, the county commission or municipality may impose the additional levy. If at least a majority of voters cast their ballot in favor of the additional levy, the county board of education may impose the additional levy: *Provided,* That any additional levy adopted by the voters, including any additional levy adopted prior to the effective date of this section, shall be the actual number of cents per each one hundred dollars of value set forth in the ballot provision, which number shall not exceed the maximum amounts prescribed in this section, regardless of the rate of regular levy then or currently in effect, unless such rate of additional special levy is reduced in accordance with the provisions of section six-g of this article or otherwise changed in accordance with the applicable ballot provisions. For county commissions, this levy shall not exceed a rate greater than seven and fifteen hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For municipalities, this levy shall not exceed a rate greater than six and twenty-five hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For county boards of education, this levy shall not exceed a rate greater than twenty-two and ninety-five hundredths cents for each one hundred dollars of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties.

Levies authorized by this section shall not continue for more than five years without resubmission to the voters.

Upon approval of an increased levy as provided by this section, a local levying body may immediately issue bonds in an amount not exceeding the amount of the increased levy plus the total interest thereon, but the term of the bonds shall not extend beyond the period of the increased levy.

Insofar as they might concern the issuance of bonds as provided in this section, the provisions of sections three and four, article one, chapter thirteen of this code shall not apply.

Acts 1908, c. 9, §§ 5, 6, 8; Acts 1919, c. 126, § 9; Acts 1921, c. 18, § 9; Acts 1931, c. 62; Acts 1933, c. 38; Acts 1933, 2nd Ex. Sess., c. 67, § 16; Acts 1959, c. 159; Acts 1963, c. 174; Acts 1993, 1st Ex. Sess., c. 8; Acts 2005, 4th ex. Sess., c. 10, eff. Sept. 9, 2005.

§ 11-8-16a. Immediate levies authorized pursuant to Better Schools Amendment

A county board of education which has heretofore increased its levies pursuant to an election conducted prior to the adoption of the Better Schools Amendment (section 10, article X of the Constitution), which election authorized such increased levies to continue for a period of years extending beyond the effective date of this section, said board of education having need of levies in excess of those authorized in such prior election, may, notwithstanding such prior increased levies, proceed at any time hereafter to hold a new election pursuant to the terms of section sixteen of this article, submitting to the voters the total amount by which the levies are proposed to be increased over those authorized in section twelve of this article, not exceeding one hundred percent, and the total number of years, not exceeding five, after the date of such election for which said proposed increased levies shall continue; and if at least sixty percent of the voters at such election cast their ballots in favor of such additional levy, the county board of education may impose the additional levy for the proposed number of years so submitted to the voters at such election; which higher rates and longer number of years shall then supersede and take the place of the increased levies authorized at the election held prior to the adoption of section 10, article X of the Constitution.

In the event that at any such election held after the effective date of this section, less than sixty percent of the voters at such election cast their votes in favor of any such proposed new increased levies and greater number of years, the increased levies approved at the election held prior to the adoption of the Better Schools Amendment shall remain in full force and effect for the number of years authorized by such prior election.

Acts 1959, c. 160.

§ 11-8-17. Special levy elections; notices; election officers; conduct of election; supplies; canvass of returns; form of ballot

The local levying body shall publish a notice, calling the election, as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this Code, and the publication area for such publication shall be the territory in which the election is held. Such notice shall be so published within fourteen consecutive days next preceding the election. All the provisions of the law concerning general elections shall apply so far as they are practicable, except as follows: Where a special election is held, the local levying body, having due regard to the minimum expense involved, shall determine the number of election officials necessary to properly conduct said election, which number shall in no case be less than three commissioners and two clerks, and shall appoint the same and fix and pay their compensation, but

otherwise the election officials shall be such as are appointed to serve with respect to the general election held at the same time. The local levying body, however, shall provide the election supplies necessary for such election and shall canvass the returns thereof. A separate ballot shall be used at a levy election held in connection with any other election. The ballot shall be entitled: "Special election to authorize additional levies for the year(s) ..... and for the purpose of ..... according to the order of the ..... entered on the ..... day of ....."

The additional levy shall be on Class I property ..... cents; on Class II property ..... cents; on Class III property (if any) ..... cents; on Class IV property (if any) ..... cents.

Acts 1908, c. 9, § 7; Acts 1919, c. 126, § 10; Acts 1933, c. 38; Acts 1933, 2nd Ex. Sess., c. 67, § 17; Acts 1939, c. 132; Acts 1963, c. 175; Acts 1967, c. 105.

§ 11-8-18. Tax commissioner to furnish forms for statements and attorney general to furnish forms for elections

The tax commissioner shall prepare and furnish forms and instructions for making the statement required in sections ten, twelve, and fourteen of this article. The attorney general shall prepare and furnish forms and instructions for the holding of any election authorized by this article.

Acts 1908, c. 9, § 10; Acts 1919, c. 126, § 13; Acts 1933, c. 38; Acts 1933, 2nd Ex. Sess., c. 67, § 18.

CHAPTER 13

PUBLIC BONDED INDEBTEDNESS

ARTICLE 1

BOND ISSUES FOR ORIGINAL INDEBTEDNESS

Section

13-1-4. Bond issue proposal to be submitted to voters; election order.

13-1-5. Engineer's estimate.

13-1-6. Bonds may be specified for more than one purpose; single or general purpose defined.

13-1-6a. When proceeds of bond issue specified for one project may be used for another project.

13-1-7. When election to be held.

13-1-8. Publication of notice of election.

13-1-12. Form of ballot.

13-1-13. Time and manner of canvassing returns.

13-1-14. Resolution authorizing issuance and fixing terms of bonds.

13-1-35. Bonded indebtedness of counties, magisterial districts and municipal corporations; levy and collection of taxes to pay same.

§ 13-1-4. Bond issue proposal to be submitted to voters; election order

No debt shall be contracted or bonds issued under this article until all questions connected with the same are first submitted to a vote of the qualified electors of the political division for which the bonds are to be issued, and receive three fifths of all the votes cast for and against the same: *Provided,* That a county board of education may contract indebtedness and issue bonds for public school purposes when submitted to a vote of the people of the county if the question of contracting indebtedness and issuing bonds is approved by a majority of all the votes cast for and against the same pursuant to section ten, article X of the constitution. The governing body of any political division referred to in this article may, and when requested so to do by a petition in writing, praying that bonds be issued and stating the purpose and amount thereof, signed by legal voters of the political division equal to twenty percent of the votes cast in a county for Governor, or in a municipal corporation or school district for mayor or member of the board of education, as the case may be, shall, by order entered of record, direct that an election be held for the purpose of submitting to the voters of the political division all questions connected with the contracting of debt and the issuing of bonds. The order shall state:

(a) The necessity for issuing the bonds or, if a petition has been filed as provided herein, that the petition has been filed;

(b) If for the construction of a county-district road or bridge thereon, a summary of the engineer's report provided for in the following section setting forth the approximate extent and the estimated cost of the proposed improvement and the kind or class of work to be done thereon;

(c) Purpose or purposes for which the proceeds of bonds are to be expended;

(d) Valuation of the taxable property as shown by the last assessment thereof for state and county purposes;

(e) Indebtedness, bonded or otherwise;

(f) Amount of the proposed bond issue;

(g) Maximum term of bonds;

(h) Maximum rate of interest;

(i) Date of election;

(j) That the levying body is authorized to lay a sufficient levy annually to provide funds for the payment of the interest upon the bonds and the principal at maturity and the approximate rate of levy necessary for this purpose;

(k) In the case of school bonds, that the bonds, together with all existing bonded indebtedness, will not exceed in the aggregate five percent of the value of the taxable property in the school district ascertained in accordance with section eight, article X of the constitution; and that the bonds will be payable from a direct annual tax levied and collected in each year on all taxable property in the school district sufficient to pay the principal and the interest maturing on the bonds in that year, together with any deficiencies for prior years, within, and not exceeding thirty-four years, which tax levies will be laid separate and apart and in addition to the maximum rates provided for tax levies by school districts on the several classes of property in section one, article X of the constitution, but in the same proportions as the maximum rates are levied on the several classes of property; and the tax may be levied outside the limits fixed by section one, article X of the constitution.

Any other provision which does not violate any provision of law, or transgress any principle of public policy, may be incorporated in the order.

Acts 1923, c. 14, § 4; Acts 1951, c. 153; Acts 1959, c. 132; Acts 2009, c. 23, eff. July 9, 2009.

§ 13-1-5. Engineer's estimate

Before ordering an election on the question of issuing bonds to construct a county-district road or bridge, whether acting on its own motion or on petition, the county court shall instruct the county road engineer, or some other engineer designated by it for the purpose, to make an investigation and furnish to the court an estimate of the probable cost of the proposed improvement.

Acts 1923, c. 14, § 5.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 13-1-6. Bonds may be specified for more than one purpose; single or general purpose defined

The order or ordinance submitting the proposition of issuing bonds to a vote may specify more than one purpose for which bonds are to be issued: Provided, That the amount of the proceeds of the issue to be used for each purpose shall also be specified therein: Provided further, That all expenditures, including but not limited to expenditures for the acquisition of sites, the construction, erection, equipping and furnishing of one or more buildings, structures, improvements or facilities, or group of buildings, structures, improvements or facilities, and the relocation, alteration, renovation or enlargement of any existing buildings, structures, improvements or facilities, or group of buildings, structures, improvements or facilities, for the same general purpose shall be construed to be a single purpose within the meaning of this section. It shall not be necessary to specify in the order or ordinance submitting the proposition the amount of the proceeds of such bond issue to be used for each such site, building, structure, improvement or facility, or group of buildings, structures, improvements or facilities, which are a part of the same general purpose and it shall be sufficient compliance with this section if such order

or ordinance state only the general purposes for which bonds are to be issued and the amount of the proceeds of such issue to be used for each such general purpose.

Acts 1923, c. 14, § 6; Acts 1965, c. 125.

§ 13-1-6a. When proceeds of bond issue specified for one project may be used for another project

If the order or ordinance submitting the proposition of issuing bonds to a vote specifies several projects within the same general purpose and the amount of the proceeds of such issue to be used for each project and for any reason one or more of said projects cannot be constructed, carried out, or completed, the amount of money specified for such projects and any sums remaining unused upon completion of any one of the specified projects may be allocated by the governing body in its discretion to and expended for any one or more of the remaining projects specified in said order or ordinance if said order or ordinance of submission shall contain a provision authorizing it to do so.

Acts 1965, c. 126.

§ 13-1-7. When election to be held

Elections for the purpose of voting upon questions of issuing bonds may be held at any general, primary, or special election which the fiscal body in its order submitting the same to a vote may designate, except that, when a petition is filed asking that bonds be issued, the fiscal body with which the same is filed, if it be not designated in the petition that the election shall be held at a general or primary election, shall order a special election to be held within sixty days from the date of the filing of such petition; or, if it be a petition for bonds for the construction of county-district roads or bridges thereon, the election shall be held within sixty days from the filing of the engineer's report as provided for in section five of this article.

Acts 1923, c. 14, § 7.

§ 13-1-8. Publication of notice of election

Notice of all bond elections shall be given by publication, within fourteen consecutive days next preceding the date of the election, of the order provided for in section four of this article as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this Code, and the publication area for such publication shall be the political division in which the election is to be held.

Acts 1923, c. 14, § 8; Acts 1967, c. 105.

§ 13-1-12. Form of ballot

The ballots to be used at elections under this article shall be in substantially the following form:

Shall ..... (name of political division) incur debt and issue bonds to the amount of $....., to run not more than ..... years from the date

thereof, with interest not exceeding the rate of ... percent per annum, for the purpose of ....., and levy taxes sufficient to pay the interest on and the principal of such bonds.

☐ Yes.

☐ No.

NOTICE TO VOTERS: To vote in favor of the proposition submitted on this ballot, place an X mark in the square before the word "Yes."

To vote against it, place a similar mark before the word "No."

Acts 1923, c. 14, § 12.

§ 13-1-13. Time and manner of canvassing returns

The authorities calling bond elections shall canvass the returns at the same time with reference to the election and in the same manner as is required of county courts for general elections.

Acts 1923, c. 14, § 13.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 13-1-14. Resolution authorizing issuance and fixing terms of bonds

If the required amount of all the votes, pursuant to section four of this article, cast for and against the proposition to incur debt and issue negotiable bonds is in favor of the same, the governing body of the political division shall, by resolution, authorize the issuance of the bonds in an amount not exceeding the amount stated in the proposition; establish the maximum rate or rates of interest which the bonds shall bear within the maximum rate stated in the proposition submitted to vote; require that the bonds shall be made payable at the office of the Municipal Bond Commission and at any other place or places as the body issuing the same designates; provide for a sufficient levy to pay the annual interest on the bonds and the principal at maturity; fix the times within the maximum period, as contained in the proposition submitted to vote, when the bonds shall become payable, which shall not exceed thirty-four years from the date thereof; determine whether all or a portion of the bonds will be subject to redemption prior to the maturity thereof; and prescribe a form for executing the bonds authorized.

Acts 1923, c. 14, § 14; Acts 1970, c. 9; Acts 1980, c. 33; Acts 1981, 1st Ex. Sess., c. 2; Acts 1990, 3rd Ex. Sess., c. 5; Acts 1994, c. 13; Acts 1998, c. 320, eff. March 14, 1998; Acts 2009, c. 23, eff. July 9, 2009.

§ 13-1-35. Bonded indebtedness of counties, magisterial districts and municipal corporations; levy and collection of taxes to pay same

Notwithstanding any other provisions of this article or any other law to the contrary, every county, by and through its county court, either for or on behalf of the county, or for and on behalf of any magisterial district, or any

group of magisterial districts therein, and any municipal corporation, by and through its council or other governing body in lieu thereof, shall levy and collect in each year a direct annual tax on all the taxable property in such county, magisterial district or districts, or municipality sufficient to pay the principal and interest maturing in such year, together with any deficiencies for prior years, within, and not exceeding thirty-four years, on any bonded indebtedness of such county, magisterial district or districts, or municipality, as the case may be, now or hereafter contracted, not to exceed in the aggregate five percent of the value of the taxable property therein, to be ascertained in accordance with section 8, article X of the Constitution, which levies shall be laid separate and apart and in addition to the maximum rates provided for tax levies by such counties, magisterial district or districts, or municipalities, as the case may be, on the several classes of property specified in section 1, article X of the Constitution, but in the same proportions as such maximum rates are levied on the several classes of property, and which tax may be levied outside the limits fixed by said section 1, article X of the Constitution.

The order of the county court, either for or on behalf of the county or for and on behalf of any magisterial district, or any group of magisterial districts therein, or of any municipal corporation, by its council or other governing body in lieu thereof, hereafter adopted calling an election on the issuance of bonds of such county, magisterial district or districts, or municipality, as the case may be, which together with the existing bonded indebtedness of such county, magisterial district or districts, or municipality, as the case may be, will not exceed in the aggregate five percent of the value of the taxable property in such county, magisterial district or districts, or municipality, as the case may be, the value to be ascertained in accordance with section 8, article X of the Constitution, shall contain a statement in substantially the following form:

Such bonds, together with all existing bonded indebtedness of such county, magisterial district or districts, or municipality, as the case may be, will not exceed in the aggregate five percent of the value of the taxable property in such county, magisterial district or districts, or municipality, as the case may be, ascertained in accordance with section 8, article X of the Constitution; and that such bonds will be payable from a direct annual tax levied and collected in each year on all taxable property in such county, magisterial district or districts, or municipality, as the case may be, sufficient to pay the principal and interest maturing on such bonds in such year, together with any deficiencies for prior years, within, and not exceeding thirty-four years, which tax levies will be laid separate and apart and in addition to the maximum rates provided for tax levies by counties, magisterial district or districts, or municipalities, as the case may be, on the several classes of property specified in section 1, article X of the Constitution, but in the same proportions as such maximum rates are levied on the several classes of property; and said tax may be levied outside the limits fixed by section 1, article X of the Constitution.

Acts 1959, c. 133.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

CHAPTER 15

PUBLIC SAFETY

ARTICLE 2

WEST VIRGINIA STATE POLICE

Section

15-2-13. Limitations upon members; exceptions.

§ 15-2-13. Limitations upon members; exceptions

(a) No member of the West Virginia state police may in any way interfere with the rights or property of any person except for the prevention of crime.

(b) No member of the West Virginia state police may in any way become active or take part in any political contest or at any time participate in any political party caucus, committee, primary, assembly or convention or in any general or special election while in uniform, except to cast his or her ballot.

(c) No member of the West Virginia state police may be detailed or ordered to duty at or near any voting precinct where any election or convention is held on the day of an election or convention; nor may any member thereof remain in, about or near the voting precinct or place of convention, except to cast his or her vote. After voting he or she shall forthwith retire from the voting precinct. No member may act as an election official. If any member of the West Virginia state police is found guilty of violating any of the provisions of this section, he or she shall be dismissed by the superintendent as hereinafter provided.

(d) While out of uniform and off duty, no member of the West Virginia state police may participate in any political activity except:

(1) Campaign for and hold office in political clubs and organizations;

(2) Actively campaign for candidates for public office in partisan and nonpartisan elections; and

(3) Contribute money to political organizations and attend political fund-raising functions.

(e) No member of the West Virginia state police may at any time:

(1) Be a candidate for public office in a nonpartisan or partisan election;

(2) Use official authority or influence to interfere with or affect the results of an election or nomination; or

(3) Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(f) No officer or member of the West Virginia state police may, in any labor

trouble or dispute between employer and employee, aid or assist either party thereto, but shall in these cases see that the statutes and laws of this state are enforced in a legal way and manner.

Acts 1919, Ex. Sess., c. 12, § 15; Acts 1977, c. 149; Acts 2004, c. 155, eff. 90 days after March 11, 2004.

CHAPTER 17

ROADS AND HIGHWAYS

ARTICLE 19

GENERAL CRIMINAL PROVISIONS

Section

17-19-1. Prohibited signs, etc.; removal at owner's expense.

17-19-4. Solicitations, assessments and receipts for political party funds by commission or personnel thereof unlawful.

§ 17-19-1. Prohibited signs, etc.; removal at owner's expense

No person shall paint, mark, post, tack, nail, or otherwise affix any sign, advertisement, notice, picture, drawing, emblem, poster, printing, or writing, other than those placed and maintained in pursuance of law, on or to any stone, rock, tree, fence, stump, post, pole, building, or other structure, which is in or upon the right-of-way of any public road or highway, including the road or highway itself, except that the commissioner may provide for suitable road signs, danger signals and other signs of informational nature. No such sign or other marking shall be suspended over the right-of-way of any public road or highway. These prohibitions include, but are not limited to, such devices which are intended to invite or draw attention of the public to the candidacy of any person for any public office; and any such device which exists in violation of the provisions of this section shall constitute prima facie evidence that the person whose candidacy appears thereon violated this section: Provided, however, That the installation and/or maintenance of newspaper, postal or mailboxes shall not be prohibited or affected by this section.

Any person violating this section, whether as principal, agent, or employee, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five nor more than one hundred dollars; and such person shall be deemed guilty of a separate offense for each day during any portion of which any violation of this section is committed or continued. Every such prohibited sign or other marking is hereby declared to be a public nuisance. Upon receiving notice of any violation of this section, the commissioner shall cause the prohibited sign or other marking to be removed within ten days and shall cause the appearance of the property on which it was affixed to be restored, as near as may be practicable, to its condition immediately before such violation occurred. The commissioner shall, in the name of the State, recover from the persons who hereafter violate this section the amounts expended by the State in removing the sign or other marking and in restoring the appearance of the property on which it was affixed.

The commissioner is empowered to remove any such prohibited sign or other marking in place upon or over any road taken over by him for construction or maintenance.

Acts 1921, c. 112, § 67; Acts 1923, c. 6, § 67; Acts 1957, c. 145.

§ 17-19-4. Solicitations, assessments and receipts for political party funds by commission or personnel thereof unlawful

It shall be unlawful for any commission member, the commissioner or any employee thereof, acting individually or by or through any organization, committee, corporation or other program or agency, to plan, promote, encourage or participate in any manner in the contribution, solicitation, assessment or receipt of any money, donation, contribution or gift of any kind or character for political party campaign or fund purposes or uses, when such money, donation, contribution or gift arises from, is related to, is measured by or is in any manner identified with a percentage, aliquot or fractional part or all of the daily, monthly or other salary, wages, pay or compensation of personnel and employees of the commission. A violation of the provisions of this section shall be cause for employment termination and dismissal of any commission member, the commissioner or employee guilty thereof and every such violation shall constitute a misdemeanor offense, upon conviction of which the guilty person shall be fined not exceeding one hundred dollars or imprisoned not exceeding thirty days, or be both fined and imprisoned within said limits.

Acts 1957, c. 143.

CHAPTER 18

EDUCATION

Article

5. County Board of Education.

9. School Finances.

ARTICLE 5

COUNTY BOARD OF EDUCATION

Section

18-5-1. Supervision and control of county school districts; number, nomination and election of members.

18-5-1a. Eligibility of members; training requirements.

18-5-1b. Election; terms of office.

18-5-1c. Organization of board; evaluation.

18-5-2. Filling vacancies.

18-5-15. Ages of persons to whom schools are open; enrollment of suspended or expelled student.

§ 18-5-1. Supervision and control of county school districts; number, nomination and election of members

Each county school district shall be under the supervision and control of a county board of education, which shall be composed of five members, nominated and elected by the voters of the respective county without reference to political party affiliation. No more than two members shall be elected from the same magisterial district.

Acts 1863, c. 137, § 2; Acts 1866, c. 74, § 2; Acts 1867, c. 98, §§ 1-3, 5; Acts 1872-3, c. 123, § 2; Acts 1877, c. 77, § 2; Acts 1879, c. 74, § 2; Acts 1881, c. 15, § 2; Acts 1883, c. 74, § 2; Acts 1893, c. 26, § 2; Acts 1908, c. 27, § 3; Acts 1915, c. 59, § 3; Acts 1919, c. 2, § 41; Acts 1933, Ex. Sess., c. 8; Acts 1941, c. 42; Acts 1945, c. 56.

§ 18-5-1a. Eligibility of members; training requirements

(a) A person who is a member of a county board:

(1) Shall be a citizen and resident in the county in which he or she serves on the county board. Also, a person who is a candidate for membership on a county board or who is a member-elect of a county board shall be a citizen and resident in the county in which he or she seeks to serve on the county board;

(2) May not be employed by the county board on which he or she serves, including employment as a teacher or service person;

(3) May not engage in the following political activities:

(A) Become a candidate for or hold any other public office, other than to succeed him or herself as a member of a county board subject to the following:

(i) A candidate for a county board, who is not currently serving on a county board, may hold another public office while a candidate if he or she resigns from the other public office prior to taking the oath of office as a county board member.

(ii) The term "public office" as used in this section does not include service on any other board, elected or appointed, profit or nonprofit, under the following conditions:

(I) The person does not receive compensation; and

(II) The primary scope of the board is not related to public schools.

(B) Become a candidate for, or serve as, an elected member of any political party executive committee;

(C) Become a candidate for, or serve as, a delegate, alternate or proxy to a national political party convention;

(D) Solicit or receive political contributions to support the election of, or to retire the campaign debt of, any candidate for partisan office;

(4) May engage in any or all of the following political activities:

(A) Make campaign contributions to partisan or bipartisan candidates;

(B) Attend political fund raisers for partisan or bipartisan candidates;

(C) Serve as an unpaid volunteer on a partisan campaign;

(D) Politically endorse any candidate in a partisan or bipartisan election; or

(E) Attend a county, state or national political party convention.

(b) A member or member-elect of a county board, or a person desiring to become a member of a county board, may make a written request to the West Virginia Ethics Commission for an advisory opinion to determine if another elected or appointed position held or sought by the person is an office or public office which would bar service on a county board pursuant to subsection (a) of this section.

(1) Within thirty days of receipt of the request, the Ethics Commission shall issue a written advisory opinion in response to the request and also shall publish the opinion in a manner which, to the fullest extent possible, does not reveal the identity of the person making the request.

(2) A county board member who relies in good faith upon an advisory opinion issued by the West Virginia Ethics Commission to the effect that holding a particular office or public office is not a bar from membership on a county board and against whom proceedings are subsequently brought for removal from the county board on the basis of holding that office or offices is entitled to reimbursement by the county board for reasonable attorney's fees and court costs incurred by the member in defending against these proceedings, regardless of the outcome of the proceedings.

(3) A vote cast by the member at a meeting of the county board may not be invalidated due to a subsequent finding that holding the particular office or public office is a bar to membership on the county board.

(4) Good faith reliance on a written advisory opinion of the West Virginia Ethics Commission that a particular office or public office is not a bar to membership on a county board is an absolute defense to any civil suit or criminal prosecution arising from any proper action taken within the scope of membership on the county board, becoming a member-elect of the county board or seeking election to the county board.

(c) To be eligible for election or appointment as a member of a county board, a person shall possess at least a high school diploma or a general educational development (GED) diploma. This provision does not apply to members or members-elect who have taken office prior to May 5, 1992, and who serve continuously from that date forward.

(d) A person elected to a county board after July 1, 1990, may not assume the duties of county board member unless he or she has first attended and completed a course of orientation relating to boardsmanship and governance effectiveness which shall be given between the date of election and the beginning of the member's term of office under the following conditions:

(1) A portion or portions of subsequent training such as that offered in orientation may be provided to members after they have commenced their term of office;

(2) Attendance at the session of orientation given between the date of election and the beginning of the member's term of office permits the member-elect to assume the duties of county board member, as specified in this section;

(3) Members appointed to the county board shall attend and complete the next orientation course offered following their appointment; and

(4) The provisions of this subsection relating to orientation do not apply to members who have taken office prior to July 1, 1988, and who serve continuously from that date forward.

(e) Annually, each member of a county board shall receive seven clock hours of training in areas relating to boardsmanship, governance effectiveness, and school performance issues including, but not limited to, pertinent state and federal statutes such as the "Process for Improving Education" set forth in section five, article two-e of this chapter and the "No Child Left Behind Act" and their respective administrative rules.

(1) The orientation and training shall be approved by the state board and conducted by the West Virginia School Board Association or other organization or organizations approved by the state board:

(A) The state board may exclude time spent in training on school performance issues from the requisite seven hours herein required; and

(B) If the state board elects to exclude time spent in training on school performance issues from the requisite seven hours, the state board shall limit the training to a feasible and practicable amount of time.

(2) Failure to attend and complete the approved course of orientation and training relating to boardsmanship and governance effectiveness without good cause as determined by the state board by duly promulgated legislative rules constitutes neglect of duty under section seven, article six, chapter six of this code.

(f) In the final year of any four-year term of office, a member shall satisfy the annual training requirement before January 1. Failure to comply with the training requirements of this section without good cause as defined by the state board by duly promulgated legislative rules constitutes neglect of duty under section seven, article six, chapter six of this code.

(g) The state board shall appoint a committee named the "county board member training standards review committee" whose members shall meet at least annually. Subject to state board approval, the committee shall determine which

particular trainings and training organizations shall be approved and whether county board members have satisfied the annual training requirement. Members of the committee serve without compensation, but may be reimbursed by their agencies or employers for all reasonable and necessary expenses actually incurred in the performance of their duties under this subsection.

Acts 1941, c. 42; Acts 1945, c. 56; Acts 1967, c. 60; Acts 1990, 3rd Ex. Sess., c. 4; Acts 1991, c. 55; Acts 1993, c. 43; Acts 2003, c. 91, eff. July 1, 2003; Acts 2009, c. 80, eff. July 10, 2009; Acts 2010, c. 59, eff. Feb. 22, 2010.

§ 18-5-1b. Election; terms of office

As the terms of county school board members who presently hold office expire, members shall be elected for four-year terms at the time of each regular primary election commencing with the year one thousand nine hundred ninety. The terms of such members shall begin on the first day of July next following the primary election at which they were elected.

The term of office of any member of any county board of education shall immediately cease, and a vacancy shall exist, upon occurrence of ineligibility as prescribed in section one-a of this article.

This section shall in no manner be construed so as to affect the unexpired terms of county school board members who hold office or were elected under prior existing law.

Acts 1941, c. 42; Acts 1945, c. 56; Acts 1975, c. 195; Acts 1989, c. 58.

§ 18-5-1c. Organization of board; evaluation

(a) On the first Monday of July, following each biennial primary election, each respective county board shall organize and shall elect a president from its own membership for a two-year term. The county board shall report promptly to the state superintendent the name of the member elected as county board president.

(b) Annually, each county board shall assess its own performance using an instrument approved by the state board. In developing or making determinations on approving evaluation instruments, the state board may consult with the West Virginia school board association or other appropriate organizations. The evaluation instrument selected shall focus on the effectiveness of the county board in the following areas:

(1) Dealing with its various constituency groups and with the general public;

(2) Providing a proper framework and the governance strategies necessary to monitor and approve student achievement on a continuing basis; and

(3) Enhancing the effective utilization of the policy approach to governance.

At the conclusion of the evaluation, the county board shall make available to the public a summary of the evaluation, including areas in which the board concludes improvement is warranted.

Acts 1941, c. 42; Acts 1945, c. 56; Acts 1975, c. 195; Acts 2003, c. 91, eff. July 1, 2003.

§ 18-5-2. Filling vacancies

(a) The board shall, by appointment, fill within forty-five days any vacancy that occurs in its membership. In the event that the board does not fill the vacancy within forty-five days, the state superintendent of schools shall appoint a person to fill the vacancy.

(b) (1) When the vacancy occurs after the eighty-fourth day before a general election, and the affected term of office ends on the thirtieth day of June following the next primary election, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs after the eighty-fourth day before a general election and not later than the close of candidate filing for the next succeeding primary election, and the affected term of office does not end on the thirtieth day of June following the next primary election, an election for the unexpired term shall be held at the next primary election, and the appointment shall continue until the thirtieth day of June following the primary election with the duly elected and certified successor taking office on the first day of July following the primary election and serving until the expiration of the original term of office.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than eighty-four days before the general election, the vacancy shall be filled by election in the general election, and the appointment shall continue until a successor is elected and certified.

Acts 1908, c. 27, § 5; Acts 1919, c. 2, § 43; Acts 1925, c. 52, § 43; Acts 1933, Ex. Sess., c. 8; Acts 1941, c. 42; Acts 1957, c. 64; Acts 1991, c. 68; Acts 1993, c. 43.

§ 18-5-15. Ages of persons to whom schools are open; enrollment of suspended or expelled student

(a) The public schools shall be open for the full instructional term to all persons who have attained the entrance age as stated in section five, article two and section eighteen, article five, chapter eighteen of this code: Provided, That any student suspended or expelled from public or private school shall only be permitted to enroll in public school upon the approval of the superintendent of the county where the student seeks enrollment: Provided, however, That in making such decision, the principal of the school in which the student may enroll shall be consulted by the superintendent and the principal may make a recommendation to the superintendent concerning the student's enrollment in his or her new school: Provided further, That if enrollment to public school is denied by the superintendent, the student may petition the board of education where the student seeks enrollment.

(b) Persons over the age of twenty-one may enter only those programs or classes authorized by the state board of education and deemed appropriate by the county board of education conducting any such program or class: Provided, That authorization for such programs or classes shall in no way serve to affect or

eliminate programs or classes offered by county boards of education at the adult level for which fees are charged to support such programs or classes.

Acts 1872-3, c. 123, § 41; Acts 1881, c. 15, § 41; Acts 1891, c. 60, § 41; Acts 1895, c. 43, § 41; Acts 1908, c. 27, § 27, 1919, c. 2, § 54; Acts 1933, Ex. Sess., c. 8; Acts 1967, c. 55; Acts 1971, c. 146; Acts 1972, c. 110; Acts 1979, c. 37; Acts 1981, c. 85; Acts 1982, c. 48; Acts 1986, c. 79; Acts 1988, 3rd Ex. Sess., c. 7; Acts 1989, c. 59; Acts 1990, c. 73; Acts 1993, c. 44; Acts 1994, 1st Ex. Sess., c. 24; Acts 2002, c. 105, eff. July 1, 2002.

ARTICLE 9

SCHOOL FINANCES

Section

18-9-1. School levies; when levy election necessary; special election.

18-9-2. Elections under this chapter; procedure.

§ 18-9-1. School levies; when levy election necessary; special election

The board of education of every school district or independent school district, wherein a majority of the votes cast on the question of school levy at the last general or special election at which the question of school levy was submitted to the qualified voters of such district or independent school district were in favor of such levy, shall annually, at the time and in the manner provided by law for making levies, levy a tax on all taxable property in its district or independent school district for the support and maintenance of free schools therein: Provided, That upon petition of not less than forty percent of the registered voters in any district or independent school district, as shown by the last registration of voters therein, addressed to the board of education of such district or independent school district, requesting the submission of the school levy to the voters of such district, the board of education of such district or independent district shall submit the question of authorizing a levy for school purposes to the voters of such district at the general election held next after such petition is presented; and the board of ballot commissioners of the county of which such district constitutes a part shall prepare or cause to be prepared separate ballots from the official ballot to be voted at said election, which separate ballot shall have printed thereon the following:

BALLOT ON SCHOOL LEVY

- ☐ For school levy.
- ☐ Against school levy.

The officers conducting the general election at each place of voting shall conduct the election on the question of the school levy and canvass and certify the result thereof to the commissioners of the county court in the same manner, so far as applicable, as they are required to conduct and certify the result of the general election; and such commissioners shall promptly certify the result

of the election on the question of the school levy to the board of education of the district or independent school district within which the election was held, and such certificate shall be entered by the secretary as part of the minutes and records of such board of education. If a majority of the ballots cast at said general election in any district or independent school district on the question of such school levy be in favor of the levy, the board of education of such district or independent school district shall annually thereafter levy a tax on all the taxable property in its district, for the support and maintenance of the schools in the district, until such time as an election may again be held on the question of such school levy in the manner hereinbefore provided.

In the event that a majority of the votes cast in any school district or independent school district upon the question of the school levy submitted at any general election be against the levy, the board of education of such district or independent school district shall have authority to call a special election for the purpose of resubmitting the question of authorizing such school levy to the voters of such district or independent district. Such special election shall be held in accordance with the provisions of the next succeeding section of this article, so far as applicable, and the ballots shall be similar to those heretofore described in this section. If a majority of the ballots cast at such special election in any school district or independent school district be in favor of the school levy, the board of education of such district or independent school district shall annually thereafter levy a tax for the support of the free schools in its district or independent school district, in the manner provided by law for school levies, until such time as the question of school levy may again be submitted at a general election upon a petition signed by not less than forty percent of the registered voters of the district or independent district, as hereinbefore provided, and a majority of the votes cast at such election be against the levy. If a majority of the votes cast at any such special election be against the school levy the board of education of any such district or independent district shall again submit the question of a school levy to the voters of its district or independent district at the next general election: Provided, however, That upon petition of not less than forty percent of the qualified voters of the district, as determined from the last registration of voters, such board of education may again submit the question of school levy at a special election to be held for that purpose, in the manner hereinbefore provided, prior to the next succeeding general election.

Acts 1872-3, c. 123, § 2; Acts 1877, c. 77, § 2; Acts 1879, c. 74, § 2; Acts 1881, c. 15, § 2; Acts 1883, c. 74, § 2; Acts 1893, c. 26, § 2; Acts 1901, c. 11, § 1; Acts 1908, c. 27, § 20; Acts 1921, c. 16, § 184a; Acts 1923, c. 12, § 1.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 18-9-2. Elections under this chapter; procedure

Any and all elections authorized by this chapter for school purposes may, unless otherwise provided, be held separately or in connection with any general or special election. Notice of any such election shall be given by the publication of the order of the board calling the same as a Class II-0 legal

advertisement in compliance with the provisions of article three, chapter fifty-nine of this Code, and the publication area for such publication shall be the territory in which the election is to be held. The order shall be so published within fourteen consecutive days next preceding the day of election. All provisions of the law concerning general and special elections shall apply in such elections insofar as is practicable, except that in cases of special elections the board calling the election shall appoint necessary election officers and shall canvass the returns, and the secretary of the board shall procure and furnish to the election commissioners at each place of voting the ballots, poll books, tally sheets and other things needed. In calling elections, district and county boards of education shall follow the forms to be prescribed by the attorney general.

Acts 1919, c. 2, § 184; Acts 1923, c. 14, § 26; Acts 1967, c. 105.

CHAPTER 19

AGRICULTURE

ARTICLE 21A

SOIL CONSERVATION DISTRICTS

Section

19-21A-3. Definitions.

19-21A-4. State Conservation Committee; continuation.

19-21A-4a. Repealed.

19-21A-5. Continuation of conservation districts.

19-21A-6. Election of supervisors for each district; filling vacancies.

19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.

§ 19-21A-3. Definitions

Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

(1) "Agency of this state" means the government of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state.

(2) "Committee" or "State Conservation Committee" means the agency created in section four of this article.

(3) "District" or "conservation district" means a subdivision of this state, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(4) "Governing body" means the supervisors of any conservation district, town or city, council, city commission, county court or body acting in lieu of a county court, in this state, and the term "governmental division" means any conservation district, town, city or county in this state.

(5) "Land occupier" or "occupier of land" means any person, firm or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this article, whether as owner, lessee, renter or tenant.

(6) "Landowners" or "owners of land" means any person or persons, firm or corporation who holds title to any lands lying within a district organized under the provisions of this article.

(7) "Notice" means notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county in which is located the appropriate area. At any hearing held pursuant to such notice at the time and place designated in such notice, adjournment may be made, from time to time, without the necessity of renewing such notice for such adjournment dates.

(8) "Petition" means a petition filed under the provisions of subsection (a), section five of this article for the creation of a district.

(9) "Soil conservation", "erosion control" or "erosion prevention projects" means those projects that have been established by federal agencies in cooperation with state agencies for the purpose of demonstrating soil erosion control and water conservation practices.

(10) "State" means the State of West Virginia.

(11) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

(12) "United States" or "agencies of the United States" means the United States of America, Natural Resources Conservation Service of the United States Department of Agriculture and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(13) "Works of improvement" means such structures as may be necessary or convenient for flood prevention or the conservation, development, utilization or disposal of water.

Acts 1939, c. 5, § 3; Acts 1957, c. 4; Acts 1967, c. 105; Acts 2002, c. 8, eff. March 7, 2002; Acts 2005, c. 6, eff. April 9, 2005; Acts 2006, c. 38, eff. 90 days after March 11, 2006.

§ 19-21A-4. State Conservation Committee; continuation

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following ten members:

(1) Four citizen members;

(2) The following ex officio members or his or her designee:

(A) The Director of the State Cooperative Extension Service;

(B) The Director of the State Agricultural and Forestry Experiment Station;

(C) The Secretary of the Department of Environmental Protection;

(D) The State Commissioner of Agriculture, who is the chairperson of the committee;

(E) The Director of the Division of Forestry; and

(F) The President of the West Virginia Association of Conservation Districts.

(b) The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

(c) The committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

(d) The committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The State Conservation Committee may employ an administrative officer, technical experts and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known as the West Virginia Conservation Agency. The committee shall determine their qualifications, duties and compensation. The committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees powers and duties it considers proper. The committee may secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee, members of the staff or personnel of the agency or institution of learning and make special reports, surveys or studies required by the committee.

(f) A member of the committee holds office so long as he or she retains the office by virtue of which he or she is serving on the committee. A majority of the committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the committee may receive no compensation for their services on the

committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules and orders issued or adopted; and

(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) In addition to other duties and powers conferred upon the State Conservation Committee, it may:

(1) Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

(2) Keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized under this article and facilitate an interchange of advice and experience between the districts and cooperation between them;

(3) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

(4) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

(5) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

(6) Accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise from the United States or any of its agencies, from the State of West Virginia or from other sources and use or expend the money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations; and

(7) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease or otherwise dispose of any of its property or interests in the property in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the State Conservation Committee and expended as provided in this article.

(8) To promulgate emergency and legislative rules to effectuate the provisions of this article as amended and reenacted by the Legislature during the regular session of the Legislature in the year two thousand five.

(9) Upon a Governor's proclamation declaring a state of emergency or federal disaster declaration, the state committee, its employees or agents may enter any water of the state for the purpose of removing debris and other obstruction which impede water flow and present additional flood hazards. The agency shall make reasonable efforts to secure the permission of the landowner before entering any private property in connection with these removal activities. The exercise of this limited authority does not constitute taking of private property or trespass. This authority shall continue for the duration of the Governor's proclamation or the federal disaster declaration.

(10) The State Conservation Committee is continued until the first day of July, two thousand twelve, pursuant to the provisions of article four, chapter ten of the Code of West Virginia, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

Acts 1939, c. 5, § 4; Acts 1947, c. 9; Acts 1963, c. 10; Acts 1984, c. 10; Acts 1989, c. 8; Acts 1991, c. 151; Acts 1993, c. 141; Acts 1994, c. 61; Acts 1998, c. 268, eff. 90 days after March 2, 1998; Acts 1999, c. 251, eff. 90 days after March 2, 1999; Acts 2000, c. 230, eff. 90 days after Feb. 7, 2000; Acts 2002, c. 8, eff. March 7, 2002; Acts 2004, c. 10, eff. 90 days after March 13, 2004; Acts 2005, c. 6, eff. April 9, 2005; Acts 2006, c. 38, eff. 90 days after March 11, 2006.

§ 19-21A-4a. Repealed by Acts 2006, c. 38, eff. 90 days after March 11, 2006

§ 19-21A-5. Continuation of conservation districts

The conservation districts formed throughout the state under the prior enactments of this section are continued and shall remain in effect until reformed or reorganized as provided in section fourteen of this article.

Acts 1939, c. 5, § 5; Acts 1947, c. 9; Acts 2002, c. 8, eff. March 7, 2002; Acts 2005, c. 6, eff. April 9, 2005; Acts 2006, c. 38, eff. 90 days after March 11, 2006.

§ 19-21A-6. Election of supervisors for each district; filling vacancies.

(a) Each county in a district shall elect two nonpartisan supervisors: *Provided,* That any county with a population of one hundred thousand based on the most recent decennial census shall elect one additional supervisor and any county with a population over one hundred thousand based on the most recent decennial census shall elect one additional supervisor for each fifty thousand residents over one hundred thousand.

(b) A candidate for supervisor must be a landowner and an active farmer with a minimum of five years' experience or a retired farmer who has had a minimum of five years' experience and must have the education, training and experience necessary to carry out the duties required by this article. The State Conservation Committee shall propose for promulgation in accordance with the

requirements of article three-a, chapter twenty-nine of this code legislative rules to establish criteria for the necessary education, training and experience.

(c) All registered voters in the district are eligible to vote in the election for candidates from the county within the boundaries of the district in which the voter resides. The candidates in each county who receive the largest number of votes cast in the election shall be elected supervisors for that county.

(d) Supervisors shall be elected in the general election to be conducted in the year 2008 as nonpartisan candidates. After that, supervisors shall be elected in the primary election. The term of office for the candidate for supervisor receiving the highest number of votes in the general election of 2008 is four years; the candidate for supervisor receiving the second highest number of votes in the general election of 2008 is two years. In counties where more than two supervisors are elected in the general election of 2008, the two supervisors receiving the highest number of votes serve for four years and the remaining supervisor or supervisors serve for two years. Terms of office for supervisors elected after that are four years. The provisions of chapter three of this code apply to election of supervisors.

(e) Persons holding the position of supervisor, regardless of the expiration of the designated term of office, continue to serve until the election and qualification of his or her successor.

(f) Any vacancy occurring in the office of supervisor shall be filled by the committee by appointment of a person from the county in which the vacancy occurs. Within fifteen days after the vacancy occurs, the district shall submit a list of names of persons qualified to be a supervisor. If the unexpired term is for less than two years and two months, the appointed person holds office until the expiration of the term. If the unexpired term is for more than two years and two months, the appointed person holds the office until a successor is elected in the next primary or general election and qualified.

Acts 1939, c. 5, § 6; Acts 1947, c. 9; Acts 2002, c. 8, eff. March 7, 2002; Acts 2005, c. 6, eff. April 9, 2005; Acts 2006, c. 38, eff. 90 days after March 11, 2006; Acts 2009, c. 5, eff. July 10, 2009.

§ 19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties

(a) The governing body of the district consists of the supervisors, appointed or elected, as provided in this article. The supervisors shall be persons who are by training and experience qualified to perform the specialized skilled services which are required of them in the performance of their duties under this section and shall be legal residents and landowners in the district.

(b) The supervisors shall designate a chairperson and may, from time to time, change the designation. On and after the election of supervisors in two thousand eight, the term of office of each elected supervisor is four years. A supervisor holds office until his or her successor has been elected or appointed. In case a new county is added to a district, the committee may appoint two supervisors to represent the county until the next regular election

of supervisors for the district takes place.

(c) A supervisor is entitled to reasonable and necessary expenses and a per diem of not more than one hundred fifty dollars nor less than thirty dollars when engaged in the performance of his or her duties. The expense and per diem rate shall be established by the state committee based on availability of funds.

(d) The supervisors may, with the approval of the State Conservation Committee, employ a secretary, dam monitors, technical experts and any other officers, agents and employees, permanent and temporary, either with or without compensation, as they may require and shall determine their qualifications, duties and compensation, if any. Dam monitors, as specified in any emergency action plan or monitoring plan approved by the Department of Environmental Protection pursuant to its dam safety rules, pertaining to a flood control structure operated or maintained by a soil conservation district and any other employees, agents or officers employed pursuant to this section are "employees" of the district within the meaning of subsection (a), section three, article twelve-a, chapter twenty-nine of this code.

(e) The supervisors may delegate to their chairperson, to one or more supervisors or to one or more agents, or employees, those administrative powers and duties they consider proper. The supervisors shall furnish to the State Conservation Committee, upon request, copies of the ordinances, rules, orders, contracts, forms and other documents they adopt or employ and any other information concerning their activities required in the performance of State Conservation Committee's duties under this article.

(f) The supervisors shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules and orders issued or adopted; and

(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) Any supervisor may be removed by the State Conservation Committee upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason.

(h) The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of a district on all questions of program and policy which may affect the property, water supply or other interests of the municipality or county.

Acts 1939, c. 5, § 7; Acts 1947, c. 9; Acts 1973, c. 4; Acts 1996, c. 6, eff. July 1, 1996; Acts 2002, c. 8, eff. March 7, 2002; Acts 2004, c. 10, eff. 90 days after March 13, 2004; Acts 2005, c. 6, eff. April 9, 2005; Acts 2006, c. 38, eff. 90 days after March 11, 2006.

CHAPTER 20

NATURAL RESOURCES

ARTICLE 11

WEST VIRGINIA RECYCLING PROGRAM

Section

20-11-5. Repealed.

§ 20-11-5. Repealed by Acts 2005, c. 199, eff. 90 days after April 9, 2005

CHAPTER 22

ENVIRONMENTAL RESOURCES

ARTICLE 15

SOLID WASTE MANAGEMENT ACT

Section

22-15-9. Exemption for solid waste facility handling in excess of thirty thousand tons per month.

§ 22-15-9. Exemption for solid waste facility handling in excess of thirty thousand tons per month

(a) Notwithstanding any provision in this article, article four, chapter twenty-two-c, article two, chapter twenty-four of this code, any other section of this code, or any prior enactment of the code to the contrary, and notwithstanding any defects in or challenges to any actions which were or are required to be performed in satisfaction of the following criteria, any person who on the first day of October, one thousand nine hundred ninety-one, has:

(1) Obtained site approval for a commercial solid waste facility from a county or regional solid waste authority or county commission pursuant to a prior enactment of this code, or has otherwise satisfied the requirements of subsection (a), section twenty-five, article four, chapter twenty-two-c of this code;

(2) Entered into a contract with a county commission regarding the construction and operation of a solid waste facility, which contract contains rates for the disposal of solid waste anticipated to be disposed of at the facility;

(3) Obtained, pursuant to section one-f, article two, chapter twenty-four of this code, following a public hearing, an order from the public service commission approving the rates established in the contract with the county commission; and

(4) An application for a permit for a commercial solid waste facility pending with the division of environmental protection, or is operating under a permit or compliance order, is permitted to handle in excess of the limitation

established in section eight of this article up to fifty thousand tons of solid waste per month at a commercial solid waste facility so long as the person complies with the provisions of this section.

(b) Any person desiring to operate a commercial solid waste facility which handles an amount of solid waste per month in excess of the limitation established in section eight of this article, but not exceeding the tonnage limitation described in subsection (a) of this section may file a notice with the county commission of the county in which the facility is or is to be located requesting a countywide referendum. Upon receipt of such notice, the county commission shall order a referendum be placed upon the ballot, not less than fifty-six days before the next primary or general election:

(1) Such referendum will be to determine whether it is the will of the voters of the county that a commercial solid waste facility be permitted to handle more than the limitation established in section eight of this article not to exceed fifty thousand tons per month. Any such election shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable;

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"Shall a commercial solid waste facility, permitted to handle up to, but no more than fifty thousand tons of solid waste per month be located within _____ County, West Virginia?

☐ For the facility

☐ Against the facility

(Place a cross mark in the square opposite your choice.)"

If a majority of the legal votes cast upon the question is against the facility handling an amount of solid waste of up to fifty thousand tons per month then the division shall not proceed any further with the application. If a majority of the legal votes cast upon the question is in favor of permitting the facility within the county, then the application process as set forth in this article may proceed: Provided, That such vote is not binding on or require the division to issue a permit.

(c) If a person submits to a referendum in accordance with this section, all approvals, certificates and permits granted and all actions undertaken by a regional or county solid waste authority or county commission with regard to the person's commercial solid waste facility within the county under this article or article four, chapter twenty-two-c of this code, or previously enacted sections of articles five-f and nine, chapter twenty of this code are valid, complete and in full compliance with all the requirements of law and any defects contained in such approvals, certificates, permits or actions are cured and such defects may not be invoked to invalidate any such approval, certificate, permit or action.

(d) Notwithstanding any provision of this code to the contrary, any person described in subsection (a) of this section who complies with the referendum requirement of this section and complies with the permitting requirements of the division provided in section ten of this article, shall not be required to comply with the requirements of sections twenty-five, twenty-six, twenty-seven and twenty-eight, article four, chapter twenty-two-c of this code: Provided, That such person is entitled to receive a certificate of need pursuant to the provisions of subsection (a), section one-c, article two, chapter twenty-four of this code to handle the tonnage level authorized pursuant to subsection (a) of this section.

(e) The purpose of this section is to allow any person who satisfies the four criteria contained in subsection (a) of this section, notwithstanding any defects in or challenges to any actions which were or are required to be performed in satisfaction of such criteria, to submit the question of siting a facility that accepts up to fifty thousand tons within the county to a referendum in order to obtain a decision at the county or regional level regarding the siting of the facility and that submission of this question at the county level is the only approval, permit or action required at the county or regional level to establish and site the proposed facility.

Acts 1994, c. 61; Acts 1998, c. 254, eff. Feb. 17, 1998.

CHAPTER 22C

ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS

ARTICLE 6

HAZARDOUS WASTE FACILITY SITING APPROVAL

Section

22C-6-3. Procedure for public participation.

§ 22C-6-3. Procedure for public participation

(a) From and after the fifth day of June, one thousand nine hundred ninety-two, in order to obtain approval to locate either a commercial hazardous waste management facility or a hazardous waste management facility which disposes of greater than ten thousand tons per annum on site in this state, an applicant shall:

(1) File a pre-siting notice with the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the commercial hazardous waste management facility siting board;

(2) File a pre-siting notice with the commercial hazardous waste management facility siting board; and

(3) File a pre-siting notice with the division of environmental protection.

(b) If a pre-siting notice is filed in accordance with subsection (a) of this section, the county commission shall publish a Class II legal advertisement in

compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper of general circulation in the counties wherein the hazardous waste management facility is to be located. Upon an affirmative vote of the majority of the county commissioners or upon the written petition of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for governor at the preceding gubernatorial election, which petition shall be filed with the county commission within sixty days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than fifty-six days before the election, order a referendum be placed upon the ballot: Provided, That such a referendum is not required for a hazardous waste management facility for which at least ninety percent of the capacity is designated for hazardous waste generated at the site of disposal. Any referendum conducted pursuant to this section shall be held at the next primary, general or other countywide election.

(1) Such referendum is to determine whether it is the will of the voters of the county that a commercial hazardous waste management facility be located in the county or that a hazardous waste management facility disposing of greater than ten thousand tons of hazardous waste per annum on site be located in the county. Any election at which such question of locating a hazardous waste management facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The secretary of state shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following depending upon the type of facility to be located with the county:

"Shall a commercial hazardous waste management facility be located within _____ County, West Virginia?

☐ For the facility

☐ Against the facility

(Place a cross mark in the square opposite your choice.)" or,

"Shall a hazardous waste management facility disposing of greater than ten thousand tons per annum on site be located within _____ County, West Virginia?

☐ For the facility

☐ Against the facility

(Place a cross mark in the square opposite your choice.)"

(3) If a majority of the legal votes cast upon the question is against the

facility, then the county commission shall notify the division of environmental protection and the commercial hazardous waste management facility siting board, in the case of a commercial facility, of the result and the commercial hazardous waste management facility siting board or division of environmental protection, as the case may be, shall not proceed any further with the application. If a majority of the legal votes cast upon the question is for the facility, then the application process as set forth in article eighteen, chapter twenty-two of this code and article five of this chapter, in the case of a commercial hazardous waste management facility, may proceed: Provided, That such vote is not binding on nor does it require the commercial hazardous waste management facility siting board to grant a certificate of site approval or the division of environmental protection to issue the permit, as the case may be. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: Provided, however, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

Acts 1994, c. 61.

CHAPTER 29

MISCELLANEOUS BOARDS AND OFFICERS

Article

6. Civil Service System.

22. State Lottery Act.

ARTICLE 6

CIVIL SERVICE SYSTEM

Section

29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited.

Acts 1989, c. 29, changed the Civil Service Commission to the State Personnel Board. See § 29-6-9.

§ 29-6-20. Favoritism or discrimination because of political or religious opinions, affiliations or race; political activities prohibited

(a) No person shall be appointed or promoted to or demoted or dismissed from any position in the classified service or in any way favored or discriminated against with respect to such employment because of his or her political or religious opinions or affiliations or race; but nothing herein shall be construed as precluding the dismissal of any employee who may be engaged in subversive activities or found disloyal to the nation.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment in the classified service.

(c) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person or for any consideration.

(d) No employee in the classified service or member of the board or the director shall, directly or indirectly, solicit or receive any assessment, subscription or contribution, or perform any service for any political party, committee or candidate for compensation, other than for expenses actually incurred, or in any manner take part in soliciting any such assessment, subscription, contribution or service of any employee in the classified service.

(e) Notwithstanding any other provision of this code, no employee in the classified service shall:

(1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;

(2) Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or

(3) Be a candidate for any national or state paid public office or court of record; or hold any paid public office other than as a paid poll clerk or worker; or be a member of any national, state or local committee of a political party, or a financial agent or treasurer within the meaning of the provisions of section three, four or five-e, article eight, chapter three of this code. Other types of partisan or nonpartisan political campaigning and management not inconsistent with the provisions of this subdivision and with the provisions of subsection (d) of this section shall be permitted.

(f) Political participation pertaining to constitutional amendments, referendums, approval of municipal ordinances or activities, serving as a poll clerk or worker or being a candidate for or serving as a delegate to any state or national political party convention shall not be deemed to be prohibited by the foregoing provisions of this section.

(g) Any classified employee who becomes a candidate for any paid public office as permitted by this section shall be placed on a leave of absence without pay for the period of such candidacy, commencing upon the filing of the certificate of candidacy.

Acts 1961, c. 130; Acts 1968, c. 12; Acts 1977, 1st Ex. Sess., c. 5; Acts 1983, 1st Ex. Sess., c. 14; Acts 1989, c. 29; Acts 2008, c. 177, eff. March 5, 2008.

ARTICLE 22

STATE LOTTERY ACT

Section

29-22-24. Disclosures by vendors and related persons and entities of political contributions.

§ 29-22-24. Disclosures by vendors and related persons and entities of political contributions

(a) For purposes of this section:

"Vendor" means any person required to make any disclosure under the provisions of section twenty-three of this article.

"Major procurement" has the same meaning as set out in section twenty-three of this article.

(b) Prior to the submission of the initial bid or proposal, and on or before the first day of July of each year thereafter, a vendor who is submitting an initial bid or proposal to, or who has submitted such within the preceding twelve months to, or who has a current contract with, the state lottery commission or any state agency, board or commission or political subdivision, for any major procurement, shall file with the secretary of state a detailed itemized disclosure statement, subscribed and sworn to before an officer authorized to administer oaths, setting forth each contribution to any local, state or federal political candidate or political committee in this state, made in the preceding three years, or a statement that no such contributions have been made.

Acts 1985, c. 115.

CHAPTER 50

MAGISTRATE COURTS

ARTICLE 1

COURTS AND OFFICERS

Section

50-1-6. Vacancy in office of magistrate.

§ 50-1-6. Vacancy in office of magistrate

Subject to the provisions of section one, article ten, chapter three of this code, when a vacancy occurs in the office of magistrate, the judge of the circuit court, or the chief judge thereof if there is more than one judge of the circuit court, shall fill the same by appointment.

At a general election in which a magistrate is elected for an unexpired term, the circuit judge, or the chief judge thereof if there is more than one judge of the circuit court, shall cause a notice of such election to be published prior to such election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the

publication area for such publication shall be the county involved. If the vacancy occurs before the primary election held to nominate candidates to be voted for at the general election, at which any such vacancy is to be filled, candidates to fill such vacancy shall be nominated at such primary election in accordance with the time requirements and the provisions and procedures prescribed in article five, chapter three of this code. Otherwise, they shall be nominated by the county executive committee in the manner provided in section nineteen, article five, chapter three of this code, as in the case of filling vacancies in nominations, and the names of the persons so nominated and certified to the clerk of the circuit court of such county shall be placed upon the ballot to be voted at such next general election.

Acts 1976, c. 33; Acts 1997, c. 128, eff. 90 days after April 12, 1987.

CHAPTER 51

COURTS AND THEIR OFFICERS

Article

1. West Virginia Supreme Court of Appeals.

2. Circuit Courts; Circuit Judges.

2A. Family Courts.

ARTICLE 1

WEST VIRGINIA SUPREME COURT OF APPEALS

Section

51-1-1. Justices.

51-1-10a. Salary of justices.

§ 51-1-1. Justices

The supreme court of appeals shall consist of five justices, elected and qualified according to the Constitution and the laws of this State, any three of whom shall constitute a quorum.

Acts 1872-3, c. 16, § 1; Acts 1882, c. 156, § 1; Acts 1903, c. 19, § 1; Acts 1915, c. 68, § 1; Acts 1973, c. 28.

§ 51-1-10a. Salary of justices

The salary of each of the justices of the Supreme Court of Appeals shall be $95,000 per year*: Provided,* That beginning July, 1, 2005, the salary of each of the justices of the Supreme Court shall be $121,000*: Provided, however,* That beginning July 1, 2011, the annual salary of a justice of the Supreme Court shall be $136,000.

Acts 1973, c. 30; Acts 1976, c. 35; Acts 1979, c. 26; Acts 1980, c. 38;

Acts 1981, 1st Ex. Sess., c. 4; Acts 1984, c. 50; Acts 1989, c. 183; Acts 1994, c. 99; Acts 1999, 1st Ex. Sess., c. 8, eff. 90 days after March 22, 1999; Acts 2005, c. 203, eff. July 1, 2005; Acts 2011, c. 154, eff. March 12, 2011.

ARTICLE 2

CIRCUIT COURTS; CIRCUIT JUDGES

Section

51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

51-2-8. Residence of judge; disqualification.

51-2-13. Salaries of judges of circuit courts.

§ 51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court

(a) The state shall be divided into the following judicial circuits with the following number of judges:

(1) The counties of Brooke, Hancock and Ohio shall constitute the first circuit and shall have four judges;

(2) The counties of Marshall, Tyler and Wetzel shall constitute the second circuit and shall have two judges;

(3) The counties of Doddridge, Pleasants and Ritchie shall constitute the third circuit and shall have one judge;

(4) The counties of Wood and Wirt shall constitute the fourth circuit and shall have three judges;

(5) The counties of Calhoun, Jackson, Mason and Roane shall constitute the fifth circuit and shall have two judges;

(6) The county of Cabell shall constitute the sixth circuit and shall have four judges;

(7) The county of Logan shall constitute the seventh circuit and shall have two judges;

(8) The county of McDowell shall constitute the eighth circuit and shall have two judges;

(9) The county of Mercer shall constitute the ninth circuit and shall have three judges;

(10) The county of Raleigh shall constitute the tenth circuit and shall have three judges;

(11) The counties of Greenbrier and Pocahontas shall constitute the eleventh circuit and shall have two judges;

(12) The county of Fayette shall constitute the twelfth circuit and shall have two judges;

(13) The county of Kanawha shall constitute the thirteenth circuit and shall have seven judges;

(14) The counties of Braxton, Clay, Gilmer and Webster shall constitute the fourteenth circuit and shall have two judges;

(15) The county of Harrison shall constitute the fifteenth circuit and shall have three judges;

(16) The county of Marion shall constitute the sixteenth circuit and shall have two judges;

(17) The county of Monongalia shall constitute the seventeenth circuit and shall have two judges: *Provided,* That effective July 1, 2009, said circuit court shall have three judges.

(18) The county of Preston shall constitute the eighteenth circuit and shall have one judge;

(19) The counties of Barbour and Taylor shall constitute the nineteenth circuit and shall have one judge;

(20) The county of Randolph shall constitute the twentieth circuit and shall have one judge;

(21) The counties of Grant, Mineral and Tucker shall constitute the twenty-first circuit and shall have two judges;

(22) The counties of Hampshire, Hardy and Pendleton shall constitute the twenty-second circuit and shall have two judges;

(23) The counties of Berkeley, Jefferson and Morgan shall constitute the twenty-third circuit and shall have five judges;

(24) The county of Wayne shall constitute the twenty-fourth circuit and shall have two judges;

(25) The counties of Lincoln and Boone shall constitute the twenty-fifth circuit and shall have two judges;

(26) The counties of Lewis and Upshur shall constitute the twenty-sixth circuit and shall have one judge;

(27) The county of Wyoming shall constitute the twenty-seventh circuit and shall have one judge;

(28) The county of Nicholas shall constitute the twenty-eighth circuit and shall have one judge;

(29) The county of Putnam shall constitute the twenty-ninth circuit and shall have two judges;

(30) The county of Mingo shall constitute the thirtieth circuit and shall have one judge; and

(31) The counties of Monroe and Summers shall constitute the thirty-first circuit and shall have one judge.

(b) The Kanawha County circuit court shall be a court of concurrent jurisdiction with each single judge circuit where the sitting judge in the single judge circuit is unavailable by reason of sickness, vacation or other reason.

(c) Any judge in office on the effective date of the reenactment of this section shall continue as a judge of the circuit as constituted under prior enactments of this section, unless sooner removed or retired as provided by law, until December 31, 2008.

(d) The term of office of all circuit court judges shall be for eight years. The term of office for all circuit court judges elected during the general election conducted in the year 2008 shall commence on January 1, 2009, and end on December 31, 2016.

(e) For election purposes, in every judicial circuit having two or more judges there shall be numbered divisions corresponding to the number of circuit judges in each circuit. Each judge shall be elected at large from the entire circuit. In each numbered division of a judicial circuit, the candidates for nomination or election shall be voted upon and the votes cast for the candidates in each division shall be tallied separately from the votes cast for candidates in other numbered divisions within the circuit. The candidate receiving the highest number of the votes cast within a numbered division shall be nominated or elected, as the case may be.

(f) Judges serving a judicial circuit comprised of four or more counties with two or more judges shall not be residents of the same county.

(g) The Supreme Court of Appeals shall, by rule, establish the terms of court of circuit judges.

Acts 1868, Ex. Sess., c. 62, § 1; Acts 1872-3, c. 15, § 1; Acts 1881, c. 3, § 1; Acts 1903, c. 20, § 1; Acts 1911, c. 7, §§ 1, 4; Acts 1911, c. 8, §§ 1, 4; Acts 1911, c. 9, §§ 1, 3; Acts 1911, c. 10, §§ 1, 4; Acts 1911, c. 11, §§ 1, 4; Acts 1919, c. 132, § 1; Acts 1921, c. 84, § 1; Acts 1927, c. 51; Acts 1927, c. 69; Acts 1935, c. 41; Acts 1941, c. 19; Acts 1951, c. 55; Acts 1959, c. 32; Acts 1960, c. 7; Acts 1967, c. 40; Acts 1971, c. 30; Acts 1976, c. 37; Acts 1977, c. 75; Acts 1979, c. 27; Acts 1990, c. 79; Acts 1991, c. 34; Acts 1999, c. 72, eff. 90 days after March 13, 1999; Acts 2006, c. 52, eff. July 1, 2006; Acts 2008, c. 52, eff. June 6, 2008; Acts 2009, c. 52, eff. July 1, 2009.

§ 51-2-8. Residence of judge; disqualification

Each circuit, criminal or intermediate judge, during his continuance in office, shall reside in the circuit or county for which he was elected. When such judge is a party to a suit, or is interested in the result thereof otherwise than as a resident or taxpayer of the district or county, or is related to either of the parties, as grandfather, father, father-in-law, son, son-in-law, brother, brother-in-law, nephew, uncle, first cousin or guardian, or if, at the time of the institution of the suit, or at any time before its final termination, he, his wife, or any party or parties related to him in the degree hereinbefore specified, is a stockholder, or officer, in any stock company or corporation which is a necessary party to the proceedings, or if he is a material witness for either party, he shall not take cognizance thereof unless all parties to the suit consent thereto in writing: Provided, that no judgment or decree rendered or pronounced by any such judge shall be invalidated by reason of such relationship unless the same appear of record in such suit or proceeding: Provided further, that nothing herein contained shall disqualify a judge who comes within the provisions of this section to enter a formal order designed merely to advance the cause towards a final hearing and not requiring judicial action involving the merits of the case.

Acts 1881, c. 3, § 9; Acts 1915, c. 71, § 9.

§ 51-2-13. Salaries of judges of circuit courts

The salaries of the judges of the various circuit courts shall be paid solely out of the State Treasury. No county, county commission, board of commissioners or other political subdivision shall supplement or add to such salaries.

The annual salary of all circuit judges shall be $90,000 per year*: Provided,* That beginning July 1,2005, the annual salary of all circuit judges shall be $116,000 per year*: Provided, however,* That beginning July 1, 2011, the annual salary of a circuit court judge shall be $126,000.

Acts 1973, c. 30; Acts 1975, c. 126; Acts 1976, c. 40; Acts 1979, c. 26; Acts 1980, c. 38; Acts 1981, 1st Ex. Sess., c. 4; Acts 1984, c. 50; Acts 1989, c. 183; Acts 1994, c. 99; Acts 1999, 1st Ex. Sess., c. 8, eff. 90 days after March 22, 1999; Acts 2005, c. 203, eff. July 1, 2005; Acts 2011, c. 154, eff. March 12, 2011.

ARTICLE 2A

FAMILY COURTS

Section

51-2A-1. Family courts established.

51-2A-4. Qualifications of family court judges.

51-2A-5. Term of office of family court judge; initial appointment; elections.

51-2A-18. Vacancy in the office of family court judge.

51-2A-19. Temporary assignment of family court judges.

§ 51-2A-1. Family courts established

There is hereby created in each county in this state a family court to be designated as "The Family Court of _____ County, West Virginia".

Acts 2001, 5th Ex. Sess., c. 5, eff. Sept. 19, 2001.

§ 51-2A-4. Qualifications of family court judges

(a) A family court judge must be a resident of this state, a member in good standing of the West Virginia state bar, admitted to practice law in this state for at least five years prior to election, and must, at the time he or she takes office, and thereafter during his or her continuance in office, reside in the family court circuit for which he or she is a judge.

(b) A family court judge may not engage in any other business, occupation or employment inconsistent with the expeditious, proper and impartial performance of his or her duties as a judicial officer. A family court judge is not permitted to engage in the outside practice of law and shall devote full time to his or her duties as a judicial officer.

(c) The supreme court of appeals may establish requirements for family court judges to attend and complete courses of instruction and continuing educational instruction in principles of family law and procedure.

(d) A person's acceptance of the office of family court judge pursuant to appointment or election constitutes the person's consent, agreement and election during the term of office not to become a member of the judges retirement system solely by reason of or based upon service as a family court judge and an acknowledgment by the person of the sole authority of the Legislature to determine the eligibility of family court judges to participate in a retirement system. Notwithstanding any other provision of law to the contrary, upon final judicial determination that a person, individually or as a member of a class, is eligible for participation in the judges retirement system solely by reason of or based upon service as a family court judge, no additional persons except as may be provided for in this subsection may be admitted to the judges retirement system existing upon the effective date of the final judicial determination. A circuit judge or justice of the supreme court of appeals who is a member of the existing judges retirement system whose employment continues beyond the final judicial determination shall continue to contribute to and participate in the existing judges retirement system without a change in plan provisions or benefits. Any person who was previously a member of the judges retirement system and who later returns to participating employment as a circuit judge or justice of the supreme court of appeals after the final judicial determination has the right to elect to return to the existing judges retirement system and participate during the judge's or justice's term or terms of office.

Acts 2001, 5th Ex. Sess., c. 5, eff. Sept. 19, 2001.

§ 51-2A-5. Term of office of family court judge; initial appointment; elections

(a) Beginning with the primary and general elections to be conducted in the year two thousand two, family court judges shall be elected. In family court circuits having two or more family court judges there shall be, for election purposes, numbered divisions corresponding to the number of family court judges in each area. Each family court judge shall be elected at large by the entire family court circuit. In each numbered division of a family court circuit, the candidates for nomination or election shall be voted upon and the votes cast for the candidates in each division shall be tallied separately from the votes cast for candidates in other numbered divisions within the family court circuit. The candidate or candidates receiving the highest number of the votes cast within a numbered division shall be nominated or elected, as the case may be.

(b) The term of office for all family court judges elected in two thousand two shall be for six years, commencing on the first day of January, two thousand three, and ending on the thirty-first day of December, two thousand eight. Subsequent terms of office for family court judges elected thereafter shall be for eight years.

(c) The primary and general elections conducted in the year two thousand eight shall be conducted to fill the family court judge positions in the reconfigured districts set forth by subsection (c), section three of this article, for terms to commence on the first day of January, two thousand nine.

Acts 2001, 5th Ex. Sess., c. 5, eff. Sept. 19, 2001; Acts 2007, c. 61, eff. June 7, 2007.

§ 51-2A-18. Vacancy in the office of family court judge

If a vacancy occurs in the office of family court judge, the governor shall fill the vacancy by appointment as provided in section three, article ten, chapter three of this code.

Acts 2001, 5th Ex. Sess., c. 5, eff. Sept. 19, 2001.

§ 51-2A-19. Temporary assignment of family court judges

(a) Upon the occurrence of a vacancy in the office of family court judge, the disqualification of a family court judge or the inability of a family court judge to attend to his or her duties because of illness, temporary absence or any other reason, the chief justice of the supreme court of appeals may assign the family court judge of any other family court circuit, or any senior status circuit judge or circuit judge of any judicial circuit, to hear and determine any and all matters then or thereafter pending in the family court to which the family court judge is assigned. While so assigned, the family court judge, senior status circuit judge or circuit judge has all of the powers of the regularly elected family court judge of the family court circuit.

(b) When, in the discretion of the chief justice of the supreme court of appeals, the urgency or volume of cases in a family court circuit so requires, the chief justice may assign a senior status circuit judge, a circuit judge of any judicial circuit or a family court judge of any family court division to serve temporarily in a family court circuit. When a senior status circuit judge

or other circuit judge is so assigned, he or she has all of the powers of a regularly elected family court judge.

(c) The chief justice of the supreme court of appeals may appoint a person who has previously served as a family law master or family court judge to serve as a temporary family court judge as disqualification, recusal, vacation, illness or the ends of justice may dictate.

(d) The supreme court of appeals shall promulgate a supervisory rule setting forth educational requirements for persons assigned to serve temporarily as family court judges pursuant to the provision of this section.

Acts 2001, 5th Ex. Sess., c. 5, eff. Sept. 19, 2001.

CHAPTER 59

FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS

ARTICLE 3

NEWSPAPERS AND LEGAL ADVERTISEMENTS

Section

59-3-1. Definitions and general provisions.

59-3-2. Classification of legal advertisements; designation of newspapers; frequency of publication; posting; manner of publishing.

59-3-3. Rates for legal advertisements; computation; filing affidavits with secretary of state.

59-3-4. Proof of publication and posting.

59-3-5. Mandamus to compel publication.

59-3-6. Political advertisements.

59-3-7. Criminal and civil penalties.

59-3-8. Construction of article; repeal; subsequent legislation.

59-3-9. Severability.

§ 59-3-1. Definitions and general provisions

(a) As used in this article, elsewhere in this code or in any other provision of law:

(1) "Legal advertisement" means any notice, advertisement, statement, information or other matter required by law or court to be published.

(2) "Publication area" means the area or areas for which a legal advertisement is required by law or court to be made.

(3) "Once a week for two successive weeks" means two publications of a legal advertisement in a qualified newspaper occurring within a period of fourteen consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication.

(4) "Once a week for three successive weeks" means three publications of a legal advertisement in a qualified newspaper occurring within a period of twenty-one consecutive days with at least an interval of six full days within the period between the date of the first publication and the date of the second publication and with at least an interval of six full days within the period between the date of the second publication and the date of the third publication.

(5) "Publication date" means the date on which a qualified newspaper is first placed in circulation.

(6) "General circulation" means not only a newspaper meeting the other qualifications specified in subsection (b) of this section and circulated among and of interest to the general public in the area in which it circulates, but also a newspaper meeting said other qualifications, the actual circulation of which throughout the publication area is large enough to give basis for a reasonable belief that publication of a legal advertisement in the newspaper will give effective notice to the residents of the publication area.

(b) Wherever the term "qualified newspaper" or "qualified newspapers" is used in this article, or the term "newspaper" or "newspapers" is used elsewhere in this code or in any other provision of law in connection with a legal advertisement as herein defined in this section, the terms shall be taken to mean only a newspaper or newspapers, as the case may be, published (unless otherwise expressly provided) in the state of West Virginia and which meet the following qualifications:

(1) Any newspaper shall be of regular issue and must have a bona fide, general circulation in the publication area. A newspaper is considered to be of regular issue if it is published regularly, as frequently as once a week, for at least fifty weeks during the calendar year as prescribed by its mailing permit; and has been published for at least one year immediately preceding the date on which the legal advertisement is delivered to the newspaper for publication. A newspaper is considered to be of bona fide, general circulation in the publication area if it meets the definition of "general circulation" as defined in this section and is circulated to the general public at a definite price or consideration.

(2) Any newspaper shall bear a title or name, consist of not less than four pages without a cover, and be a newspaper to which the general public resorts for passing events of a political, religious, commercial and social nature, and for current happenings, announcements, miscellaneous reading matters, advertisements and other notices.

(c) Notwithstanding any other provision of this code or law to the contrary, a qualified newspaper shall for all purposes be considered to be published where it is first placed in circulation.

Acts 1967, c. 105; Acts 1984, c. 102; Acts 2002, c. 195, eff. 90 days after March 7, 2002.

§ 59-3-2. Classification of legal advertisements; designation of newspapers; frequency of publication; posting; manner of publishing

(a) A Class I legal advertisement shall be published one time, a Class II legal advertisement shall be published once a week for two successive weeks and a Class III legal advertisement shall be published once a week for three successive weeks in a qualified newspaper published in the publication area; or if there is no qualified newspaper published in the publication area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in a qualified newspaper published outside the publication area; or if no qualified newspaper is published outside the publication area or if no qualified newspaper published outside the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be posted in at least three public places in the publication area, one of which postings shall be in the county courthouse, at or near the front door of the county courthouse, if a county courthouse is located in the publication area and one of which postings shall be in the municipal office building or municipal office or offices, at or near the front door thereof, if the publication area is a municipality.

(b) A Class I-0 legal advertisement shall be published one time, a Class II-0 legal advertisement shall be published once a week for two successive weeks, and a Class III-0 legal advertisement shall be published once a week for three successive weeks, in two qualified newspapers of opposite politics published in the publication area; or if two qualified newspapers of opposite politics are not published in the publication area or if two qualified newspapers of opposite politics published in the publication area will not publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in one qualified newspaper published in the publication area; or if there is no qualified newspaper published in the publication area or if no qualified newspaper published in the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be published in one qualified newspaper published outside the publication area; or if no qualified newspaper is published outside the publication area or if no qualified newspaper published outside the publication area will publish the legal advertisement at the rates specified in section three of this article, the legal advertisement shall be posted in at least three public places in the publication area, one of which postings shall be in the county courthouse, at or near the front door thereof, if a county courthouse is located in the publication area and one of which postings shall be in the municipal office building or municipal office or offices, at or near the front door thereof, if the publication area is a municipality.

(c) A legal advertisement may be published in a qualified newspaper published on any day of the week except Sunday.

(d) All legal advertisements shall be published together in continuous columns

on one page of the newspaper publishing them under a general heading styled "Legal Advertisements", unless the number or size of the legal advertisements requires the use of more than one page, in which event the legal advertisements shall be published as near as practicable in continuous columns on as many pages as necessary under the same heading as above required.

Acts 1967, c. 105; Acts 2002, c. 195, eff. 90 days after March 7, 2002.

§ 59-3-3. Rates for legal advertisements; computation; filing affidavits with secretary of state

(a) The rates which a publisher or proprietor of a qualified newspaper in West Virginia may charge and receive for a single or first publication of any legal advertisement set solid depends on the bona fide circulation of the newspaper, as follows:

(1) Four cents per word if the qualified newspaper has a bona fide circulation of less than one thousand, except as provided in subdivision (1), subsection (a) of this section;

(2) Eight and one-half cents per word if the qualified newspaper has a bona fide circulation of one thousand to five thousand;

(3) Nine cents per word if the qualified newspaper has a bona fide circulation of more than five thousand but less than ten thousand;

(4) Ten cents per word if the qualified newspaper has a bona fide circulation of more than ten thousand and less than thirty thousand; or

(5) Eleven cents per word if the qualified newspaper has a bona fide circulation of thirty thousand or more: Provided, That on the first day of July in the year two thousand three and on the first day of July in the year two thousand four and on the first day of July in the year two thousand five the allowable rate per word in each of the classifications of qualified newspapers with reference to circulation as set forth in this subsection shall, for each classification, increase one cent per word over the prior year's rate.

(b) In computing the number of words in a legal advertisement, not set solid, the basis is the size of type in which legal advertising is set by the qualified newspaper making the publication and shall be computed at the legal rate as though the matter were solid type, that is to say, on the basis of eighty-four words to the single column inch in six point type and fifty-four words to the single column inch in eight point type and any other size type in proportion.

(c) In determining the cost of a legal advertisement which is to appear more than once in the same qualified newspaper, the cost for the first publication shall be computed as specified in subsections (a) and (b) of this section and the cost of the second and each subsequent publication shall be seventy-five percent of the cost of the first publication computed as specified in subsections (a) and (b) of this section.

(d) The average bona fide circulation stated by each qualified newspaper in the statement filed by the newspaper with the United States post office department

in October of each year shall control the rate of circulation classification of the qualified newspaper for the period commencing the first day of July of each year until the last day of June of the following year. On or before the first day of November of each year, the publisher or proprietor of each newspaper desiring to publish any legal advertisement during the ensuing one year time period commencing the first day of July shall file with the secretary of state an affidavit stating the average bona fide circulation of the newspaper during the preceding twelve month time period ending the thirtieth day of September of each year and shall set forth sufficient facts in the affidavit to show whether the newspaper is a qualified newspaper. The average bona fide circulation stated in the affidavit by each qualified newspaper shall control the rate circulation classification for the ensuing twelve-month period commencing the first day of July. Any qualified newspaper for which the required affidavit is not filed on or before the first day of March of any calendar year shall be conclusively presumed to have for the ensuing twelve-month period commencing the first day of July of such year a bona fide circulation of less than one thousand. At the time a publisher or proprietor of a qualified newspaper files an affidavit with the secretary of state, as required by this subsection, the publisher or proprietor shall notify the clerk of the county commission and the board of education of the county in which the qualified newspaper is published of the circulation classification of the qualified newspaper and of the applicable rate for publishing legal advertisements in the qualified newspaper during the ensuing twelve-month period commencing the first day of July. If the qualified newspaper is published in a municipality, the publisher or proprietor shall at the same time also furnish the same notification to the clerk or recorder of the municipality.

(e) The rate charged for political advertising appearing in a newspaper at any time or times during the time period commencing thirty days prior to any primary or general election and ending the day following the election may not exceed one hundred five percent of the lowest commercial rate charged by the newspaper in which the political advertising appears.

(f) Nothing contained in this section prohibits qualified newspapers from charging less than the specified rates for any legal advertisement or from charging usual and customary rates for notarizing and producing additional copies of the affidavits and statements required in section four of this article.

Acts 1967, c. 105; Acts 1983, c. 126; Acts 1984, c. 102; Acts 1995, c. 147, eff. March 11, 1995; Acts 2002, c. 195, eff. 90 days after March 7, 2002.

§ 59-3-4. Proof of publication and posting

(a) Any qualified newspaper publishing a legal advertisement incident to any type of judicial proceeding or any provision in a deed of trust or contract, or incident to any other case if required by the responsible party placing the legal advertisement for publication, shall make and furnish under oath an affidavit of publication of each legal advertisement published, showing the number of times it was published in the qualified newspaper, the dates of the publications and the cost of the publications. When posting of any legal advertisement is required in addition to publication of the legal advertisement in a qualified newspaper, the posting shall be done by the party responsible for causing the legal advertisement to be published. In any case where any

legal advertisement is not required to be published in a qualified newspaper but is required to be posted, an affidavit of the type provided for in this section with respect to posting shall be made by the party who would have been responsible for causing the legal advertisement to be published in a qualified newspaper had it been required.

(b) The affidavit of the publisher or proprietor of a qualified newspaper required by this section, together with a copy of the legal advertisement as published, constitutes prima facie evidence that the legal advertisement was published or published and posted as stated in the affidavit.

Acts 1967, c. 105; Acts 2002, c. 195, eff. 90 days after March 7, 2002.

§ 59-3-5. Mandamus to compel publication

Any citizen, taxpayer, or the publisher or proprietor of any qualified newspaper entitled by law to have any legal advertisement published in his qualified newspaper, which any county court or tribunal created in lieu thereof, board of education, governing body of any municipal corporation, or public officer, shall fail or refuse to make, may have a writ of mandamus to compel such publication, if a qualified newspaper is willing to accept the legal advertisement for publication at the rates prescribed in section three of this article.

Acts 1967, c. 105.

W.Va. Const., art. IX, § 9, redesignated the office of the county court as county commission.

§ 59-3-6. Political advertisements

In no case involving the publication of paid advertisements for candidates for political office shall the rate charged by any publisher or proprietor of any newspaper be more than the average rate received by him from private patrons for similar advertising composed of reading matter or photographs and requiring the same amount of space.

Acts 1967, c. 105.

§ 59-3-7. Criminal and civil penalties

(a) Any person who publishes a legal advertisement and who knowingly refused to file with the secretary of state the affidavit for the fiscal year in which the legal advertisement was published, as required by the provisions of section three of this article, or to make and furnish the affidavit required by the provisions of section four of this article, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

(b) Any person who shall knowingly file a false affidavit required by the provisions of this article shall be guilty of false swearing, and, upon conviction thereof, shall be punished as provided for that offense.

(c) Any qualified newspaper which shall knowingly charge any rates in excess of

those specified in section three of this article, and any newspaper which shall knowingly charge any rates in excess of those specified in section six of this article, as the case may be, shall be liable to the person damaged thereby for treble damages.

Acts 1967, c. 105.

§ 59-3-8. Construction of article; repeal; subsequent legislation

This article is intended to standardize and make uniform certain areas of the law relating to newspapers, qualified newspapers, legal advertisements and publication of a newspaper or qualified newspaper, and to this end all other provisions in this Code or elsewhere in law pertaining to such subjects shall be construed so as to conform to and be consistent with the pertinent provisions of this article. As to those provisions in this Code or elsewhere in law which are so inconsistent with the provisions of this article as to preclude such construction, such other provisions, whether general or specific in character, are hereby repealed to the extent of such inconsistency. No subsequent legislation shall be held to supersede or modify the provisions of this article except to the extent that such legislation shall do so specifically and expressly. The provisions of this act shall not affect the publication and/or posting of any legal advertisements commenced, in process or completed prior to the effective date of this act.

Acts 1967, c. 105.

§ 59-3-9. Severability

If any provision of this act or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the act, and to this end, the provisions of this act are declared to be severable.

Acts 1967, c. 105.

West Virginia Code of State Rules

TITLE 146

LEGISLATIVE RULE ELECTION COMMISSION

SERIES 1

CORPORATE POLITICAL ACTIVITY

Sec.

146-1-1. General.

146-1-2. Definitions.

146-1-3. General Prohibition.

146-1-4. Exceptions.

146-1-5. Powers And Duties Of Political Action Committees.

146-1-6. Miscellaneous Provisions.

146-1-7. Penalty Provision.

§ 146-1-1. General.

1.1. Scope.—These rules establish general rules on corporate political activity.

1.2. Authority.—W. Va. Code § 3-8-8.

1.3. Filing Date.—April 10, 2008.

1.4. Effective Date.—April 10, 2008.

§ 146-1-2. Definitions.

2.1. "Candidate's committee" means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

2.2. "Contribution" or "Expenditure" means any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to herein. The terms contribution and expenditure shall not include:

2.2.a. Communications by a corporation to its stockholders and executive or administrative personnel and their families on any subject;

2.2.b. Registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel, and their families;

2.2.c. The establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation;

2.2.d. The payment for legal or accounting services rendered to or on behalf of any political committee of a political party other than services attributable to activities which directly further the election of a designated candidate or candidates for office if the corporation paying for the services is the regular employer of the individual rendering the services. This exclusion shall not be applicable if additional employees are hired for the purpose of rendering services or if additional employees are hired in order to make regular employees available;

2.2.e. The payment for legal or accounting services rendered to or on behalf of

a political committee solely for the purpose of ensuring compliance with this rule, if the corporation paying for the services is the regular employer of the individual rendering the services, but amounts paid or incurred for these services shall be reported in accordance with W. Va. Code § 3-8-5a. This exclusion shall not be applicable if additional employees are hired for the purpose of rendering services or if additional employees are hired in order to make regular employees available;

2.2.f. Any activity which is specifically permitted by this rule.

2.3. "Corporate Political Action Committee" means an organization that comes into existence by specific written authorization of the Board of Directors, or equivalent governing body, of one (1) or more corporation(s) the purpose of which is to solicit funds for, and make expenditures and contributions on behalf of political committees as defined herein.

2.4. "Corporation" means any entity legally incorporated, whether under the laws of West Virginia or any other state or any foreign country.

2.5. "Election Officer" means the officer or official who receives the Statement of Organization of a political committee, and includes the Secretary of State, the county clerk, and the municipal clerk or recorder, as set forth in W. Va. Code § 3-8-4.

2.6. "Executive or Administrative Personnel" means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional or supervisory responsibilities.

2.6.a. This definition includes:

2.6.a.1. The individuals who run the corporation's business such as officers, other executives and plant, division and section managers; and

2.6.a.2. Individuals following the recognized professions, such as lawyers and engineers.

2.6.b. This definition does not include:

2.6.b.1. Professionals who are represented by a labor organization;

2.6.b.2. Salaried foremen and other salaried lower-level supervisors having direct supervision over hourly employees;

2.6.b.3. Former or retired personnel who are not stockholders; or

2.6.b.4. Individuals who may be paid by the corporation, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)-1 of the corporation for the purpose of income withholding tax on employee wages under Internal Revenue Code of 1954, § 3402.

2.6.c. Individuals on commission may be considered executive or administrative personnel if they have policymaking, managerial, professional or supervisory responsibility and if the individuals are employees within the meaning of 26 CFR 31.3401(c)-1 of the corporation for the purpose of income withholding tax

or employee wages under the Internal Revenue Code of 1954, § 3402.

2.6.d. The Fair Labor Standards Act, 29 U.S.C. 201, et seq. and the regulations issued pursuant to that Act, 29 CFR 541, may serve as a guideline in determining whether individuals have policymaking, managerial, professional or supervisory responsibilities.

2.7. "Families" means spouses and unemancipated children.

2.8. "Person" means any individual, partnership, committee, association, corporation and any other organization or group of persons.

2.9. Political Action Committee means a committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates. The following are types of political action committees:

2.9.a. A corporate political action committee, as that term is defined by subsection 2.3 of this rule;

2.9.b. A separate segregated fund established by a membership organization;

2.9.c. An unaffiliated political action committee.

2.10. Political Committee means any candidate committee, political action committee or political party committee.

2.11. "Political Party Committee" means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination or defeat of a candidate in any election.

2.12. "Political Purposes" means supporting or opposing the nomination, election or defeat of one or more candidates, supporting the administration or activities of an established political party or an organization which has declared itself a political party, supporting the administration or activities of a political committee, determining the advisability of becoming a candidate under the pre-candidacy financing provisions, and supporting the retirement of the debt of a candidate or political committee incurred for any of the purposes set forth in this subsection.

2.13. "Restricted Group" or Restricted Class means stockholders and their families, and executive and administrative personnel of its subsidiaries, branches, divisions, and departments and their families, of a corporation or when applicable, the members of an incorporated association or organization or group of persons, and the stockholders and their families, and executive and administrative personnel and their families, of such members.

2.14. "Stockholder" means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted (if it is voting stock), and has the right to receive dividends.

§ 146-1-3. General Prohibition.

3.1. Except as permitted below by this rule, no officer of any corporation (as

defined by Section 2 herein), or agent or person (as defined by Section 2 herein), on behalf of such corporation, shall directly or indirectly make, or authorize to be made, or consent to a contribution or expenditure (as defined by subsection 2.2 herein) whatsoever in connection with election to any local or state office, or in connection with any primary election or political convention or caucus held to select candidates for any local or state office.

3.2. No candidate, political committee or any other person shall knowingly accept or receive any payment prohibited by this section.

3.3. No corporation shall facilitate the making of contributions as further described in this subsection:

3.3.a. Corporations (including officers, directors or other representatives acting as agents of corporations) are prohibited from facilitating the making of contributions to candidates or political committees, other than to the separate segregated funds of the corporations. Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any candidate for election. A corporation does not facilitate the making of a contribution to a candidate or political committee if it provides goods or services in the ordinary course of its business as a commercial vendor in accordance with W. Va. Code § 3-8-9 at the usual and normal charge.

3.3.b. Examples of facilitating the making of contributions include but are not limited to:

3.3.b.1. Fundraising activities by corporations (except commercial vendors):

3.3.b.1.A. Officials or employees of the corporation ordering or directing subordinates or support staff (who therefore are not acting as volunteers) to plan, organize or carry out the fundraising project as a part of their work responsibilities using corporate resources, unless the corporation receives advance payment for the fair market value of such services;

3.3.b.1.B. Failure to reimburse a corporation within a commercially reasonable time for the use of corporate facilities in connection with such fundraising activities;

3.3.b.1.C. Using a corporate list of customers, clients, vendors or others who are not in the restricted group to solicit contributions or distribute invitations to the fundraiser, unless the corporation receives advance payment for the fair market value of the list;

3.3.b.1.D. Using meeting rooms that are not customarily made available to clubs, civic or community organizations or other groups; or

3.3.b.1.E. Providing catering or other food services operated or obtained by the corporation, unless the corporation receives advance payment for the fair market value of the services;

3.3.b.2. Providing materials for the purpose of transmitting or delivering contributions, such as stamps, envelopes addressed to a candidate or political committee other than the corporation's separate segregated fund, or other

similar items which would assist in transmitting or delivering contributions, but not including providing the address of the candidate or political committee;

3.3.b.3. Soliciting contributions earmarked for a candidate that are to be collected and forwarded by the corporation's separate segregated fund, except to the extent such contributions also are treated as contributions to and by the separate segregated fund; or

3.3.b.4. Using coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee.

3.3.c. Facilitating the making of contributions does not include the following activities if conducted by a separate segregated fund:

3.3.c.1. Any activity specifically permitted under W. Va. Code § 3-8-9, including soliciting contributions to a political committee, and making in kind contributions to a political committee; and

3.3.c.2. Collecting and forwarding contributions earmarked to a candidate.

3.3.d. Facilitating the making of contributions also does not include the following activities if conducted by a corporation:

3.3.d.1. Enrolling members of a corporation's restricted group in a payroll deduction plan or check-off system which deducts contributions from dividend or payroll checks to make contributions to the corporation's separate segregated fund, checkoff system or an employee participation plan, and are subject to the solicitation requirements of W. Va. Code § 3-8-8;

3.3.d.2. Soliciting contributions to be sent directly to candidates if the solicitation is directed to the restricted group; and

3.3.d.3. Soliciting contributions earmarked for a candidate that are to be collected and forwarded by the corporation's separate segregated fund, to the extent such contributions also are treated as contributions to and by the separate segregated fund.

3.3.e. Facilitating the making of contributions also does not include the provision of incidental services by a corporation to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including collection through a payroll deduction or check-off system.

3.3.f. Any use of corporate property as described in Section 4.3.a. is conditioned on such corporation also permitting any group of employees represented by a corporate political action committee registered with either the Secretary of State of West Virginia or the Federal Election Commission, to use, without reimbursement, the real property of such corporation solely to establish, administer and solicit contributions to such corporate political action committee. No such group of employees may use any such real property in

such a manner as to significantly disrupt the normal operations or activities of the corporation.

3.3.f.1. A corporation is prohibited from soliciting any contributions by use or threat of any physical force, job discrimination, financial reprisals or as a condition of employment, or by paying any contributor for his or her contribution through a bonus, expense account or other form of direct or indirect compensation.

3.3.f.2. Any person soliciting for a contribution to a Corporate Political Action Committee must, at the time of the solicitation, inform the person or member being solicited of the political purposes of such Corporate Political Action Committee.

3.3.f.3. Any person soliciting for a contribution to a Corporate Political Action Committee must at the time of the solicitation inform the person or member being solicited of the right to refuse to so contribute without any reprisal.

3.3.f.4. A guideline for contributions may be suggested, and not enforced by any direct or indirect means: Provided, That the person soliciting, or the solicitation, informs the person being solicited:

3.3.f.4.A. That the guidelines are merely suggestions; and

3.3.f.4.B. That a person is free to contribute more or less than the guidelines suggest and that the corporation will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.

3.3.f.5. Any written solicitation for a contribution to a Corporate Political Action Committee must contain statements which comply with the requirements of paragraph (2) and (3) of this subdivision, and if a guideline is suggested, statements which comply with the requirements of paragraph (4) of this subdivision.

3.3.f.6. Subject to this rule, a corporation may, in making solicitations aimed solely at its restricted group for contributions to its Corporate Political Action Committee, utilize a payroll deduction plan, checkoff system or other plan which deducts contributions from dividend or payroll checks of its restricted group.

3.3.f.7. Accidental or inadvertent solicitation by a corporation, of persons beyond those whom it is permitted to solicit, will not be deemed a violation, provided that the corporation has used its best efforts to comply with the limitations regarding the persons it may solicit and that the method of solicitation is corrected forthwith after the discovery of such erroneous solicitation.

§ 146-1-4. Exceptions.

The provisions of Section 3 of this rule shall not be deemed to prohibit:

4.1. Expenditures made for public editorials or commentaries produced in the ordinary course of business by corporations whose primary purpose is journalism

or public communications.

4.2. Direct communications by a corporation to its restricted group on any subject by any means not intended to reach the general public. Such communications by a corporation to its restricted group may be made by, but are not limited to, the following means:

4.2.a. The distribution of printed material by a corporation to its restricted group: Provided, That

4.2.a.1. The material is disseminated at the expense of the corporation; and

4.2.a.2. The material clearly states that it constitutes a communication of the views of the corporation.

4.2.b. The allowing of a candidate or party representative to address the restricted group of the corporation at any meeting, convention or other regularly scheduled function of the corporation which is primarily held for other purposes. The corporation shall pay no compensation whatsoever to such candidates. The candidate or party representative may address members of the restricted group in their individual rather than corporate capacities, and may at such time ask for individual contributions to his or her campaign or party, ask that such contributions to be sent to his or her campaign or party, or ask that contributions to a Corporate Political Action Committee (as defined in Section 2 of this rule) of the corporation be designation for his or her campaign or party.

4.2.c. The establishment and operation of phone banks by a corporation to communicate with its restricted group urging them to register and/or vote for a particular candidate or candidates.

4.2.d. The conducting of nonpartisan registration and get-out-the-vote drives, as by providing transportation to the polls, by a corporation aimed at its restricted group. If a registration drive is undertaken, assistance in registering or voting may not be withheld or refused on a partisan basis, and if transportation or other services are offered in connection with a registration or get-out-the-vote drive, such transportation or services may not be withheld or refused on a partisan basis.

4.3. Establishment and administration of a Corporate Political Action Committee.—A Corporate Political Action Committee or persons acting on its behalf may, subject to the authorization of such corporation, use the real or personal property, facilities and equipment of any corporation that participated in the establishment or participates in the administration or solicits contributions on behalf of such Corporate Political Action Committee. The cost of such use of property, real or personal, facilities or equipment need not be reimbursed to the corporation so long as such costs are incurred in setting up and running the Corporate Political Action Committee. Such costs that need not be reimbursed include the costs of office space, phones, utilities and supplies.

4.4. Use of corporate facilities by other persons.

4.4.a. A corporation may, at its discretion, allow use of its real or personal

property, facilities or equipment beyond such uses as described in subsection 4.3 above, in connection with any political activity by any person. However, the cost of any such use of corporate property, real or personal, facilities or equipment under this rule must be reimbursed to the corporation within a commercially reasonable time, at normal and usual commercial rental rates; except that:

4.4.b. Stockholders (as defined in Section 2 of this rule) of the corporation and any employees of the corporation making use of corporate real or personal property, facilities and equipment under this subsection 4.3 of this rule must reimburse all costs in excess of those that would arise from "Occasional, Isolated or Incidental" use. As to such occasional, isolated or incidental use, reimbursement will be required only to the extent that the overhead or operating costs of the corporation are increased. As used here, "Occasional, Isolated or Incidental Use" generally means:

4.4.b.1. When use by corporate employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

4.4.b.2. When used by corporate stockholders other than employees during the working period, such use does not interfere with the corporation in carrying out its normal activities; and/or

4.4.b.3. Any such activity which does not exceed one (1) hour per week or four (4) hours per month, regardless of whether the activity is undertaken during or after normal working hours, shall be considered an occasional, isolated or incidental use.

§ 146-1-5. Powers And Duties Of Corporate Political Action Committees.

5.1. All Corporate Political Action Committees must file notice of their existence with the appropriate election officer, as defined in W. Va. Code § 3-8-5b, prior to receiving or soliciting contributions. No such committee may be formed within twenty-eight (28) days of any election in which the committee will be active.

5.2. Solicitation and acceptance of contributions.

5.2.a. A Corporate Political Action Committee may solicit contributions and volunteer personal services solely from the restricted group(s) of the corporation(s) which established such Corporate Political Action Committee.

5.2.b. All solicitations by Corporate Political Action Committees shall conform in method and manner to the provisions of W. Va. Code § 3-8-8.

5.2.c. A Corporate Political Action Committee is specifically prohibited from receiving any direct or indirect payment, distribution, discount, loan, advance, deposit, gift of money or any services or anything of value from any person other than the corporation(s) which established such Corporate Political Action Committee or the restricted group(s) of such establishing corporation.

5.2.d. No Corporate Political Action Committee shall hold or sponsor any

raffle, dance, banquet or similar fund-raising event directed to persons other than the restricted group(s).

5.3. Contributions and expenditure by Corporate Political Action Committee.

5.3.a. No Corporate Political Action Committee shall directly or indirectly make any contribution in excess of the value of one thousand dollars ($1,000) in connection with any campaign for nomination or election to or on behalf of any local or state office or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing or advocating the nomination or election of any candidate for any such office. For purposes of applying this one thousand dollar ($1,000) limitation, all Corporate Political Action Committees established, maintained or controlled by the same corporation(s), including their respective parents, subsidiaries, branches, divisions, departments or local units, are aggregated into one (1) Political Action Committee. This one thousand dollar ($1,000) limitation applies separately to contributions made in connection with the primary election for nomination of a candidate, and contributions made in connection with the election which determines the officeholder.

5.3.b. Corporate Political Action Committees may make unlimited independent expenditures on public issues.—Corporate Political Action Committees may make unlimited independent expenditures expressly advocating the election or defeat of any issue or a clearly identified candidate: Provided, That such expenditures are made without cooperation or consultation with, or at the suggestion of, any candidate or any authorized committee or agent of such candidate. If there is such cooperation or consultation or suggestion, an in-kind contribution results which then is subject to the contribution limits of Section 3.5.a. immediately above.

5.4. Administration of Corporate Political Action Committees.—Corporate Political Action Committees formed pursuant to these regulations may govern themselves, and control and expend funds, in any manner not in violation of law.

§ 146-1-6. Miscellaneous Provisions.

6.1. Notwithstanding any provision of these regulations to the contrary, a corporation which customarily makes its meeting rooms available to clubs, civic or community organizations, or other groups may make such facilities available to a political committee, if the meeting rooms are made available on a nonpartisan basis and on the same terms given to other groups using the meeting rooms.

6.2. All persons are prohibited from knowingly accepting or receiving any contribution, payment, distribution, loan, advance, deposit, gift of money or services or anything of value prohibited by these regulations.

6.3. Nothing in these regulations limits in any manner the reporting obligations of corporations or Corporate Political Action Committees or any other person under W. Va. Code § 3-8-5.

§ 146-1-7. Penalty Provision.

Any person violating this rule shall be guilty a misdemeanor, and, upon conviction thereof, shall be fined not more than ten thousand ($10,000) dollars pursuant to W. Va. Code § 3-8-8.

SERIES 2

FAIR CAMPAIGN PRACTICES

Sec.

146-2-1. General.

146-2-2. Definitions.

146-2-3. Code of Fair Campaign Practices.

146-2-4. Advisory Opinions.

146-2-5. Complaint and Hearing Procedures.

§ 146-2-1. General.

1.1. Scope.—These rules establish the implementation of state law on the voluntary adherence to the "Fair Campaign Practices of 1995." See W. Va. Code § 3-1B-1, et seq.

1.2. Authority.—W. Va. Code §§ 3-1A-5, 6 and 3-1B-3

1.3. Filing Date.—May 24, 1996.

1.4. Effective Date.—June 7, 1996.

§ 146-2-2. Definitions.

2.1. "Campaign advertising or communication" means:

2.1.1. a communication, whether written or oral, authorized by a candidate or a candidate's committee; and,

2.1.2. for the express purpose of publicly advocating the nomination, election or defeat of a candidate.

2.2. "Candidate for public office" means an individual:

2.2.1. who has filed a pre-candidacy statement, pursuant to W. Va. Code '3-8-5e; or

2.2.2. who has qualified to have his or her name listed on the ballot of any election; or

2.2.3. who has declared his or her intention to seek nomination or election for any state, regional, county, municipal or district office which is to be filled at an election through a petition or write-in procedure.

2.3. "Code" means the Code of Fair Campaign Practices, set forth in W. Va. Code § 3-1B-5.

2.4. "Commission" means the state election commission created pursuant to the applicable provisions of W. Va. Code § 3-1A-1 et seq.

2.5. "Political committee" means a committee organized by one or more individuals, corporations, associations, labor unions or organization, for the purpose of advocating or opposing the nomination or election of one or more candidates or the passage or defeat of one or more ballot issues.

2.6. "Advisory opinion" means a written opinion issued by the commission in response to a written request for such an opinion on the issue of whether or not an action, or proposed action, of a subscribing candidate violates the Code of Fair Campaign Practices;

2.7. "Subscribing candidate" means a candidate for public office who has voluntarily agreed to subscribe to, adhere to and endorse the Code of Fair Campaign Practices;

2.8. "Automatic release" means a release by operation of law, pursuant to the applicable provisions of W. Va. Code § 3-1B-9, from the campaign spending limitations when a subscribing candidate's opponent exceeds such campaign spending limitations.

2.9. "Election officer" means the officer or official who receives the pre-candidacy filings made by individuals running for public office, and includes the Secretary of State, the Circuit Clerk, the County Clerk, and the Municipal Clerk or Recorder.

§ 146-2-3. Code of Fair Campaign Practices.

3.1. Prescribed forms of code.

3.1.1. It is the duty of the secretary of state, in consultation with the commission, to prescribe the forms to be used and to furnish the prescribed forms to the appropriate election officers in sufficient time and quantities, as may be requested by the election officers;

3.1.2. The prescribed forms are required to contain the full and complete text that is statutorily mandated by W. Va. Code § 3-1B-5, except that the commission may increase the spending limitations established in the text at its discretion by properly promulgated legislative rule(s).

3.2. Notice and an opportunity to subscribe to the Code is required when:

3.2.1. an individual files his or her pre-candidacy statement, certificate of announcement, nominating petition and other paper evidencing his or her intention to be a candidate for public office; or

3.2.2. an individual files the statement of organization of a political committee.

3.3. At the time an election officer receives a filing, as outlined in '146-2-

3.2 above, the election officer is required

3.3.1. to furnish the individual with the prescribed form containing the text of the Code of Fair Campaign Practices;

3.3.2. to advise the candidate of his or her opportunity voluntarily to subscribe to, adhere to and endorse the code;

3.3.3. to inform the candidate whether or not his or her opponent(s) have voluntarily subscribed;

3.3.4. to advise the candidate of the voluntary nature of his or her subscription to, adherence to and endorsement of the code; and,

3.3.5. to inform the candidate that in no event will any person be required to so subscribe to, adhere to and endorse the code.

3.4. Forms of public information

3.4.1. The election officer receiving the filing is required to accept the candidate's completed forms at any and all times prior to the election;

3.4.2. Any election officer mistakenly receiving a completed form from a candidate (i.e. one which should have been filed with a different election officer) is required to forward the completed form immediately to the appropriate election officer, with a record of such kept until one hundred eighty (180) days after the election to which they pertain.

§ 146-2-4. Advisory Opinions.

4.1. The commission may, at its discretion, issue advisory opinions in response to written requests for such on the issue of whether or not an action, or proposed action, of a subscribing candidate violates the code;

4.2. The opinion is required to be in writing, citing the particular part or portion of the code, or any other authority, being relied upon by the commission;

4.3. All advisory opinions issued are required to be published and indexed in the code of state rules by the secretary of state.

§ 146-2-5. Complaint and Hearing Procedures.

The complaint will be in writing on the forms prescribed by the commission. The form will include, at least, the following sworn and notarized information.

5.1.1. The name, address and telephone number of the complainant; and

5.1.2. The name, address and telephone number of the subscribing candidate; and

5.1.3. A narrative section, which will include the complainant's allegations of violation(s) by the subscribing candidate, with as much particularly as possible requested on the face of the form; and,

5.1.4. The signature of the complainant, with a proper verification as is used in other civil cases, wherein the complainant affirms that he or she believes the allegations complained of are true and correct; and

5.1.5. Within five (5) days of receiving the written complaint, the commission will forward a copy of the complaint to the subscribing candidate, requesting a written answer to the alleged violations of the code; and,

5.1.6. Within ten (10) days of his or her receipt of the complaint, the subscribing candidate will file his or her answer; and

5.1.7. The answer of the subscribing candidate:

(a) will be made in writing, with the proper complaint number on the face of the answer; and

(b) should address each allegation made by the complainant; and

(c) will have the signature of the subscribing candidate, along with a statement swearing or affirming that the information contained in the answer is true and correct to the best of the candidate's knowledge.

5.1.8. Within ten (10) days of its receipt of the answer the commission will determine by a majority vote whether or not there is a reasonable likelihood that the candidate has violated the code.

5.1.9. If the subscribing candidate is determined not to have a reasonable likelihood of having violated the code, the candidate will be so advised in writing.

5.1.10. If the subscribing candidate is determined to have a reasonable likelihood of having violated the code, the candidate will be so informed in writing, together with a proper notice of his or her right to request a hearing before the commission within ten (10) days of the receipt of the determination and notice.

5.1.11. Should the subscribing candidate request a hearing before the commission, it will:

(a) be scheduled within ten (10) days after such request with written notice of such served upon both the complainant and the candidate; and

(b) be continued only for good cause shown.

5.1.12. At and during the hearing on the merits of the complaint, the commission:

(a) will conduct a hearing in a fair and impartial manner to both the complainant, and his or her witnesses, and the subscribing candidate, and his or her witnesses; and,

(b) need not strictly apply the Rules of Evidence, however, the evidence must be reasonably related to the issues in the complaint

(c) will in it's discretion admit credible hearsay evidence; and

(d) will make it's decision based on the greater weight of evidence presented at the hearing;

(e) will have a quorum present at the hearing and the decision must be agreed upon by a majority of those present.

5.1.13. Following the commission's review and deliberations over all of the evidence introduced and the entire record before it, the commission:

(a) may issue a public opinion stating that the subscribing candidate has committed a violation of the code, should the commission determine by majority vote that there was clear and convincing evidence supporting the alleged violation(s), or should the subscribing candidate decline to request such a hearing; or

(b) will issue a public statement that the subscribing candidate has not violated the code, should the commission determine by a majority vote that there was not clear and convincing evidence supporting the alleged violation(s). This public statement will be issued on the same day on which the hearing takes place, as required by W. Va. Code § 3-1B-4.

SERIES 3

REGULATION OF CAMPAIGN FINANCE

Sec.

146-3-1. General.

146-3-2. Definitions.

146-3-3. Contributions for Primary and General Elections.

146-3-4. Contributions for Inaugural Events.

146-3-5. Contribution Limitations and Sources.

146-3-6. Lawful Expenditures.

146-3-7. Disposing of Excess Campaign Assets, Terminating a Political Committee.

146-3-8. Receiving, Distributing and Reporting Contributions and Expenditures.

146-3-9. State and Local Activity by Federal Committees.

146-3-10. Solicitation for Political Purposes.

146-3-11. Procedures for Levying Civil Penalties

146-3-12. Political Disclaimers.

146-3-13. Membership Organization Activity.

§ 146-3-1. General.

1.1. Scope.—This rule clarifies and provides for implementation of state law relating to the regulation of campaign finance, reporting requirements and prohibited activities set forth under W. Va. Code § 3-8-1 et seq.

1.2. Authority.—W. Va. Code § 3-1A-5.

1.3. Filing Date.—April 10, 2008.

1.4. Effective Date.—April 10, 2008.

§ 146-3-2. Definitions.

2.1. "Ballot issue" means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter adoption or revision, an increase or decrease of corporate limits, or any other question placed before the voters under the provisions of the West Virginia Code.

2.2. "Ballot issue committee" means a committee established solely for the purpose of advocating or opposing a ballot issue and which makes no expenditures to or on behalf of a political committee.

2.3. "Business affiliation" means the name of an individual's employer, or the name of the firm, business or organization, if any, with which a self-employed individual is primarily affiliated.

2.4. "Candidate" means an individual who:

2.4.a. has filed a certificate of announcement under W. Va. Code § 3-5-7 or a municipal charter;

2.4.b. has filed declaration of candidacy under W. Va. Code § 3-5-23;

2.4.c. has been named to fill a vacancy on a ballot; or

2.4.d. has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election to a state, district, county or municipal office or party office to be filled at any primary, general or special election.

2.5. "Candidate's committee" means a political committee established with the approval of or in cooperation with one pre-candidate or candidate to explore the possibilities of seeking a particular office and/or to advocate his or her nomination or election to an office in one election cycle. If a candidate directs or influences the activities of more than one committee, those committees shall be considered one committee for the purpose of contribution limits.

2.6. "Election" means any primary, general or special election conducted under the provisions of this code or under the charter of any municipality.

2.7. "Grossly incomplete or grossly inaccurate" means that a financial statement as defined under W. Va. Code § 3-8-5 is missing information required by W. Va. Code § 3-8-2 et seq. and State Election Commission, Regulation of Campaign Finance, 146 CSR 3.

2.8. Member means any person who currently satisfies the membership requirements in a membership organization, affirmatively accepts the membership organization's invitation to become a member, and either:

2.8.a. Pay membership dues at least annually, of a specific amount predetermined by the organization; or

2.8.b. Have a significant organizational attachment to the membership organization which includes: affirmation of membership on at least an annual basis; and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote directly for organization officers; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

2.9. Membership Organization means an organization that:

2.9.a. Is composed of members, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;

2.9.b. Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;

2.9.c. Makes its articles, bylaws, constitution, or other formal organizational documents available to its members upon request;

2.9.d. Expressly solicits persons to become members;

2.9.e. Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the members' name on a membership newsletter list; and

2.9.f. Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to political office.

2.10. "Necessary traveling and hotel expenses" includes mileage at a rate not to exceed the current state-mandated reimbursement rate per mile or direct charges for transportation and itemized food and lodging costs incurred specifically for the purpose of campaigning or conducting the organizational, political or financial business of a political committee. The term does not include the purchase cost of any vehicle, or expenditures for traveling and hotel expenses incurred for activities which result primarily in personal benefit and are not directly and specifically undertaken for political purposes.

2.11. "Nominal noncash expressions of appreciation" means a token of appreciation, having a cash value of three dollars ($3.00) or less, given to volunteer or paid campaign workers following the close of the polls or within 30 days thereafter.

2.12. "Occupation" means the principal work activity which is described by a general term such as teacher, miner, business executive, homemaker or doctor.

2.13. Person means an individual, partnership, committee, association and any other organization or group of individuals.

2.14. Political Action Committee means a committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates. The following are types of political action committees:

2.14.a. A corporate political action committee;

2.14.b. A separate segregated fund established by a membership organization, as defined by this rule;

2.14.c. An unaffiliated political action committee.

2.15. "Political committee" means any candidate committee, political action committee or political party committee.

2.15.a. This definition includes but is not limited to political party executive committees, other committees operating in conjunction with a political party or using a political party name, political action committees and any other organizations, whether temporarily or permanently established, using any portion of their funds for political purposes.

2.15.b. This definition shall not include family members or members of a partnership acting together to make joint or individual contributions to a candidate or political committee.

2.16. "Political party committee" means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination or defeat of a candidate in any election.

2.17. "Political purposes" means advocating or opposing the nomination, election or defeat of one or more candidates, supporting the administration or activities of an established political party or an organization which has declared itself a political party, supporting the administration or activities of a political committee determining the advisability of becoming a candidate under the pre-candidacy financing provisions, and supporting the retirement of the debt of a candidate or political committee incurred for any of the purposes set forth in this subsection.

2.18. "Pre-candidate" means, for the purpose of this rule, an individual who has filed a pre-candidacy statement under the provisions of W. Va. Code § 3-8-5e but has not yet filed a certificate of announcement or declaration of candidacy. This definition does not exclude a pre-candidate from the

requirements and prohibitions relating to candidates in the West Virginia Code.

2.19. Restricted Group means the membership organization's members and the executive or administrative personnel of the membership organization and their families.

2.20. "Solicit" or "solicitation" means the act of asking, suggesting, requiring or inviting, either orally or in writing, a person or persons, organization of any kind, political committee or other entity to give a contribution or other thing of value for political purposes, as defined in this section.

2.21. "Treasurer" means an individual designated to act on behalf of a political committee to conduct the financial transactions of the committee. For the purposes of this rule, the term "treasurer" shall be used in place of "financial agent" as defined in W. Va. Code § 3-8-1a when the individual acts on behalf of more than one candidate or person.

§ 146-3-3. Contributions for Primary and General Elections.

3.1. A contribution to a pre-candidate or pre-candidate's committee is a contribution in connection with a primary election.

3.2. A contribution to a candidate or candidate's committee is a contribution in connection with a primary election in the following circumstances:

3.2.a. For a candidate for nomination or election in the primary or for nomination by petition, all contributions received on or before the primary election day;

3.2.b. For a candidate nominated in the primary election, a contribution received after the primary which is designated in writing on the financial report, with the consent of the contributor, as a contribution for the primary election, providing the aggregate of all these designated contributions do not exceed the total of unpaid bills, loans or other financial obligations incurred for the primary election;

3.2.c. For a candidate defeated for nomination in the primary election, all contributions received after the primary, not to exceed the total of unpaid primary election expenses; and

3.2.d. For a candidate for nomination in a party convention, all contributions received on or before the day of that convention.

3.3. A contribution to a candidate or candidate's committee is a contribution in connection with a general or special election in the following circumstances:

3.3.a. For a candidate nominated in a primary election or party convention, all contributions, except those designated as primary contributions under subdivision 3.2.2, of this section received after the nomination and not later than the date when all debts, loans or other financial obligations of the general election campaign have been repaid; and

3.3.b. For a candidate appointed to fill a vacancy on the general or special election ballot by a party executive committee, all contributions received in connection with the election and not later than the date when all debts, loans or other financial obligations of the general election campaign have been repaid.

3.4. A contribution to a political committee, other than a candidate's committee, acting for political purposes in both the primary and general election is a contribution:

3.4.a. In connection with a primary election, if the contribution is received on or after the last Saturday in March of a non-election year and by the date of the primary election in the following calendar year (for example, from March 27, 1999, to May 8, 2000); and

3.4.b. In connection with a general election, if the contribution is received after the date of a primary election and not later than the day before the last Saturday of March of the following calendar year (for example, from May 10, 2000 to March 24, 2001).

3.5. A contribution to a political committee acting for political purposes only in one election is a contribution in connection with that election.

§ 146-3-4. Contributions for Inaugural Events.

4.1. An inaugural committee established for the purpose of soliciting or receiving contributions for the funding of all or any part of an inaugural event for any person elected to any state public office shall file a verified financial statement with the Secretary of State's Office relating to any contributions from one person in excess of two hundred fifty dollars ($250.)

4.2. An inaugural committee shall file and retain detailed records of any contribution from one person in excess of two hundred fifty dollars ($250.).

4.3. For purposes of this section, "detailed records" shall contain the following information:

4.3.a. The full name of each person, firm, association or committee;

4.3.b. The residence and mailing address of the contributor and may include a business telephone number, if available;

4.3.c. In the case of an individual, his or her major business affiliation and occupation; and

4.3.d. The amount of the contribution.

4.4. The inaugural committee, financial agent or any person or officer acting on behalf of the committee shall file a sworn financial statement, containing the information required by subsection 4.3 of this section for each person making a contribution in excess of two hundred fifty dollars ($250.), within ninety (90) days following the inaugural event.

4.5. The sworn financial statement shall be on a form prescribed by the State

Election Commission.

4.6. Aggregate contributions of any person to any inaugural committee shall not exceed $5,000.

4.7. Excess campaign funds, as defined in section 7 of this rule, may not be transferred to an inaugural committee.

§ 146-3-5. Contribution Limitations and Sources.

5.1. Limitations on contributions to candidates for national elective office (including President, Vice President, U.S. Senate and U.S. House of Representatives) are established in Chapter 14, Title 2 of the United States Code and the Code of Federal Regulations and are not subject to regulation by the states. The Federal Election Commission regulates federal campaign activity. (FEC, 999 E Street, N. W., Washington, D.C. 20463 Telephone (800)424-9530)

5.2. Aggregate contributions from one person to a candidate or political committee in connection with a primary election may not exceed one thousand dollars ($1,000). Aggregate contributions from one person to a candidate or political committee in connection with a general or special election may not exceed one thousand dollars ($1,000); Provided that the aggregate of contributions from one person to a State political party executive committee may not exceed one thousand dollars ($1,000.) in any calendar year.

5.3. A contribution made by a business licensed as a sole proprietorship is a contribution made by the owner of that sole proprietorship. The aggregate contribution limits apply to all contributions to a candidate or political committee made by that owner, whether from personal or business funds.

5.4. A contribution made by a business licensed as a partnership is a contribution which shall be apportioned to the ownership interest of the partners. The aggregate contribution limits apply to contributions to a candidate or political committee made by each partner whether from personal funds or from the contributor's share of partnership funds.

5.5. A husband and wife may each contribute one thousand dollars ($1,000) to the same candidate or political committee in connection with the same election, regardless of the source of family income.

5.6. A contribution made by check drawn on a joint personal account shall be attributed to the person who signed the check, or equally to the persons signing the check, unless otherwise specified in writing by the contributor.

5.7. Minor children (children under eighteen (18) years of age) may contribute up to one thousand dollars ($1,000) to a candidate or political committee if:

5.7.a. The decision to contribute is made knowingly and voluntarily by the minor child;

5.7.b. The funds, goods or services contributed are owned and controlled by the minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained

in the child's name; and

5.7.c. The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed or is not in any other way controlled by another individual.

5.8. When a contributor designates all or part of a contribution for the benefit of a particular candidate and makes that contribution to a political committee acting with the approval or control of that candidate, the contribution shall be considered to be an indirect contribution to the designated candidate and is subject to the aggregate contribution limits for that candidate.

5.9. A candidate or candidate's committee established for one primary and general election may transfer excess campaign assets to the same candidate's campaign or committee for a subsequent election year, and the transfer is not limited by aggregate contribution limits.

5.10. The aggregate contribution by a person to a ballot issue committee is not limited; and corporate contributions to a ballot issue committee are not prohibited.

5.11. Transfers of contributions by a political committee established as a federal committee under the regulation of the Federal Election Commission (FEC) from the committee's federal account to a state account shall not be made for the purpose of allowing any contributor to exceed the maximum contribution per election to the state account.

5.12. If a candidate or candidate's committee has excess campaign funds at the time of the close of the General Election polls, close of the Primary Election polls if unsuccessful in the nomination in the Primary Election or withdrawal of candidacy or pre-candidacy, no further contributions may be accepted until the candidate files a pre-candidacy statement for a subsequent election.

5.13. If a candidate or candidate's committee has debts, outstanding loans or unpaid bills at the time of the close of the General Election polls, close of the Primary Election polls if unsuccessful in the nomination in the Primary Election or withdrawal of candidacy or pre-candidacy, further contributions may be accepted only until an amount sufficient to repay the debts and outstanding loans has been received.

§ 146-3-6. Lawful Expenditures.

6.1. Funds belonging to or received by a candidate or political committee may be used to employ persons to perform those functions enumerated in W. Va. Code § 3-8-9, either on a full-time, part-time or temporary basis, providing the provisions of State Election Commission, Regulation of Campaign Finance, 146 CSR 3 are complied with.

6.2. Funds belonging to or received by a political committee may be used for reasonable office expenses enumerated in W. Va. Code § 3-8-9.

6.3. No money or thing of value derived from contributions received by a political committee may be paid to or given to any person, except:

6.3.a. as lawful payment for goods provided, services rendered or reimbursement of expenses incurred for political purposes as defined in subsection 2.16 of this rule;

6.3.b. as food, entertainment or costs incidental to a fund-raising event or public meeting;

6.3.c. as printed campaign promotional items of nominal value which clearly identify the candidate, or party; or

6.3.d. as a nominal noncash expression of appreciation to campaign workers as defined in subsection 2.9 of this rule, following the close of the polls or within 30 days thereafter.

6.4. A candidate may be reimbursed from contributions received for lawful election expenses paid from the personal funds of the candidate, providing receipts are retained and those itemized expenditures are reported in a timely manner as required by law.

6.5. No candidate may receive any payment of money or other thing of value for personal use from funds solicited or received for political purposes on his or her behalf, except as reimbursement as provided in subsection 6.4 of this rule.

§ 146-3-7. Disposing of Excess Campaign Assets, Terminating a Political Committee.

7.1. Excess campaign assets are those monies, materials, equipment or other things of value derived from contributions which:

7.1.a. remain in the possession of the pre-candidate or pre-candidate's committee at the conclusion of pre-candidacy when the pre-candidate decides not to become a candidate;

7.1.b. remain in the possession of the candidate or candidate's committee after the candidate loses in the primary election or after the candidate's general election and after debts, loans and other liabilities are repaid; or

7.1.c. belong to a political committee which wishes to discontinue activity and dissolve.

7.2. Excess campaign assets may be lawfully:

7.2.a. transferred from a candidate's committee organized for one election year to the same candidate's committee for a subsequent election year, providing that candidate has filed a pre-candidacy statement and a statement of organization of the new committee before the transfer is made;

7.2.b. distributed for a lawful election expense enumerated in W. Va. Code § 3-8-10 by making a contribution to one or more political party committees, other political committees or candidates, in accordance with the existing limitations on contributions;

7.2.c. returned on a pro-rata basis to each contributor;

7.2.d. subject to Internal Revenue Service regulations relating to personal income, used by the candidate to defray any usual and customary expenses incurred in connection with his or her duties as a holder of public office;

7.2.e. contributed to any charitable organization without limitation; or

7.2.f. transferred to any state party, executive committee or state party legislative caucus committee, in an amount not to exceed fifteen thousand dollars in a calendar year; or

7.2.g. contributed to any national committee in accordance with federal requirements.

7.3. No person may receive or utilize excess campaign assets for personal economic benefit or use.

7.3.a. Subject to subdivision 7.2.d. of this section, supplies or equipment purchased by an office holder and used to defray any usual and customary expenses incurred in connection with his or her duties as a holder of public office becomes the property of the state, or the district, county, or municipality in which the office is held.

7.4. No candidate, financial agent or treasurer may distribute excess campaign assets through personal gifts, promotional items or other expenditures not authorized by W. Va. Code § 3-8-10 or W. Va. Code § 3-8-9(a)(13).

7.5. A political committee which is solvent and has no outstanding debts or obligations may terminate its existence by:

7.5.a. filing a statement of dissolution with the Secretary of State, if the political committee was formed in support of a candidate for nomination or election to any office to be filled by voters of the entire state, or a candidate for nomination or election for any office encompassing an election district larger than a county, or the passage or defeat of any issue, thing or item to be voted upon, encompassing an election larger than a county; or

7.5.b. filing a statement of dissolution with the county clerk or municipal clerk or recorder, or other such election officer as defined in State Election Commission, Regulation of Campaign Finance, 146 CSR 3, as may be determined proper by the Secretary of State, if the political committee was formed in support of a candidate for nomination or election to any office to be filled by voters of a county or district therein, or for the passage or defeat of any issue, thing or item to be voted upon, encompassing the electorate of a county or district therein; and,

7.5.c. stating within the written request that the political committee will no longer receive any contributions or make any disbursements; and,

7.5.d. stating within the written request that the political committee has no outstanding debts or obligations; and,

7.5.e. stating within the written request that any excess funds of the political committee will be transferred to a political committee established by

the same candidate, or established for the passage or defeat of the same issue, thing or item, or will be otherwise disbursed pursuant to subsection 7.2 of this rule.

7.6. The Secretary of State's Office may, upon the request of the committee, make determinations as to the solvency or insolvency of a political committee, including:

7.6.a. the orderly liquidation of an insolvent political committee;

7.6.b. the orderly application of the assets of an insolvent political committee toward reduction of its outstanding debts;

7.6.c. the assessment of any forgiven debts as being political contributions; and,

7.6.d. the termination of an insolvent political committee after the liquidation and application of assets.

§ 146-3-8. Receiving, Distributing and Reporting Contributions and Expenditures.

8.1. The treasurer of a political committee receives all contributions and disburses all funds, and it is unlawful for a person or persons other than the treasurer to receive and disburse funds without the treasurer's knowledge and participation.

8.2. A candidate who does not appoint another person as financial agent or organize a candidate's committee and appoint a treasurer at least twenty-eight (28) days prior to the election at which he or she is to act shall be considered to be the financial agent for his or her own campaign.

8.3. A financial report shall include all financial transactions occurring during the accounting period just completed, and any other financial transactions which have not been reported previously. Financial reports shall be in the form prescribed by the State Election Commission.

8.4. For the purpose of financial accounting and reporting, an election cycle is divided into accounting periods. The first accounting period begins on the date of the first financial transaction. The last day of each accounting period is the day before the next financial report may be filed. Accounting periods end on the following dates:

8.4.a. the day before the last Saturday in March of each year;

8.4.b. the sixteenth day before the primary election;

8.4.c. the twelfth day after the primary election;

8.4.d. the forty fourth day preceding the general election;

8.4.e. the sixteenth day before the general election; and

8.4.f. the twelfth day after the general election.

8.5. Financial reports may be filed, pursuant to W. Va. Code § 3-8-5b,

8.5.a. by mail;

8.5.b. in person; or,

8.5.c. by facsimile or other electronic means of transmission to be established by the Secretary of State.

8.6. Filing dates for each method of delivery shall be determined as follows:

8.6.a. For mailings, the filing date is the date of the postmark of the United States Postal Service;

8.6.b. For hand delivery, the filing date, is the date of delivery to the proper reporting agency or entity during regular business hours of such office; and

8.6.c. For the facsimile or other electronic means of transmission, the filing date is the date of delivery to the appropriate reporting agency or entity.

8.7. Financial statements which are delivered by facsimile or other means of electronic transmission shall be limited in length to fifteen (15) pages, including a cover page. When delivered by a facsimile or other electronic means of transmission, original signed and sworn financial statements shall be postmarked or hand delivered to the appropriate reporting agency or entity within twenty-four (24) hours of the date of the facsimile or other means of electronic transmission.

8.8. For the purpose of reporting contributions, a contribution occurs on the date the check, cash or other thing of value is received by the treasurer or agent of the political committee. No person acting as agent for the candidate, treasurer or committee shall knowingly withhold a contribution from the treasurer to prevent the reporting of the contribution until a later reporting period.

8.9. For the purpose of reporting unpaid bills, a liability is incurred on the date a bill for goods received or services rendered is received by the treasurer or agent of the political committee.

8.10. For the purpose of reporting expenditures, an expenditure is made on the date the treasurer or agent of the political committee writes the check or transfers cash to any person to pay for goods or services rendered. No transfer may be made to an intermediary to avoid reporting an expenditure in a particular reporting period.

8.11. Persons making independent expenditures shall report those expenditures according to W. Va. Code § 3-8-2.

8.12. Persons making electioneering communications shall report those expenditures according to W. Va. Code § 3-8-2a.

§ 146-3-9. State and Local Activity by Federal Committees.

9.1. A political committee other than a candidate's committee which properly establishes and maintains an account with the Federal Election Commission shall be in compliance with the state reporting requirements if all requirements are met in reporting with the Federal Election Commission. No additional reporting requirements are applicable to meet the requirements of W. Va. Code § 3-8-1 et seq.

9.2. When a federal committee maintains a state account, the treasurer shall not place in its federal account, funds which have been designated by the contributor for use in state, district, county and municipal election activities. The funds shall be placed directly into the state account, and are subject to state reporting requirements and contribution limits.

9.3. The treasurer of a federal committee may not knowingly transfer into a state account or disburse on behalf of a state or local candidate or political committee any portion of an individual contributor's contribution which exceeds one thousand dollars ($1,000) per election.

§ 146-3-10. Solicitation for Political Purposes.

10.1. No person may lawfully solicit and accept funds for political purposes on behalf of any individual before that individual becomes a pre-candidate or a candidate as defined in this rule.

10.2. No person may lawfully solicit and accept funds on behalf of any political committee, other than a candidate's committee, before that committee files a statement of organization and appoints a treasurer.

10.3. No person may lawfully solicit and accept funds on behalf of any candidate or any elected official if no outstanding debt remains from a previous election, except in that a pre-candidate, candidate or political committee may solicit or accept funds if pre-candidacy papers have been filed for an upcoming primary or general election.

10.4. A person who solicits funds to retire a debt incurred for political purposes by a candidate or committee during a previous primary or general election is soliciting funds in connection with that campaign for nomination or election.

10.5. A solicitation which is broadcast by radio or television or published in a newspaper or other publication of general circulation shall not be considered to violate any prohibition against solicitation of the members of specific groups.

10.6. A solicitation which is conducted randomly by such means as bulk mail to boxholders, broad literature distribution in a geographic area, or random-number telephone solicitations shall not be considered to violate any prohibition against solicitation of the members of specific groups, providing solicitations of the members of specific groups are not knowingly and purposely included in the random solicitation.

10.7. A solicitation directed to individuals by name shall not be considered to violate the prohibition against solicitation of public employees if that

solicitation prominently contains the words "Please disregard if you are a public employee" or words to that effect, providing solicitations of members of prohibited groups are not knowingly and purposely included in the solicitation.

10.8. A solicitation specifically on behalf of one or more candidates for President, Vice President, U.S. Senate or U.S. House of Representatives is governed by the United States Code and the Code of Federal Regulations and is not subject to regulation by the state.

10.9. A solicitation within the state by a federal committee is subject to the W. Va. Code and State Election Commission, Regulation of Campaign Finance, 146 CSR 3, if all or part of any contribution received as a result of the solicitation is used to support one or more candidates in West Virginia.

§ 146-3-11. Procedures for Levying Civil Penalties.

11.1. A campaign finance report shall not be grossly incomplete or grossly inaccurate if:

11.1.a. the filing officer has notified, by certified mail, the individual or committee responsible for filing the report that the report is incomplete or inaccurate;

11.1.b. corrections to the report are received by the filing officer no later than ten (10) days after the individual or committee has been notified of the inaccuracies; and

11.1.c. in the case of a financial statement due not less than three nor more than fifteen days preceding each primary or other election, corrections to the report are received by the filing officer no later than twenty-four (24) hours after the individual or committee has been notified of the inaccuracies or deficiencies.

11.2. A report shall be considered to be delinquent if:

11.2.a. It is received after the deadlines established by W. Va. Code § 3-8-5; and

11.2.b. It bears a U.S. Postal Service postmark dated after the deadline.

11.3. A report shall not be considered delinquent if:

11.3.a. The report is filed late due to the death of the candidate, treasurer, or other individual responsible for filing the reports; or

11.3.b. The report is filed late due to a serious illness of the candidate, treasurer, or other individual responsible for filing the reports; and

11.3.c. A written notification of either death or serious illness is received by the filing officer no later than sixty days after the last day the financial statement is due. Upon receipt of the notification, the filing officer may grant an extension of time for the filing of the financial statement.

§ 146-3-12. Political Disclaimers.

12.1. No person may publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, radio or television advertisement or other publication supporting or aiding the election or defeat of a clearly identified candidate.

12.2. No person will be in violation of subsection 12.1 above if on the communication the words "Paid for by (name of the person paying for the communication)" are visible and legible on the face of the communication or spoken clearly in an audio advertisement.

§ 146-3-13. Membership Organization Activity.

13.1. Any membership organization which for political purposes desires to involve itself outside the organization's restricted group must establish a separate segregated account to receive funds for such purpose.

13.2. Any membership organization which raises funds for political purposes by payroll deduction, as an assessment of a part of its membership dues, or as a separate assessment, may report the amount raised as follows:

13.2.a. If the portion of dues or assessments designated for political purposes equals twenty-five dollars or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to have been paid by each member and the number of paying members.

13.2.b. If the total payroll deduction for political purposes of each participating member equals twenty-five dollars or less over the course of a calendar year or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through payroll deductions during the reporting period and, to the maximum extent possible, the amount of yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

13.2.c. A membership organization may accept contributions by its members by means other than payroll deductions, membership dues, or assessments, but shall be reported in accordance with the provisions of WV Code § 3-8-5a(a)(3).

13.3. Administrative functions performed by a membership organization that shall not be deemed contributions to the separate segregated fund established for political purposes and shall not need to be reimbursed by the separate segregated fund include:

13.3.a. Expenditures made for public editorials or commentaries produced in the ordinary course of business by membership organization whose primary purpose is journalism or public communications.

13.3.b. Direct communications by a membership organization to its restricted group on any subject, by any means not intended to reach the general public. Such communications by a membership organization to its restricted group may be made by, but are not limited to, the following means:

13.3.b.1 The distribution of printed material by a membership organization to its restricted group: Provided, That

13.3.b.1.A. The material is disseminated at the expense of the membership organization; and

13.3.b.1.B. The material clearly states that it constitutes a communication of the views of the membership organization.

13.3.b.2. The allowing of a candidate or party representative to address the restricted group of the membership organization at any meeting, convention or other regularly scheduled function of the membership organization which is primarily held for other purposes. The membership organization shall pay no compensation whatsoever to such candidates. The candidate or party representative may address members of the restricted group in their individual rather than membership organization capacities, and may at such time ask for individual contributions to his or her campaign or party, ask that such contributions to be sent to his or her campaign or party, or ask that contributions to a separate segregated fund established by the membership organization be designation for his or her campaign or party.

13.3.b.3. The establishment and operation of phone banks by a membership organization to communicate with its restricted group urging them to register and/or vote for a particular candidate or candidates.

13.3.b.4. The conducting of nonpartisan registration and get-out-the-vote drives, as by providing transportation to the polls, by a membership organization aimed at its restricted group. If a registration drive is undertaken, assistance in registering or voting may not be withheld or refused on a partisan basis, and if transportation or other services are offered in connection with a registration or get-out-the-vote drive, such transportation or services may not be withheld or refused on a partisan basis.

13.4. The establishment and administration of a separate segregated fund of a membership organization, or persons acting on its behalf, may, subject to the authorization of such membership organization, use the real or personal property, facilities and equipment of any membership organization that participated in the establishment or participates in the administration or solicits contributions on behalf of such separate segregated fund established by the membership organization. The cost of such use of property, real or personal, facilities or equipment need not be reimbursed to the membership organization so long as such costs are incurred in setting up and running the separate segregated fund established by the membership organization. Such costs that need not be reimbursed include the costs of office space, phones, utilities and supplies.

SERIES 4

ELECTION EXPENDITURES

Sec.

146-4-1. General.

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146-4-8. Employment Of Election Workers By Candidates Or Candidate's Authorized Committee.

146-4-9. Employment Of Election Workers By Party Committees.

146-4-10. Employment Of Election Workers By Political Action Committees.

146-4-11. Forms.

§ 146-4-1. General.

1.1. Scope.—These legislative rules regulate the employment of election workers and regular campaign staff, rate of payment, method of payment, reporting requirements and forms utilized for compliance. These legislative rules apply to all municipal, county, state or national elections conducted in this State.

1.2. Authority.—W. Va. Code §§ 3-1A-5, 3-1A-6, 3-8-1, 3-8-11, 3-8-12, 3-9-12, 3-9-13, 3-9-16 and West Virginia Supreme Court of Appeals Order No. 16884

1.3. Filing Date.—April 10, 2008.

1.4. Effective Date.—April 10, 2008.

§ 146-4-2. Policy.

The Legislature through West Virginia Code subsection (d), section six, article one-a; section one, article eight; subsection (c), section eleven; subsection (e), section twelve, article eight; sections twelve, thirteen and sixteen, article nine, all of chapter three clearly addresses the intent of the Legislature to prevent the buying and selling of votes. Pursuant to statutory authority, it is the policy of the State Election Commission and the Secretary of State that unreasonable, excessive and grossly disproportionate expenditure of money in relation to services rendered represents the buying of votes or influence to obtain a public office. The following rules are established to carry out this policy.

§ 146-4-3. Definitions.

3.1. "Candidate's Committee" means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid

his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

3.2. "Paid Campaign Staff" means an individual employed by a political committee who works in excess of twenty (20) hours per week on a regular and continuing basis and who is paid a regular salary out of which is deducted withholding tax and social security obligations.

3.3. "Paid Election Worker" means an individual employed by a political committee on an intermittent, temporary or irregular basis.

3.4. "Political Action Committee" means a committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates.

3.5. "Political Committee" means any candidate's committee, political action committee or political party committee.

3.6. "Political Party Committee" means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination or defeat of a candidate in any election.

3.7. "Political Subdivision" means those precincts comprising the electoral district from which a candidate is to be elected. (i.e. senatorial district, delegate district)

3.8. "Volunteer Election Worker" means an individual providing services to a political committee without pay or other compensation for services, not including expenses.

§ 146-4-4. Exceptions.

4.1. Payments for contracted services with a person or business licensed to do business in the State of West Virginia are not limited by these regulations: Provided, however, that payments to election workers or campaign staff employed or provided by a licensed person or business on behalf of a candidate's committee are subject to these regulations. Such paid election workers employed for election day work will be calculated as part of the total paid workers allowed for that candidate or committee pursuant to Section 8 of these rules.

4.2. The number of volunteer election workers utilized on election day is not limited by these regulations.

§ 146-4-5. Payment Of Election Workers.

5.1. An election worker's pay, including direct or indirect payments for expenses, shall not exceed nine dollars ($9.00) per hour up to a maximum of seventy-five dollars ($75.00) per day regardless of the source or sources of the payment or the hours worked in any given day.

5.2. Payment shall be by check for any and all services provided or expenses

incurred by any paid election worker.

5.3. Any check issued for payment to any paid election worker shall clearly indicate the name of the candidate's committee issuing the check, and the name and social security number of the person to whom the check is issued.

5.4. No check may be issued to any paid election worker before that worker has submitted to the candidate's committee an itemized statement on a form prescribed by the Secretary of State showing the specific work performed, the times and dates of the work and the amount of pay to be issued by the candidate or committee to the election worker for the work reported.

5.5. The candidate's committee shall attach all itemized statements, upon which payment was made, with the financial statement, for the reporting period during which the check was issued.

5.6. The candidate's committee shall comply with all Internal Revenue Service laws, regulations and reporting requirements as they relate to the payment of election workers.

§ 146-4-6. Payment Of Campaign Staff.

6.1. Paid campaign staff may be paid in excess of seventy-five dollars ($75.00) per day, but such pay may not exceed that which is reasonable and fairly commensurate with similar services rendered in the private sector.

6.2. Payment shall be by check for any or all service provided by any paid campaign staff worker.

6.3. Any check issued for payment to any paid campaign staff worker shall clearly indicate the name of the organization or person issuing the check and the name and social security number of the person to whom the check is issued.

6.4. The candidate's committee shall file with the financial statement the names and social security number of each paid campaign staff worker employed during the reporting period covered by the financial statement, along with the job title, description of duties, rate of pay, beginning and ending employment dates and work schedule of each paid campaign staff worker.

6.5. The political committee shall comply with all Internal Revenue Service laws, regulations and reporting requirements as they apply to the payment of campaign staff.

§ 146-4-7. Reimbursement For Expenses Of Volunteer Election Workers.

7.1 A volunteer election worker may, by presentment of a receipt or receipts for the expenditures, be reimbursed for out-of-pocket purchases of goods or services made for the candidate's committee. Such out-of-pocket expenditure reimbursements shall be reflected in the candidate committee's financial report as an expenditure, as required by W. Va. Code 3-8-5a(a)(8).

7.2. Payment to a volunteer election worker for any and all expenses incurred shall be made by the candidate or committee by check.

7.3. Reimbursement for mileage shall not exceed the current state-mandated reimbursement rate per mile.

§ 146-4-8. Employment Of Election Workers By Candidates Or Candidate's Authorized Committee.

8.1. Each candidate's committee may employ paid election workers solely for the candidate's personal campaign: Provided, however, That within the limits of one (1) election worker per precinct, as set forth in Section 8.2 of these rules, two (2) or more candidates' committees may jointly employ paid election workers only when the payment to each worker is equally divided among the candidate's committees.

8.2. Under no circumstances shall a candidate's committee employ directly or indirectly in excess of one (1) paid election worker per number of precincts within the area the candidate is seeking to represent. The total number of election worker(s) employed to work within any political subdivision shall not exceed the total number of precincts in which the candidate appears on the ballot within that political subdivision. The candidate's committee may employ any number of worker(s) per day per political subdivision, so long as the total number of worker-days do not exceed the number of precincts in the political subdivision. (Example: In a delegate district with thirty (30) precincts, thirty (30) workers may be employed for one (1) day; or, one (1) worker may be employed for thirty (30) days; or, three (3) workers may be employed for ten (10) days; or, any variation so long as the number of workers or worker-days do not exceed the total precincts within that delegate district).

8.3. A candidate's committee may not make indirect contributions to other candidates or committees by having paid election workers drive voters, distribute literature or perform any other task on behalf of another candidate.

8.4. The candidate's committee shall comply with all Internal Revenue Service laws, regulations and reporting requirements as they apply to the payment of campaign staff.

§ 146-4-9. Employment Of Election Workers By Party Committees.

9.1. Each party committee may employ election workers: Provided, however, That a municipal executive committee may not employ election workers on any county, district or statewide election day and a county, district or statewide executive committee may not employ election workers on any municipal election day.

9.2. Any state party executive committee may employ not more than one (1) paid election worker per precinct within any county.

9.3. Any county executive committee, or combination of county and district executive committees of the same political party, may employ not more than one (1) election worker per precinct within a county.

9.4. Any municipal executive committee may employ not more than one (1) paid election worker per precinct within the city.

§ 146-4-10. Employment Of Election Workers By Political Action Committees.

10.1. Each political action committee may employ election workers.

10.2. Regardless of the number of candidates supported or opposed by a political action committee, the total number of paid election workers employed by such committee to work within any county may not exceed the total number of precincts within that county in which candidates or issues supported or opposed appear on the ballot.

10.3. Each political action committee shall report the amount of expenditures made on behalf of each candidate or to promote the defeat of a candidate.

§ 146-4-11. Forms.

All forms necessary to comply with this rule shall be prescribed by the State Election Commission and available from the Secretary of State's office, county clerk's office, and the municipal election officer.

TITLE 153

INTERPRETIVE RULE SECRETARY OF STATE

SERIES 8

ELECTIONEERING PROHIBITION

Sec.

153-8-1. General.

153-8-2. Electioneering Defined.

153-8-3. Measurement of Restricted Areas.

153-8-4. Business Within Three Hundred Foot (300′) Area.

153-8-5. Use of Private Residences Within Three Hundred Foot (300′) Area.

153-8-6. Billboards and Signs.

153-8-7. Driving to the Polls.

153-8-8. Press Personnel.

153-8-9. Delivery of Lunches.

153-8-10. "Checkers."

§ 153-8-1. General.

1.1. Scope.—This interpretive rule relates to electioneering prohibitions found in the below West Virginia Code citations and the Secretary of State's position in the enforcement of these provisions.

1.2. Authority and Related Code Citations.—W. Va. Code §§ 3-1A-6, 3-1-20, 3-1-37, 3-9-6 and 3-9-9.

1.3. Filing Date.—October 25, 1985.

1.4. Effective Date.—October 25, 1985.

§ 153-8-2. Electioneering Defined.

Electioneering means anything which aids or promotes the success or defeat of any candidate or ballot issue, such as displaying of signs, distribution of campaign literature, cards or handbills, or the solicitation of voters for or against any candidate or question on the ballot.

§ 153-8-3. Measurement of Restricted Areas.

3.1. Where the West Virginia Code establishes the distance in which electioneering is prohibited on election day, that distance shall be measured from the outside entrance door of the building containing the election room, The outside entrance door shall be that outside door beside which the flags and placards designating the precinct number are placed.

3.2. The officers of election shall, prior to the opening of the polls, measure from the outside door of the building housing the voting place along access walkways and/or roadways to determine the three hundred foot (300') distance and shall clearly mark the boundary of the restricted area in at least two (2) places.

§ 153-8-4. Business Within Three Hundred Foot (300′) Area.

4.1. The law specifically allows persons to enter the three hundred foot (300') restricted area "while in the discharge of their legitimate business." All permanent and regular businesses may remain open, and people may come in and out on election day, but no person may use this exception to electioneer under the cover of business.

4.2. Temporary business, such as bake sales or hot dog stands, must be established outside of the three hundred foot (300') area during primary, general, and municipal elections.

§ 153-8-5. Use of Private Residences Within Three Hundred Foot (300′) Area.

No house, office or other facility within the three hundred foot (300') limit may be used as a center where food and drink is mixed with campaign persuasion for a number of people, or for voters to receive political advice and literature.

§ 153-8-6. Billboards and Signs.

6.1. Permanent structures made continuously available for commercial advertising may display political advertising and are not required to be removed on election day if located within the three hundred foot (300')

restricted area.

6.2. Electioneering signs erected on private property within the three hundred foot (300') restricted area are prohibited during the hours the polls are open and must be removed before 6:30 a.m. on election day.

6.3. Stopping, standing and parking of vehicles displaying electioneering signs within the three hundred foot (300') restricted area is prohibited, except as provided in 7.3 or 7.4.

§ 153-8-7. Driving to the Polls.

7.1. Drivers who are regularly transporting persons or groups of persons to the polls may drop off those persons within the three hundred foot (300') area, but must then remove the vehicle outside the three hundred foot (300') area until time to pick up those persons after they have voted.

7.2. Drivers who are transporting elderly, handicapped or blind voters may remain within three hundred foot (300') area while the voters are inside the polling place, but may not utilize such privilege for electioneering.

7.3. Such vehicles permitted within the three hundred foot (300') area must remove all election signs from such vehicles. Small signs such as bumper stickers which are not easily removed may be left on the vehicle.

7.4. Voters may park within the three hundred foot (300') area while they are voting. Small signs such as bumper stickers need not be removed from a voter's vehicle, but large signs must be removed.

§ 153-8-8. Press Personnel.

8.1. Legitimate news media personnel with proper credentials may remain within the three hundred foot (300') area while conducting their official and legitimate news-gathering business, including exit polling, but may not enter the polling place or the building housing the polling place.

§ 153-8-9. Delivery of Lunches.

Lunches may be delivered to the door of the polling room during meal periods, Repeated visitation to the polling room to deliver messages, food or drink or for any other purpose is prohibited.

§ 153-8-10. "Checkers."

"Checkers" who keep lists of those who vote or attempt to ask questions of voters or urge voters to vote one way or another are not permitted within the three hundred foot (300') restricted area.

SERIES 9

ELIMINATION OF PRECINCT REGISTRATION BOOKS

Sec.

153-9-1. General.

153-9-2. Definitions.

153-9-3. Elimination of Separate Precinct Registration Books.

§ 153-9-1. General.

1.1. Scope.—This rule provides for implementation of state law relating to the maintenance of state voter registration records.

1.2. Authority.—W. Va. Code § 3-2-21.

1.3. Filing Date.—April 25, 2000.

1.4. Effective Date.—June 12, 2000.

§ 153-9-2. Definitions.

2.1. "State Uniform Data System" means a uniform software program and system of digitized electronic storage of voter registration records.

2.2. "Precinct Registration Books" means the hard-cover books which contain the voter registration records.

§ 153-9-3. Elimination of Separate Precinct Registration Books.

A county may eliminate precinct registrations books after it has officially adopted the State Uniform Data System.

3.2. The State Uniform Data System shall contain the following information for each voter:

3.2.1. first, middle and last name; and,

3.2.2. residence address including city, county, number and street or RFD and Zip number;

3.2.3. mailing address, if any;

3.2.4. date of birth;

3.2.5. gender;

3.2.6. last four numbers of social security number;

3.2.7. party affiliation;

3.2.8. registration number;

3.2.9. precinct number;

3.2.10. date of registration;

3.2.11. record of name, address and party changes;

3.2.12. voting record; and

3.2.13. voter's signature.

3.3. The county may use State Uniform Voter Data System voter records as precinct registration records after they have been approved by the secretary of state.

3.4. When the State Uniform Voter Data System is adopted and is in successful use, the county clerk may apply to eliminate the use of precinct registration books by applying in writing to the secretary of state. The written request shall include:

3.4.1. the vendor and the name of the State Uniform Voter Data used by the county; and,

3.4.2. a certified copy of an actual voter record which includes the information required under subsection 3.2. of this section.

SERIES 10

LOAN PROGRAM FOR PURCHASE OF VOTING EQUIPMENT, SOFTWARE AND SERVICES

Sec.

153-10-1. General.

153-10-2. Request for loan.

153-10-3. Application.

153-10-4. Matching Funds.

153-10-5. Authorized Equipment, Software and Services.

153-10-6. Ownership.

153-10-7. Approval.

153-10-8. Maximum Amount of Loan Funds Available.

153-10-9. Equipment Purchased or Leased Before November 13, 2004.

153-10-10. Replacement of Punch Card and Lever Voting Systems.

153-10-11. Repayment of Loans

§ 153-10-1. General.

1.1. Scope.—To establish guidelines for the administration of County Assistance Voting Equipment Fund (Fund) loan program established by W. Va. Code § 3-1-48 (2004).

1.2. Authority.—W. Va. Code § 3-1-48.

1.3. Filing Date.—May 9, 2006.

1.4. Effective Date.—May 9, 2006.

§ 153-10-2. Request for loan.

A county commission may request a loan from the Fund from the Secretary of State for the purpose of obtaining, modifying or replacing voting equipment, software and necessary related services, including voting systems, technology and methods for casting and counting votes.

§ 153-10-3. Application.

3.1. Any county commission requesting a loan from the Fund shall file an application with the Secretary of State.

3.2. The application shall be on a form provided by the Secretary of State and shall contain the following information:

3.2.a. Name of county

3.2.b. Amount of loan requested

3.2.c. Proposed use of funds, including type of equipment, software and/or services and quantity, if applicable

3.2.d. Statement that county has obtained at least fifty percent (50%) of the cost of the equipment, software and/or service

3.2.e. Date of application

3.2.f. Signature of county commissioners

3.2.g. Such other information deemed necessary by the Secretary of State

3.3. In addition to the application, the county commission shall provide to the Secretary of State a copy of the resolution passed by the county commission authorizing the county to purchase or lease the voting equipment, software and/or services and to enter into the loan agreement.

§ 153-10-4. Matching Funds.

4.1 A county commission must obtain at least fifty percent (50%) of the cost of the equipment, software and/or services and may only obtain a loan from the Fund for up to fifty percent (50%) of the cost.

4.2. The State Election Commission may waive a portion or all of the fifty percent (50%) matching funds if the county commission demonstrates to the satisfaction of the State Election Commission that the county commission has exercised due diligence to raise the matching funds; it is unable to obtain the matching funds; and that it has the ability to pay the installments on the loan

when due.

4.3. A county commission may request a waiver of the matching funds by filing an application with the State Election Commission.

4.4. The application for waiver of matching funds shall be on a form provided by the Secretary of State and it shall include the following information:

4.4.a. Name of county

4.4.b. Amount that county commission has raised toward the matching fund

4.4.c. Amount of waiver requested

4.4.d. An explanation of the efforts of the county commission to raise the entire matching funds

4.4.e. Full financial disclosure of the assets and liabilities of the county

4.4.f. Potential for future income and its ability to pay the installments on the loan when due

4.4.g. Date of application

4.4.h. Signature of county commissioners

4.4.i. Such other information deemed necessary by the Secretary of State

§ 153-10-5. Authorized Equipment, Software and Services.

Loans may be approved by the State Election Commission only for the purchase or lease of equipment, software and/or services and only if certified, when necessary, by the State Election Commission, and if authorized by the Secretary of State under a contract awarded through the state purchasing procedure.

§ 153-10-6. Ownership.

All equipment, software and services acquired through this loan program shall be purchased by the Secretary of State from the vendor under the contract referred to in section 5 of this rule and shall be immediately turned over to the county. The equipment shall be solely owned by the county.

§ 153-10-7. Approval.

7.1. Upon receipt of a complete application for a loan or application for a waiver of the matching funds, the State Election Commission shall review and approve the application, deny the application or request additional information within forty-five days. Any denial shall include a letter setting forth the reason(s) for the denial. Any county commission receiving a denial has thirty days to amend its original application in order to comply with any necessary changes required by the State Election Commission.

7.2. Once a county commission has met all of the requirements of this rule, the State Election Commission shall approve the loan if funds are available.

7.3. Upon approval, the county commission and the State Election Commission shall enter into a contract for the repayment of the loan by equal monthly or annual payments for the length of the contract, not to exceed five years to obtain the equipment, software and/or services.

7.4. Upon written request by the county commission, the State Election Commission may extend the repayment of the loan on a year-to-year basis for a period not to exceed five additional years. Nothing in this section should be construed to allow a loan to continue for more than ten years from the date of the signing of the agreement.

7.5. Unanimous approval shall be required by the State Election Commission when a county commission applies for a subsequent loan from the county assistance voting equipment fund (here in after the fund) while such county commission currently has an outstanding loan from the fund.

§ 153-10-8. Maximum Amount of Loan Funds Available.

The maximum amount that any county may borrow from the fund under any one request is limited to a pro rata fraction of loan funds available at the time of the request. The numerator of the fraction shall be the number of registered voters in that county as of the most recently passed federal presidential election, and the denominator of the fraction shall be the total number of registered voters in the state as of the most recently passed federal presidential election.

§ 153-10-9. Equipment Purchased or Leased Before November 13, 2004.

Any county commission that purchased or leased an electronic voting system prior to November 13, 2004, is eligible to apply for a loan to upgrade or replace the system. The loan may not exceed the amount available to purchase a new electronic voting system under the Secretary of State's authorized contract.

§ 153-10-10. Replacement of Punch Card and Lever Voting Systems.

Any county commission that makes the choice after January 1, 2006 to replace its punch card or lever voting system is eligible to apply for funds from this loan program for the purpose of replacing its voting system with a HAVA-compliant system; Provided that the maximum aggregate amount of loan proceeds available to any such county shall be reduced by the amount of federal funding that was forfeited and returned to the federal government as a result of such county's failure to replace its punch card or lever system by January 1, 2006.

§ 153-10-11. Repayment of Loans.

11.1. No county commission may apply for and receive a loan if that county commission currently has an outstanding loan from this fund which is in default.

11.2. Upon nonpayment of the loan installments by the county commission or other breach of the loan agreement, the Secretary of State may institute a

civil action, mandamus or other judicial or administrative proceeding to compel performance by the county commission.

11.3. Nonpayment of the loan installments means a nonpayment of two consecutive monthly payments or nonpayment of an annual payment in excess of thirty days beyond the scheduled payment date.

11.4. The Secretary of State will cease any legal action upon full payment of the default amount by the county. The defaulting county commission is liable for any legal costs incurred by the Secretary of State in order to obtain compliance.

SERIES 11

PUBLIC TESTING OF BALLOT-MARKING VOTING SYSTEMS AND PRECINCT BALLOT-SCANNING DEVICES

Sec.

153-11-1. General.

153-11-2. Definitions.

153-11-3. Implementation of Ballot-Marking Accessible Voting System.

153-11-4. Implementation of Precinct Ballot-Scanning Device.

153-11-5. Procedures Manual for Using the Precinct Ballot-Scanning Device.

§ 153-11-1. General.

1.1. Scope.—To provide for ballot-marking voting systems and precinct ballot scanning systems to be publicly tested in accordance with H.B. #2950 (2005).

1.2. Authority.—W. Va. Code §§ 3-4A-9a and 3-4A-9b.

1.3. Filing Date.—May 9, 2006.

1.4. Effective Date.—May 9, 2006.

§ 153-11-2. Definitions.

2.1. For the purposes of this rule:

2.1.a. Ballot-marking accessible voting system means a device which allows voters, including voters with disabilities, to mark an optical scanning or mark-sensing voting system ballot privately and independently.

2.1.b. Precinct ballot-scanning device means a device used by the voter at the precinct on election day or during early voting for the purpose of scanning the voter's ballot after the ballot has been voted but prior to depositing the ballot into the ballot box.

§ 153-11-3. Implementation of Ballot-Marking Accessible Voting System.

Prior to the use of a ballot-marking accessible voting system in an election, the appropriate county authorities shall publicly test the equipment in accordance with WV Code § 3-4a-13 and 17.

§ 153-11-4. Implementation of Precinct Ballot-Scanning Device.

Prior to the use of a precinct ballot-scanning device in an election, the device shall be publicly tested in accordance with WV Code § 3-4a-13 and 17.

§ 153-11-5. Procedures Manual for Using the Precinct Ballot-Scanning Device.

5.1. At least once every two years, the Secretary of State shall provide a procedures manual for using the precinct ballot-scanning device in an election. The manual shall include a step-by-step procedure to be followed in the precinct where the device is being used.

5.2. Election officials shall carry out the procedures set out in the procedures manual when using the precinct ballot-scanning device in an election.

SERIES 13

EARLY VOTING IN PERSON SATELLITE PRECINCTS

Sec.

153-13-1. General.

153-13-2. Definitions.

153-13-3. Early Voting Satellite Precinct Selection.

153-13-4. Crediting of Voter Record.

153-13-5. Procedures for Conducting Early Voting at Satellite Precincts.

153-13-6. Public Notice.

§ 153-13-1. General.

1.1. Scope.-This rule establishes criteria to assure neutrality and security in the selection process for early voting in person satellite precincts and establishes processes and deadlines for establishing such precincts.

1.2. Authority.-W.Va. Code § 3-3-2a(c)

1.3. Filing Date.-

1.4. Effective Date.-

§ 153-13-2. Definitions.

2.1. For the purposes of this rule:

2.1.1. Clerk means the Clerk of the County Commission or other official charged with the administration of elections.

2.1.2. Early voting means early in-person absentee voting as provided for in W.Va. Code § 3-3-3.

2.1.3. Published means a Class II-0 legal advertisement as defined in W.Va. State Code § 59-3-2. For counties having more than one qualified newspapers weekly, the notice must be published in each of the qualified newspapers.

2.1.4. Satellite precinct means locations for early voting in addition to the primary location as provided for in W.Va. Code § 3-3-2a.

§ 153-13-3. Early Voting Satellite Precinct Selection.

3.1. No later than one hundred twenty (120) days prior to election day, the clerk shall submit a proposal for an early voting satellite precinct or precincts to the County Commission for approval or disapproval.

3.2. The proposal submitted by the clerk shall include:

3.2.1. The proposed location or locations for early voting satellite precincts and the days and hours each precinct will be open;

3.2.2. Provisions for staffing the satellite precinct including a minimum of two persons: *Provided*, That the two persons shall not be registered with the same political party affiliation or two persons registered with no political party affiliation. The persons may be full-time employees of the county or temporary employees hired for the period of early voting or volunteers; and

3.2.3. Any other procedures necessary for the proper conduct of an election according to provisions of W.Va. Code §§ 3-1, 3-3-2a and 3-3-3, and section five (5) of this rule, at the early voting satellite location or locations.

3.3. In order to ensure neutrality in the satellite precinct selection process, the clerk shall also submit to the County Commission with the proposal for an early voting satellite precinct or precincts a duly notarized written agreement from the chairperson of the county executive committee of each of the two major political parties.

3.4. The County Commission shall approve or disapprove the proposal submitted by the clerk no later than 90 days prior to election day. An early voting satellite precinct plan must be approved for each particular primary, general or special election and is only valid for the election for which it was approved.

3.5. If agreement cannot be reached among the County Commission, County Clerk and the chairperson of the county executive committee of each of the two major political parties, the proposal shall be considered void and no early voting satellite precincts shall be authorized in the county for the election cycle.

§ 153-13-4. Crediting of Voter Record.

4.1. Any voter who votes at an early voting satellite precinct shall immediately be given credit in the uniform voter registration system, and the clerk shall take all necessary steps to prevent a voter from voting more than once.

§ 153-13-5. Procedures for Conducting Early Voting at Satellite Precincts.

5.1 All election material and equipment used at any satellite precinct shall be prepared in the same manner as the equipment used during early voting at the primary location including, but not limited to:

5.1.1. Provisions for the security of ballots and other election material; and

5.1.2. Logistics and accuracy testing of voting equipment.

5.2. Counties using paper ballots or optical scan ballots must have copies of each ballot style at the early voting satellite precinct in numbers sufficient for the efficient conduct of early voting.

5.3. Each early voting satellite precinct must be open and operational in the same manner as the primary location for early voting, except for differing hours or days approved by the County Commission.

5.4. Each early voting satellite precinct must be open for a minimum of three (3) consecutive days per location.

5.5. Security of both used and unused ballots, any voting equipment and supplies and all poll books must be maintained in the same manner as at the primary early voting location according to provisions of W.Va. Code §§ 3-1, 3-3-2a and 3-3-3.

§ 153-13-6. Public Notice.

6.1. Not later than seven (7) calendar days before the start of early voting, the county commission shall cause a notice to be broadcast in a manner sufficient to reach a majority of citizens in the county as determined by the County Commission or published as defined in section two of this rule, and placed on the county's website (if applicable). The notice placed on the county's website must remain on the website until the close of the early voting period. All notices shall state the location or locations and dates and hours of operation for each early voting satellite precinct.

SERIES 14

GUIDELINES FOR THE USE OF NICKNAMES AND OTHER DESIGNATIONS ON THE BALLOT

Sec.

153-14-1. General.

153-14-2. Allowable Additions or Alterations to Legal Names.

153-14-3. Unallowable Additions or Alterations to Legal Names.

153-14-4. Maximum Length of Name.

§ 153-14-1. General.

1.1. Scope.—This rule clarifies the guidelines to be used by the secretary of state and the county board of ballot commissioners in determining how a name is to be printed on the ballot. See W. Va. Code § 3-1-21.

1.2. Authority.—W. Va. Code § 3-1A-6.

1.3. Filing Date.—April 22, 1996.

1.4. Effective Date.—June 7, 1996.

§ 153-14-2. Allowable Additions or Alterations to Legal Names.

2.1. A nickname by which a person is commonly known, provided it does not violate the restrictions described herein, may be used on the ballot in lieu of the candidate's first name or may be placed within the name, either in quotation marks or parentheses.

Examples: Bill Trees, William "Bill" Trees, Elizabeth (Betsy) Bond, Liz Bond, Carl "Junior" Rivers, Ester "Lilly" Smith.

2.2. A woman may use the term Miss, Ms. or Mrs. with her own given name, or Mrs. with her husband's first name.

Examples: Mrs. Carol Redman, Mrs. Ida (Carol) Redman, Mrs. Ira Redman, Carol (Mrs. Ira) Redman.

2.3. A man may use the term Mr. with his own given name. A man may use Sr., Jr. or other similar designations at the end of his name which distinguish him from other generations of his family members.

Examples: Ed Roe, Jr.; Thomas Orr, Sr.; Lloyd Wilson, III; Mr. Carroll Thomas.

§ 153-14-3. Unallowable Additions or Alterations to Legal Names.

3.1. No title, position name or other designation which is not a part of an individual's legal name shall be placed before the name on the ballot.

Examples: Dr., Rev., Capt., Col., Maj., Supt., Pres., Coach, Brother, Father, Rabbi, Chief, Auctioneer, Sen., Cong., Del., Sheriff.

3.2. No degree, rank or other designation which is not a part of an individual's legal name shall be placed before or after a name on the ballot.

Examples: Ph.D., M.D., D.V.M., CPA, R.N., Lt., Sgt. 1st Class.

3.3. No nickname which carries a common meaning which denotes status or membership in a class of persons, or which is commonly used as or suggests a title, position designation, or other similar designation shall be placed before, after, or within a name on the ballot, whether or not the candidate has or has not held the position represented by the title.

Examples: Howard "Sarge" Jones, Earl "Chief" Weber, Lydia (Doc) Miller, "General" Lee Upton, Lou (Coach) Jones, John "Congressman" Adkins.

3.4. No nickname which suggests specific action by the voter shall be placed on the ballot.

Examples: Sam "Single Shot" Roberts, Joe "Vote Straight" Jones.

3.5. No variation in the typography of a name which calls attention to that name on the ballot shall be allowed. The standard for whether the name will be used is one based on the personal common use of the name by the candidate over a period of time. The candidate's signature, legal name status pursuant to W. Va. Code § 48-5-1, driver's license, phone book spelling, etc..., can be used. If a clear preponderance of such evidence reflects the requested spelling, then it should be printed.

Examples: OTIS Slevptvacowicz, SteVen WilSon, mmm GOODman.

3.6. No slogan may be used under the guise of a nickname.

Examples: Franklin "New Deal" Roosevelt, Jimmy "Why Not The Best" Carter.

3.7. No addition to a legal name may be used to indicate associations with particular individuals or causes.

Examples: Joseph "Reagan" Johnson, Charles "Chuck Yeager" Browning, Mamie "ERA" Monroe, Alice "Gun Control" Anderson.

§ 153-14-4. Maximum Length of Name.

4.1. Because space and typographical limitations affect ballot printing, the length of names on the ballot are hereby limited.

4.2. When a candidate specifies a name for the ballot which incorporates names other than his or her legal name, and which includes more than twenty-five (25) letters, the secretary of state or circuit clerk may require the candidate to designate a name for the ballot including no more than twenty-five (25) letters. If the candidate fails to comply, the secretary of state or circuit clerk shall use only the candidate's legal name.

4.3. Nicknames other than shortened forms of legal names shall be limited to one word.

SERIES 18

PROCEDURES FOR CANVASSING ELECTIONS

Sec.

153-18-1. General.

153-18-2. Definitions.

153-18-3. Preparation.

153-18-4. Order of Canvassing Procedures by Voting System.

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153-18-10. Certifying the Results.

153-18-11. Preparing for a Recount.

§ 153-18-1. General.

1.1. Scope.—This rule details procedures for the board of canvassers for canvassing the results of elections conducted with paper ballots or electronically tabulated ballots, including optical scan ballots.

1.2. Authority.—W. Va. Code § 3-1A-6.

1.3. Filing Date.—May 7, 2007.

1.4. Effective Date.—May 7, 2007.

§ 153-18-2. Definitions.

2.1. "Board of canvassers" or "board" means:

2.1.a. The county commission of each county for any statewide primary, general or special election held throughout the county, and for any other election conducted in conjunction with a statewide election using the same precincts and election officials;

2.1.b. The county commission of the affected county for any special election ordered by that Commission and held throughout all or part of that county, and for any other election conducted in conjunction with that county election using the same precincts and election officials;

2.1.c. The county commission and the board of education, jointly, for any special levy or bond election ordered by the board of education;

2.1.d. The municipal governing body for any primary, general or special election conducted by the municipal governing body entirely within the city and not held in conjunction with any county or state election.

2.2. "Canvass" means the proceeding required by law in which the materials, equipment and results of an election are reviewed, corrected and officially recorded prior to the certification of that election.

2.3. "Election" means any statewide primary, general or special election held under the provisions of the West Virginia Code throughout the state or any of its subdivisions.

2.4. "Electronically tabulated ballots" means ballots authorized under the provisions of W. Va. Code § 3-4A et seq., including those ballots referred to as punch card and optical scan ballots, which are counted by means of electronic scanners or readers.

2.5. "Paper ballots" means ballots authorized under the provisions of W. Va. § 3-1 et seq. Code which are counted by hand.

§ 153-18-3. Preparation.

3.1. The governing body constituting the board of canvassers shall schedule the canvass to begin on the Friday immediately following a primary election, and on the fifth day, not counting Sunday, after a general election. If the fifth day falls on a Saturday or legal holiday, the canvass shall begin on the next business day.

3.1.a. For a canvass conducted by the county commission or a joint canvass conducted by the county commission and board of education, the canvass shall be held at the county courthouse; except that, for an election conducted with lever voting machines, the canvass shall be convened at the place of storage of the voting machines in order to perform the review required under section 7.

3.1.b. For a canvass conducted by a municipal governing body, the canvass shall be held at city hall.

3.2. A quorum of the governing body constituting the board of canvassers, or in the case of a joint board of canvassers as prescribed in 2.1.c., a quorum of each governing body, must be present to conduct the canvass.

3.2.a. If a quorum of the governing body, or each governing body, is not present, the meeting will stand adjourned until the next business day.

3.2.b. If the canvass cannot be completed in one day, the board of canvassers may adjourn until the next day, and so on from day to day until the canvass is completed and the results declared.

3.3. The board of canvassers may utilize regular or temporary personnel to assist with the canvass, but all procedures must be conducted under the supervision of a quorum of the board.

3.4. The presiding officer of the governing body shall act as the presiding officer of the board of canvassers.

3.5. The clerk of the county commission for canvasses conducted by the county commission, or the municipal clerk or recorder for canvasses conducted by the municipal governing body, shall assist the board of canvassers.

3.6. The officers having custody of the materials and equipment of the election shall bring it before the board at the proper time, as follows:

3.6.a. When paper ballots were used, the ballot boxes, all packages of voted, unused, spoiled and challenged ballots, the pollbooks, tally sheets, precinct return certificates, official registration records, and cumulative returns;

3.6.b. For canvasses of electronically tabulated ballot elections, the ballot boxes, all packages of tabulated, spoiled, challenged and any unused ballots, the pollbooks, official registration records, voting devices, tabulating equipment, and computer printouts of the unofficial tabulation of the ballots for each precinct and any supplementary tabulations such as tally sheets of hand counted ballots with write-in votes prepared on election night; and

§ 153-18-4. Order of Canvassing Procedures by Voting System.

4.1. For canvasses of elections conducted with paper ballots, the board of canvassers shall proceed with steps outlined in sections 5, 6, 9, 10 and 11, in that order.

4.2. For canvasses of elections conducted with electronically tabulated ballots, the board of canvassers shall proceed with steps outlined in sections 5, 6, 8, 9, 10 and 11, in that order.

4.3. For canvasses of elections conducted with lever voting machines, the board of canvassers shall proceed with steps outlined in sections 7, 5, 6, 9, 10 and 11, in that order.

§ 153-18-5. Receiving the Absentee Ballots for All Voting Systems.

5.1. The clerk responsible for absentee voting for the election shall deliver to the board of canvassers all absentee ballots, lists and other documentation as follows:

5.1.a. All absentee ballots postmarked on or before election day but received after delivery to the polls, along with the original applications and a precinct list of those ballots, to be delivered in packets labeled with the precinct number;

5.1.b. All absentee ballots challenged by the circuit clerk, along with the original applications and a precinct list of those ballots, to be delivered in packets by precinct; and

5.1.c. All absentee ballots not postmarked by election day and received after the polls are closed, along with the original applications and a list of those ballots, to be delivered in a single packet.

5.1.d. Certification by the clerk responsible for absentee voting that the voter registration records for each absentee voter have been examined and that all unchallenged absentee ballots were cast by voters properly registered.

5.2. The board of canvassers shall open the packet of absentee ballots with late or missing postmarks received after the polls have closed, as described in subdivision 5.1.c. The board shall then:

5.2.a. Examine each absentee envelope for the postmark;

5.2.b. Count and record in the record of the canvass the number of ballot envelopes found with a late or missing postmark, return the envelopes to the packet and hold them to be sealed after the precincts have been processed; and

5.2.c. Place any ballot envelopes found to contain a postmark dated on or before election day with the materials from the proper precinct to be processed utilizing the step procedures issued by the Secretary of State according to subsection 6.1.

§ 153-18-6. Canvassing Each Precinct.

6.1. At least once annually, and not less than 15 days before the first election held in that calendar year, the Secretary of State shall provide a step procedures manual for canvassing individual precincts to each governing body responsible for canvassing the returns of that election.

6.1.a. The manual shall include detailed descriptions of the steps required to verify the accuracy of the "Statement of Ballots Used", the steps required for processing absentee ballots as provided in subsections 5.1.a. and 5.2.c., and the steps required for determining the disposition of the challenged ballots.

6.1.b. The manual shall include worksheets for the board of canvassers to record the findings relating to each precinct and to enter the tallies of challenged or absentee ballots counted by the board of canvassers and added to the unofficial results.

6.2. In canvassing the precincts, the board of canvassers shall perform the step procedures and complete the worksheets for each precinct, considering one precinct at a time.

§ 153-18-8. Special Canvassing Procedures for Elections Conducted with Electronically Tabulated Ballots; Hand Counting Five Percent (5%) of Precincts.

8.1. The board of canvassers shall tally by hand the ballots of a number of precincts equal to five percent of the total number of precincts in the jurisdiction, not fewer than one precinct, and with fractions rounded to the nearest whole number, as in the following table.

When the total precincts equal:	Count the ballots of:
1—29	One precinct
30—49	Two precincts
50—69	Three precincts
70—89	Four precincts
90—109	Five precincts

110—129 Six precincts

130—149 Seven precincts

150—169 Eight precincts

170—189 Nine precincts

8.2. The board shall identify the precincts to be counted by random selection, such as by drawing, and may not arbitrarily select.

8.3. In order to reduce the potential for error, the tally should be made with two persons reading out the votes cast on each ballot, and two other should separately record the votes read.

8.4. After the hand count of each precinct is recorded, the board shall compare the recorded tallies with the tabulated results of the same precincts.

8.5. If the difference between the tabulated results of the randomly selected precincts and the hand counted results of the same ballots is more than 1% of the total votes cast, all precincts must be hand counted.

153-18-9. Declaring the Results.

9.1. After the canvassing procedures have been completed for all precincts, the board shall re-total the votes cast for each candidate and for or against every issue. The board shall then declare the resulting totals and enter each total into the record of the canvass.

9.2. The board shall also announce the place and time, which shall be scheduled at least forty-eight (48) hours after the declaration, of the meeting at which the results will be certified if no recount is requested, and shall then adjourn until that time.

§ 153-18-10. Certifying the Results.

10.1. If no recount is demanded according to the requirements of law, the board shall prepare duplicate certificates for a primary election for each office and each party, and for the general election for each office and ballot issue, with the total votes for each candidate or question entered in words and numbers on the certificates. In the general election, the certificates for federal, statewide, legislative and judicial offices shall be prepared in triplicate originals.

10.2. The board shall take official action to certify the results of the election, and each member of the canvassing board shall sign each certificate.

10.3. The board of canvassers shall transmit certificates for a primary election within thirty (30) days from the election, or within thirty (30) days from the completion of a recount if one is requested, as follows:

10.3.a. One of each original shall be filed with the election records of the county commission, or of the municipal governing board for a municipal primary election.

10.3.b. For candidates on the ballot only within the county, including single county districts, county offices and county executive committee, one of each original shall be filed with the clerk of the circuit court, and one copy of each shall be filed with the Secretary of State.

10.3.c. For candidates on the ballot in more than one county, one of each original shall be filed with the Secretary of State.

10.3.d. For issues on the ballot, one of each original shall be filed with the Secretary of State.

10.3.e. Upon request of the chairman of the political party executive committee of the county, a certificate showing the number of votes received by each of the candidates of the party in the county or any magisterial district therein.

10.3.f. For municipal elections, one of each original shall be filed with the municipal recorder or clerk.

10.4. The board of canvassers shall transmit certificates for a general election within thirty (30) days from the election, or within thirty (30) days from the completion of a recount if one is requested, as follows:

10.4.a. One of each original shall be filed with the election records of the county commission, or of the municipal governing board for a municipal primary election.

10.4.b. One certificate shall be mailed to each candidate voted for on the ballot.

10.4.c. For candidates for President and Vice President, United States Senator, United States House of Representatives, Justice of the Supreme Court of Appeals, and judge of circuit court shall be filed with the Governor, and one copy of each shall be filed with the Secretary of State.

10.4.d. For candidates for statewide office, except Justice of the Supreme Court of Appeals, and candidates for State Senate and House of Delegates, one of each original shall be filed with the Secretary of State.

10.4.e. For issues on the ballot, one of each original shall be filed with the Secretary of State.

§ 153-18-11. Preparing for a Recount.

11.1. If a recount is requested by any candidate, the board of canvassers shall proceed to certify the results for all offices and issues not subject to the recount request.

11.2. For any office in which a recount has been properly requested and a bond posted, the board shall immediately schedule a date for the recount to begin, which shall be no earlier than three days after the notices are served.

11.3. The board shall prepare the proper notices for the recount proceeding and make arrangements with the sheriff to serve the notices on each of the other

candidates in the race in which the recount has been requested within twenty-four (24) hours following the meeting held for the purpose of certifying the election.

SERIES 20

PROCEDURES FOR RECOUNT OF ELECTION RESULTS

Sec.

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153-20-9. Recount by Step Procedures.

153-20-10. Certifying the Results.

§ 153-20-1. General.

1.1. Scope—This rule details procedures for the board of canvassers for completing a recount of results of elections conducted with paper ballots or electronically tabulated ballots, including optical scan ballots.

1.2. Authority.—W. Va. Code § 3-1A-6.

1.3. Filing Date.—May 7, 2007.

1.4. Effective Date.—May 7, 2007.

§ 153-20-2. Definitions.

2.1. "Board of canvassers" or "board" means:

2.1.a. The county commission of each county for any statewide primary, general or special election held throughout the county, and for any other election conducted in conjunction with a statewide election using the same precincts and election officials;

2.1.b. The county commission of the affected county for any special election ordered by the Commission and held throughout all or part of that county, and

for any other election conducted in conjunction with that county election using the same precincts and election officials;

2.1.c. The county commission and the county board of education or other governing board, jointly, for any special levy or bond election ordered by the county board of education or other governing board or a special election ordered by the county board of education or other governing board and not held in conjunction with any other election conducted by the county commission; or

2.1.d The municipal governing body for any primary, general or special election conducted by the municipal governing body entirely within the city and not held in conjunction with any county or state election.

2.2. "Recount" means the proceeding required by W. Va. Code § 3-6-9 in which the tally of votes recorded for a specific elected office or on a specific issue in an election is reviewed by counting a second time the ballots containing votes for that office or issue, correcting and officially recording the results.

2.3. "Election" means any primary, general or special election held under the provisions of the West Virginia Code throughout the state or any of its political subdivisions.

2.4. "Electronically tabulated ballots" means ballots authorized under the provisions of W. Va. Code § 3-4A-1 et seq., including those ballots referred to as optical scan ballots, which are counted by means of electronic scanners or readers.

2.5. "Paper ballots" means ballots authorized under the provisions of W. Va. Code § 3-1-1 et seq. which are counted by hand.

§ 153-20-3. Requesting a Recount.

3.1. The person requesting a recount for an elected office must be a candidate for the elected office in which the recount is requested. The person requesting a recount for a special issue election must be a voter of the jurisdiction of the election.

3.1.a. The request for a recount shall include all precincts covered by that election unless the person filing the request specifies otherwise.

3.1.b. If the candidate filing the request specifies only specific precincts to be recounted, that candidate cannot afterwards add other precincts to the list to be recounted.

3.2. A candidate shall make a request for recount within forty-eight (48) hours after the canvass. The forty-eight-hour (48) period begins when the board of canvassers publicly declares the results of the election. Saturdays, Sundays and legal holidays are excluded when computing the forty-eight-hour (48) period.

3.2.a. A candidate shall make the request in writing to the county clerk who shall present the request to the board.

3.2.b. The recount request of an elected office shall state the name of the candidate making the request, the elected office for which the recount is requested and the precincts which the candidate is requesting to be recounted.

3.2.c. The recount request for an issue shall state the voter's name and address and the precincts in which the recount is requested.

3.2.d. The person requesting a recount must furnish bond in an amount sufficient to pay for the cost and expenses of the recount if the results do not change. The recount bond shall be set as described in section 4.7 of this rule.

3.3. The board shall give notice of the recount to candidates who filed for the same elected office as one in which a recount has been requested or the governing board that officially requested the special issues election in which a recount has been requested within the twenty-four (24) hours following the meeting held for the purpose of certifying the election. For recount requests of a special issues election, the board shall also post the notice of a recount on the door of the office where the recount is to be held.

3.4. Candidates who filed for the same elected office as one in which a recount has been requested or the governing board that officially requested the special issues election in which a recount has been requested may preserve their right to demand a recount of precincts not recounted in the original recount request or to have the recount continued and completed should the candidate or voter initiating the recount request stop the recount.

3.4.a. The candidate shall file the request to preserve the right to recount in writing to the county clerk who will present the request to the board, This request must be filed within twenty-four (24) hours from the time the notice of recount is served.

3.4.b. The request to preserve the right to recount shall state the name of the candidate(s) or of the governing board filing the request to preserve the right to recount and the intention to preserve the right to request the recount of precincts not originally requested by the initiating candidate or to continue the recount should the initiating candidate or voter stop the recount.

3.4.c. The candidate(s) or the governing board filing the request to preserve the right to recount shall furnish bond in an amount sufficient to pay for any recount cost incurred by request for a continuation of the recount or a recount of additional precincts. The bond must be the same amount as the bond required of the original candidate or voter requesting the recount.

§ 153-20-4. Preparation.

4.1. If a recount is requested, the governing body constituting the board of canvassers shall certify the results for all offices and issues not subject to the recount at the end of the forty-eight (48) hour period following the declaration.

4.2. The clerk of the county commission for recounts conducted by the county commission and by county commissions jointly with a governing board for special issue elections, or the municipal clerk or recorder for recounts conducted by

the municipal governing body, shall assist the board.

4.3. The officers having custody of the materials of the election shall bring before the board at the appropriate time the paper ballots, the electronically tabulated ballots and the record of the tally of votes for all election precincts.

4.4. For a recount conducted by the county commission or a joint recount conducted by the county commission and county board of education or other governing board, the canvass shall be held at the county courthouse.

4.5. For a recount conducted by a municipal governing body, the recount shall be held at city hall.

4.6. Employees of the county commission or county clerk may assist or other persons may be employed to assist in the recount.

4.6.a. No candidate or member of his or her immediate family may assist in the recount.

4.6.b. No member of a governing board which requested a special issue election or any member of a board member's immediate family may assist in the recount.

4.6.c. No voter requesting the recount of a special issue election or member of his or her immediate family may assist in the recount.

4.6.d. All persons participating in the recount proceedings shall work in teams of two (2) persons of opposite political parties, shall be deputized in writing and shall take an oath that they will faithfully perform their duties.

4.6.e. All procedures shall be conducted under the supervision of a quorum of the board.

4.7. The board shall set the amount of bond for a recount "in a reasonable amount with good sufficient surety" but not to exceed three-hundred dollars ($300.00). The recount bond amount shall be determined during the canvass procedures before any recount request is received.

4.7.a. The bond may be a cash, personal property or other bond.

4.7.b. The costs of the recount shall be paid by the candidate or voter initiating the recount, so long as it continues at his or her request, However, if the outcome of the election is reversed at the conclusion of the recount, the canvassing board shall not assess costs to the candidate or voter requesting the recount.

4.7.c. If the initiating candidate pulls ahead during the recount and stops the recount, the responsibility for costs incurred after that time then shifts to the candidate requesting the continuation, but only if the outcome is not again reversed.

4.7.d. If a recount of a special issue requested by a voter reverses its outcome during the recount and the voter stops the recount, the responsibility for costs incurred after that time then shifts to the governing board

requesting the continuation, but only if the outcome is not again reversed.

4.8. The board shall immediately schedule a date for the recount to begin and shall prepare the proper recount notices to be served on each of the other candidates in the elected office in which the recount has been requested or to the governing board that officially requested the special issue election in which the recount has been requested and at the door of the place where the recount is to be held.

§ 153-20-5. Notification of Recount.

5.1. The recount notice shall be served in the twenty-four-hour (24) period beginning at the end of the forty-eight (48) hours following the declaration of the election results given at the end of the canvass.

5.1.a. The recount notice shall state the date, time and place of the recount.

5.1.b. The date may not be sooner than three (3) days after the recount notice is delivered.

5.2. The recount notice shall be delivered by the sheriff of the county or the sheriff's designee.

5.2.a. The recount notice shall be delivered to the candidate in person or to the members of the governing board that officially requested a special issue election in person.

5.2.b. If a candidate or member of the governing board is not found to receive the recount notice in person, the notice may be given to the spouse of the candidate or a governing board member or to some other family member over the age of sixteen (16) found at the usual place of residence of the candidate or of a governing board member.

5.2.c. If the notice is given to a person other than the candidate or a governing board member, the sheriff or the sheriff's designee shall inform the person receiving the notice of its purpose and meaning.

5.2.d. If the candidate or a governing board member or appropriate family member is not found to receive the notice, it shall be posted on the front door of the usual place of residence or the candidate or governing board member.

5.2.e. The sheriff or the sheriff's designee who delivers the notice shall record how, to whom and the time each notice is delivered.

5.2.f. If the candidate or a governing board member does not have a usual place of residence in the county where the recount notice is being served, the recount notice shall be delivered to the sheriff of the county in which the candidate or governing board member to be served does have a usual place of residence. The sheriff of that county shall serve the recount notice in the same manner as provided in this section.

§ 153-20-6. Conducting the Recount.

6.1. A quorum of the board of canvassers, or in the case of a joint board of

canvassers as prescribed in subdivision 2.1.c. of this rule, a quorum of each governing body, shall be present at all times during the recount of the ballots and the recount shall be conducted under their supervision.

6.1.a. The presiding officer of the governing board shall act as the presiding officer of the board. In the case of a joint board of canvassers of the county commission and the governing board of a special issue election, the presiding officer of the county commission shall act as the presiding officer of the board.

6.1.b. If a quorum of the board of canvassers is not present, the recount shall stand adjourned until the next business day.

6.1.c. If the recount cannot be completed in one day, the board shall adjourn until the next business day, and so on from day to day until the recount is completed and the results declared.

6.2. The candidate or officially designated representative or voter or officially designated representative initially requesting a recount as well as the candidate(s) or officially designated representative or governing board or a member's officially designated representative who preserve their right to participate in the recount and a reasonable number of the general public shall be freely admitted to the room where the recount is being conducted. The board shall hold the recount is a room of sufficient size and satisfactory arrangement to permit such observation of the recount.

6.2.a. The official representative of a candidate, voter or governing board member shall have a written and signed statement from the candidate, voter or governing board member designating him or her as the official representative, The name of the representative must be included in the statement. Each candidate may appoint only one official representative to act for him or her in the candidate's absence. Each member of a governing board may appoint only one official representative to act in his or her absence. A voter initiating a recount may appoint only one official representative to act in his or her absence.

6.2.b. The official representative shall have the right to observe the recount proceedings including observing each ballot as it is read in a hand count process. They may view and examine the tally sheets and ballots, but may not handle the election material.

6.2.c. The candidate or his or her representative or voter or his or her representative or governing board member or his or her representative has the right to question any ballot during the recount.

6.3. The processing and handling of the ballots in a recount shall be conducted by teams consisting of two (2) persons of opposite political parties who shall be appointed and deputized in writing by the board of canvassers.

6.3.a. If a ballot is questioned, the deputized team shall reexamine that ballot and reach their finding. Any ballot questioned shall be marked to provide for its identification at any future contest of the election.

6.3.b. If a majority of the deputized team cannot agree on the intent of the

voter's markings on a ballot, it shall remain questioned and the votes for that ballot shall not be recorded.

6.3.c. Only authorized persons may handle the election materials. These persons include the board of canvassers, the county clerk, the employees of the clerk and persons specifically employed to process the election materials and who have been deputized in writing and who have taken an oath to perform faithfully their duties.

6.4. The evidence considered at a recount shall be only that obtainable from the viewing of the election material as it exists or from relevant evidence from the election commissioners, poll clerks or other persons present at the election in which the recount is being conducted. The board may not consider extraneous evidence.

6.5. When ballots are being counted by hand, one of the deputized teams shall read the ballots together. The votes shall be read aloud so that the deputized team that is recording the vote can hear. Each member of the recording team shall mark separate tally sheets. The recording team should compare their vote count on a scheduled basis (as an example, after every twenty (20) ballots) in order to catch marking errors.

6.6. If a recount has been requested in more than one elected office or special issue, one deputized team may handle only one elected office or special issue recount proceeding at a time. The team shall work with its elected office or special issue recount (one precinct at a time) until that recount is completed. After a recount of a particular elected office or special issue is completed, the teams that worked with the completed recount may be assigned to work with a recount of another elected office or special issue.

6.7. Each team shall count or otherwise work with only one precinct at a time, The precinct materials may not be mixed.

6.7.a. The challenged ballots of each precinct shall be handled as they were during the canvass. The same procedures shall be in place to maintain the secrecy of the ballots and to preserve them for any future contest.

6.8. Each precinct may be recounted only one time. However, if after recounting a precinct, the results do not match the canvass results the ballots and tallies shall be rechecked at that time by one of the deputized teams in order to discover any error in reading the ballots or marking and computing the tally figures.

6.8.a. The candidate or voter who requested the recount has the right to stop the recount at the conclusion of any precinct by withdrawing his or her request. At this time, the candidate(s) or governing board that has preserved the right to continue may exercise that right.

6.9. Before starting the recount, the board shall determine the order in which the precincts will be recounted. The board shall use a logical means of determining the order, either by drawing or using a sequential order, beginning with the lowest number and continuing to the highest number. The determined order should meet with the agreement of the parties to the recount or their designated representatives.

§ 153-20-7. Order of Recount Procedures by Voting System.

7.1. For recounts of election conducted with paper ballots, the board shall proceed as outlined in sections 3, 4, 5, 6, 10 and 11 of this rule.

7.2. For recounts of elections conducted with electronically tabulated ballots, the board shall proceed as outlined in sections 3, 4, 5, 6, 9, 10 and 11 of this rule.

§ 153-20-8. Special Recount Procedures for Elections Conducted with Electronically Tabulated Ballots: Hand Counting Five Percent (5%) of Precincts.

8.1. The board shall tally by hand the votes of the elected office or special issue for which the recount has been requested on the ballots of a number of precincts equal to five percent (5%) of the total number of precincts in the jurisdiction, not fewer than one (1) precinct, and with fractions rounded to the nearest whole number, as in the following table.

When the total precincts equal:	Count the ballots of:
1—29	One (1) precinct
30—49	Two (2) precincts
50—69	Three (3) precincts
70—89	Four (4) precincts
90—109	Five (5) precincts
110—129	Six (6) precincts
130—149	Seven (7) precincts
150—169	Eight (8) precincts
170—189	Nine (9) precincts

8.2. The board shall identify the precincts to be counted by random drawing.

8.3. The hand count shall be conducted using the procedures described in 6.4 of this rule.

8.4. After the hand count of each precinct is recorded, the board shall compare the recorded tallies with the electronically tabulated results for the same elected office of the same precincts or the issue in a special issue election.

8.5. If the difference between the electronically tabulated results of the randomly selected precincts and the hand counted results of the same ballots is

more than one percent (1%) of the total votes cast for the elected office being examined in the recount proceedings, the board shall hand count all precincts for that elected office or the issue in a special issue elections.

8.6. The board, a candidate or voter requesting a recount or a candidate(s) or governing board preserving their right to recount may demand that the recount of any precinct be conducted by hand count.

§ 153-20-9. Recount by Step Procedures.

9.1. The Secretary of State shall provide a step procedures manual for the recount of an election's votes cast in an elected office or special issue, The manual shall be used by each governing body responsible for recount procedures.

9.1.a. The manual shall include detailed descriptions of the steps required to review, correct and officially record the results of a designated election office in an election.

9.1.b. The manual shall include worksheets for the board to record their recount procedures and the findings for each precinct recounted.

9.2. In a recount procedure, the board shall perform the step procedures and complete the worksheets for each precinct recounted.

§ 153-20-10. Certifying the Results.

10.1. The recount is not complete until the board seals the ballots in a suitable container with their endorsement and delivers them to the care of the county or municipal clerk.

10.2. Upon completion of the recount as described in subsection 11.1. of this rule, the board shall take official action to certify the result of the elected office recounted as it is determined by the recount.

10.3. The board shall prepare duplicate certificates for a primary election for each elected office considered by the recount with total votes for each candidate in the recounted office. The certificates shall be in words and numbers. In a general election, the certificates for federal, statewide, legislative and judicial offices shall be prepared in triplicate originals.

10.4. Each member of the board shall sign each certificate.

10.5. The board of canvassers shall prepare and transmit the certificates for elected offices and special issues involved in the recount as directed in W. Va. Code §§ 3-6-2-10 and 3-6-11.

SERIES 23

ABSENTEE VOTING BY MILITARY VOTERS WHO ARE MEMBERS OF RESERVE UNITS CALLED TO ACTIVE DUTY

Sec.

153-23-1. General.

153-23-2. Absentee Voting for Activated Reservists.

153-23-3. Procedures.

§ 153-23-1. General.

1.1. Scope.—This rule provides for absentee voting procedures to be used when a member of the reserves, who has been called to active duty, applies for an absentee ballot and is unable to receive and return that ballot within the time required using normal procedures.

1.2. Authority.—W. Va. Code § 3-1A-6; also see 42 U.S.C. § 1973ff-1.

1.3. Filing Date.—May 7, 2007.

1.4. Effective Date.—May 7, 2007.

§ 153-23-2. Absentee Voting for Activated Reservists.

2.1. Any registered voter who is a member of a reserve unit that is called into active duty as a result of an order of the President of the United States and who, as a result of that order, will not be able to vote in any primary, general, or special election held in this state because they will be unable to vote in person or by normal procedures for absentee voting, shall be allowed to cast an absentee ballot by mail or by voting in person at the office of the county clerk, in the county in which he or she is registered, as provided for in this rule.

2.2. For the purposes of this rule, a reserve unit includes all united that can be called into active duty as part of the United States Army, Navy, Air Force, Marine Corps or Coast Guard.

§ 153-23-3. Procedures.

3.1. Any person who has been ordered to active duty, pursuant to the terms of section two of this rule, may apply to the county clerk, in the county where registered, to cast an absentee ballot by completing a federal postcard application (FPCA) or a state Application for Voting an Absent Voters Ballot and Form A-8, entitled "Affidavit of Military Voter Called to Active Service Requesting to Vote Absentee."

3.2. The county clerk shall examine the application and the affidavit and if the voter requests that an absentee ballot be sent to the voter's home address, then a ballot shall be sent to the address provided by the voter in the affidavit and shall not be challenged for the reason of being returned from within the county. The request shall, in all other respects, be handled as provided for in W. Va. Code § 3-3-5.

3.3. If the voter requests permission to cast an absentee ballot in person, and the application is made at the time within forty-two (42) days of the election, then the voter shall be allowed to vote at the county clerk's office pursuant to the provisions of W. Va. Code § 3-3-3.

AFFIDAVIT OF MILITARY VOTER CALLED TO ACTIVE SERVICE REQUESTING TO VOTE ABSENTEE

I, _____, a registered voter in Precinct _____

in the County of _____, do solemnly swear or affirm under penalty of perjury, that I am required to be absent from the county in which I am registered during the entire period of absentee voting in the office of the County Clerk, _____, (dates) and during the hours which polls are open on election day on _____ (date).

I further swear of affirm that, because I have been called to active service in the _____ (branch of service) on _____, I will be unable to vote by mail at my service date address, therefore, I request: (Check one)

____(1) The official absentee ballot be mailed to my home address within the county at _____ (address/city) before my departure, and that I will return the ballot from within the county before my departure to active service.

OR

____(2) To vote an absentee ballot in person at the clerk's office before my departure because I will be unable to receive and return a ballot by mail within the time allowed.

_____

Signature of Voter

Subscribed and sworn before me this _____day of _____, 19____.

_____

Notary Public or County Clerk

My commission expires _____.

(seal)

SERIES 24

NUMBERED DIVISIONS FOR THE ELECTION OF CIRCUIT JUDGES

Sec.

153-24-1. General.

153-24-2. Designation of Numbered Divisions.

153-24-3. Nomination of Circuit Judges in Numbered Divisions.

153-24-4. Election of Circuit Judges in Numbered Divisions.

153-24-5. Continuity of Numbered Divisions.

§ 153-24-1. General.

1.1. Scope.—To make uniform the implementation of W. Va. Code § 3-1-17 requiring that judges in multi-judge circuits be elected within numbered divisions each including only one judge.

1.2. Authority.—W. Va. Code §§ 3-1A-6, 3-1-17

1.3. Filing Date.—April 22, 1996.

1.4. Effective Date.—June 7, 1996.

§ 153-24-2. Designation of Numbered Divisions.

2.1. Each judicial circuit shall contain as many divisions as there are judges within the circuit as established by W. Va. Code § 51-2-1.

2.2. Within each circuit having more than one judge, the divisions shall be designated as in the following examples:

2.2.1. Full designation: 1st Judicial Circuit, 2nd Division

2.2.2. Short form: 1st Circ., 2nd Div.

2.2.3. Abbreviation: Circ. 1/2

2.3. When the number of judges in a circuit is increased or decreased by the Legislature, the number of divisions shall automatically be adjusted and any added position shall be assigned the next number in the sequence.

2.4. The secretary of state shall post a list of numbered divisions up for election and shall distribute that list to each circuit court clerk by the first Monday in January of each election year.

§ 153-24-3. Nomination of Circuit Judges in Numbered Divisions.

3.1. Certificate of candidacy.

3.1.1. Each person seeking nomination to the office of judge of the circuit court shall file a certificate of candidacy in the time, manner and place required by W. Va. Code § 3-5-7, and shall pay the filing fee or file the petition in lieu of filing fee as required by W. Va. Code §§ 3-5-8 and 3-5-8a.

3.1.2. On the certificate of announcement, the candidate shall state the numbered division of the judicial circuit which he or she is seeking, except in circuits having only one judge.

3.1.3. Any certificate of announcement for judge in a multi-judge circuit shall not be deemed to have been properly filed unless a circuit and a single numbered division within the circuit is clearly designated as the division sought. The secretary of state or the board of ballot commissioners, as the case may be, shall not certify the candidacy of any person who fails to designate a circuit and a single division.

3.1.4. No candidate for circuit judge shall be permitted to be a candidate for office in more than one division, as required by W. Va. Code § 3-5-7(f).

a. A candidate who files two (2) or more certificates of announcement designating different divisions and pays the required filing fee for each different division shall not be eligible to be certified as a candidate for any division unless a signed notarized statement of withdrawal from all but one designated division is filed no later than the close of candidate filing, All filing fees are non-refundable.

b. The secretary of state, or circuit clerk, as the case may be, shall immediately reject and return the filings of a candidate who simultaneously files two (2) or more certificates of announcement designating different divisions accompanied by a single filing fee.

3.2. Ballot arrangement of candidates for circuit judge.

3.2.1. Divisions shall be placed on primary and general election ballots in numerical order.

3.2.2. The heading for each division on the primary election ballot shall be as nearly as possible as follows:

For Circuit Court Judge (No.) Judicial Circuit, (No.) Division
(Vote for One)

3.2.3. Only those candidates certified for placement on the ballot within a specific numbered division shall appear under that division heading.

3.3. Nomination of candidates in numbered divisions.

3.3.1. Each political party may nominate only one candidate for circuit judge for each numbered division of a judicial circuit for multi-judge circuits.

3.3.2. The board of canvassers, in issuing the certification of results for candidates for circuit judge, shall designate the circuit, the numbered division, the candidates for judge within that division and the votes received in words and numbers.

3.3.3. The secretary of state for multi-county circuits, and the board of ballot commissioners for single county circuits, shall certify the nomination of the candidate of each party receiving the highest number of votes within each division.

§ 153-24-4. Election of Circuit Judges in Numbered Divisions.

4.1. Only candidates who have filed a proper certificate of announcement within the time required and who have been nominated in the primary election or by petition shall be certified for placement on the general election ballot.

4.2. The board of canvassers shall, in issuing the certificate of results of the general election, designate the judicial circuit, the numbered division, the candidates for judge within that division and the votes received in words

and numbers.

4.3. The governor shall, upon ascertaining the results within each numbered division, proclaim the results of the election and thereafter proclaim those judges duly elected.

§ 153-24-5. Continuity of Numbered Divisions.

5.1. The numbered divisions as designated shall continue to be so designated for election purposes.

5.2. Provisions relating to the designation of chief judge or the assignment of terms of court within various counties within a circuit are not affected by the designation of divisions.

SERIES 27

PROCEDURES FOR HANDLING BALLOTS AND COUNTING WRITE-IN VOTES IN COUNTIES USING OPTICAL SCAN BALLOTS

Sec.

153-27-1. General.

153-27-2. Definitions.

153-27-3. Casting and Counting Write-in Votes.

153-27-4. Procedures for Optical Scan Ballots.

§ 153-27-1. General.

1.1. Scope.—This rule provides guidelines for the counting of write-in votes in counties that use the optical scan ballot systems.

1.2. Authority.—W. Va. Code §§ 3-1A-6, 3-4A-27, 3-6-4a, and 3-6-5.

1.3. Filing Date.—May 7, 2007.

1.4. Effective Date.—May 7, 2007.

§ 153-27-2. Definitions.

2.1. "Attempted write-in vote" means any punch or mark in a write-in voting position on a ballot or any writing, stamping or attaching by sticker of a name in the position provided for write-in votes to be entered for the voting system.

2.2. "Central counting center" means the room in the county courthouse where the ballot boxes are opened and the ballots processed and tabulated on election night.

2.3. "Inspection team" or "ballot box team" means two persons, one from each major political party, appointed and deputized according to § 3-4A-27 by the

clerk of the county commission for the purpose of opening ballot boxes, verifying the statement of ballots used, and for punch card voting systems, separating ballots with attempted write-in votes from ballots without attempted write-in votes, and for ballots without attempted write-in votes, separating the ballot cards from the grey secrecy envelopes.

2.4. "Official write-in candidate" means one who has filed a write-in candidate's certificate of announcement, paid the filing fee, and has been certified according to the provisions of W. Va. Code § 3-6-4a.

2.5. "Overvote" means a combination of votes for an office which results in the voter casting more votes for that office than there are persons to be elected. For example, a person who marks one party nominee and also casts an attempted write-in vote for the same office and only one person is to be elected has "overvoted," whether or not the write-in vote can be counted.

2.6. The "proper location for entering a write-in vote" shall mean:

2.6.1. for optical scan systems, on or near the blank line labeled "WRITE-IN, IF ANY" positioned under the office for which the vote is cast.

2.7. "Resolution team" means two persons, one from each major political party, appointed and deputized according to W. Va. Code § 3-4A-27 by the clerk of the county commission of a county using an optical scan voting system, for the purpose of examining ballots isolated by the tabulator because of damages, flaws, unreadable marks, or other defects, and determining whether the ballot must be duplicated or hand counted in order to tabulate the ballot accurately.

2.8. "Valid write-in vote" means a vote cast for an official write-in candidate by permitted means which includes the following elements:

2.8.1. a punch or mark in the voting position specified for write-in votes for the office;

2.8.2. an entry of the name of the official write-in candidate in the proper location, which shall include the first name, or last name, or both first and last names in such a way that the intention of the voter can be determined; and

2.9. "Write-in counting team" or "counting team" for optical scan systems means two persons, one from each major political party, appointed and deputized according to W. Va. § 3-4A-27 by the clerk of the county commission for the purpose of examining ballots containing attempted write-in votes, determining which of those votes are valid write-in votes, and determining whether the ballot must be temporarily altered or duplicated in order to tabulate the remaining offices accurately.

2.10. "Write-in counting team" or "counting team" for means two persons, one from each major political party, appointed and deputized according to W. Va. Code § 3-4A-27 by the clerk of the county commission for the purpose of examining ballots containing attempted write-in votes, determining which of those votes are valid write-in votes, and determining whether the punch card must be duplicated or hand counted in order to tabulate the remaining offices accurately.

§ 153-27-3. Casting and Counting Write-in Votes.

3.1. Valid write-in votes may be cast and counted for the election for any official write-in candidate for election to an office or party position other than Delegate to National Convention, but not for the nomination of any candidate. Write-in votes for any person or name other than an official write-in candidate shall be disregarded.

3.2. An attempted write-in vote shall be counted when the write-in counting team or resolution team finds the vote meets the conditions of a "valid write-in vote" as defined in Section 2.3 of this rule and does not create an overvote for the office.

3.3. Acceptable means of making a write-in vote include printing or writing with pen or pencil, imprinting with an inked rubber stamp, and attaching a sticker or gummed label.

3.4. In punch card voting systems, an attempted write-in vote found on a grey secrecy envelope which does not contain a punch card ballot signed by the poll clerks shall be disregarded.

§ 153-27-4. Procedures for Optical Scan Ballots.

4.1. The clerk of the county commission shall appoint the following teams of persons to process ballots at the central counting center:

4.1.1. As many inspection teams as are needed to efficiently sort the incoming ballots and complete the procedures for all precincts in the county;

4.1.2. As many write-in counting team as are needed to efficiently review the ballots containing attempted write-in votes and to complete the procedures for all precincts in the county.

4.1.3. One or more resolution teams as needed to efficiently complete the procedures and prevent delays in completing the tabulation for all precincts in the county.

4.2. Each inspection team shall handle the ballots of only one precinct at a time, so as not to intermingle the ballots of various precincts. Each team shall remove the ballots from the ballot box, sort the ballots into stacks of ballots with write-in votes and ballots without write-in votes, and complete any other procedures required or directed by the clerk of the county commission.

4.3. Each write-in counting team shall proceed as follows:

4.3.1. They shall handle the ballots of only one precinct at a time.

4.3.2. They shall examine the ballots containing attempted write-in votes one by one in order to determine whether the write-in vote shall be counted and whether any temporary alteration or duplication of the ballot is necessary.

a. They shall determine whether any official write-in candidates have filed for offices on the ballot in the precinct under consideration. If there are

official candidates, they shall proceed to the next step, 4.3.2b. If not, the ballot shall be reviewed as an invalid write-in. (under step 4.3.3.b or c.)

b. They shall examine the attempted write-in vote to determine whether the name of an office to be filled in that election is given. If not, the attempted vote shall be disregarded, and the ballot placed in the stack to be tabulated. If an office to be filled is named, they shall proceed to the next step, 4.3.2c.

c. They shall then determine if the vote is entered in the proper place for write-in votes. If the name is entered in the proper location, they shall proceed to the next step, 4.3.3. If not, the ballot shall be reviewed as an invalid write-in, step 4.3.3b or c.

4.3.3. They shall examine the write-in vote to determine if it is a valid write-in vote, as defined in section 2.3 of this rule.

a. If the counting team finds the entry is a valid write-in vote, they shall then examine the ballot to determine whether the voter has overvoted for the office for which the write-in vote was cast.

A. If there is no overvote, a tally mark shall be entered on the write-in record sheet for the precinct, and the ballot placed in the stack to be tabulated.

B. If there is an overvote, no tally mark shall be entered, and the ballot placed in the stack to be tabulated.

b. If the counting team finds the write-in position was marked but the name entered is not an official write-in candidate, they shall place the ballot placed in the stack to be tabulated.

c. If the counting team finds the write-in position was not marked, they shall then examine the ballot to determine whether the voter's intention for the office is clear.

A. If the attempted write-in would not have caused an overvote had it been a valid vote and the ballot contains no straight ticket vote, the voter's intention is clear. The ballot shall be placed in the stack to be tabulated.

B. If the attempted write-in would have caused an overvote or would have caused a straight ticket vote to be rejected for that office had the vote been a valid write-in, the voter's intention is not clear. The write-in team shall place a black sticker over the write-in position or duplicate the ballot according to the provisions of W. Va. Code § 3-4A-27(d), and mark the write-in position so as to cause the tabulator to reject the overvote or straight ticket vote. [Note: If the straight ticket party has a vacancy on the ballot for the write-in office which meant the write-in would not have caused an overvote, or if the straight ticket party has no nominee for the office, the ballot may be counted by the electronic tabulator without alteration or duplication.] The duplicate ballot shall be placed in the stack to be tabulated, or held in a separate stack until the group to be tabulated is complete.

4.4. A ballot shall be duplicated only if there is a mark which makes correct

tabulation impossible, or the ballot is so badly damaged it will not go through the scanner;

4.4.1. All duplicated ballots shall be numbered in red ink corresponding to the original ballot beginning with one (1) and continuing in sequence (for example, if there are five (5) ballots to be duplicated for a precinct, the numbers assigned would begin with one (1) and end with five (5).);

4.4.2. When any ballot is duplicated, the original ballot shall be retained with the duplicate.

4.5. For each precinct, a careful tally of write-in votes and all other votes counted manually under this procedure shall be kept by each deputized person designated to count ballots containing write-in votes;

4.6. Once all the ballots are stacked for the tabulator and all valid write-in votes tallied, the ballots shall be delivered as directed by the clerk to the team in charge of the tabulator.

4.7. One resolution team shall be present at the tabulator to review any ballots isolated by the tabulator.

4.7.1. The resolution team shall begin the review of isolated ballots immediately, and shall complete the review and any necessary temporary alteration or duplication according to the procedures of subsection 5.4, in order to reflect the voter's intention and shall return the ballots for tabulation.

4.7.2. The results of the precinct tabulation shall not be posted until the resolution team has completed its work and all ballots from the precinct have been tabulated.

4.8. As soon as practical after the tabulation of the precinct, the tally of all tabulated and write-in votes for announced write-in candidates shall be posted for public inspection.

SERIES 28

AGENCIES DESIGNATED TO PROVIDE VOTER REGISTRATION SERVICES

Sec.

153-28-1. General.

153-28-2. Definitions.

153-28-3. Designated Public Assistance Agencies.

153-28-4. Designated Disabilities Services Agencies.

153-28-5. Designated County Marriage License Offices.

§ 153-28-1. General.

1.1. Scope—To designate those agencies and programs required to provide voter registration according to the provisions of the W. Va. Code § 3-2-13.

1.2. Authority—W. Va. Code §§ 3-1A-6 and 3-2-13.

1.3. Filing Date—May 16, 2005.

1.4. Effective Date—May 16, 2005.

§ 153-28-2. Definitions.

For the purposes of this rule:

2.1. "Designated agency" means a department, division or office of state or local government, or a program supported by state funds which is designated by this rule to provide voter registration services according to the provisions of W. Va. Code § 3-2-13 beginning July 1, 1999.

2.2. "Public assistance agency" means a designated agency which receives applications for assistance as defined in W. Va. Code § 9-1-2(e) for which an income means test is applied for determination of eligibility for assistance and includes the food stamp program, Temporary Assistance to Needy Families, the "Women, Infants and Children" (WIC) program and the Medicaid program as specified in W. Va. Code § 3-2-13(b)(1).

2.3. "Disabilities Services agency" means a designated agency primarily engaged in providing services to persons with disabilities.

2.4. "Offices which issue marriage licenses" means those sections or divisions of the offices of the clerk of the county commission and/or those employees assigned to provide or receive marriage license applications, and shall not include those sections, divisions or employees delivering other services of the clerk's office.

§ 153-28-3. Designated Public Assistance Agencies.

Voter registration services will be provided to applicants for services through:

3.1. the Temporary Assistance to Needy Families, the Food Stamp program, the Transportation Remuneration and Incentive Program (TRIP), the Emergency Assistance Program, the Low Income Energy Assistance Program (LIEAP) and the Medicaid program within the West Virginia Department of Health and Human Resources;

3.2. the Women, Infants and Children program (WIC) under the

Nutrition Services Section, Bureau of Public Health within the West Virginia Department of Health and Human Resources; and

3.3. the Homeless program under the Social Services Division within the West Virginia Department of Health and Human Resources.

§ 153-28-4. Designated Disabilities Services Agencies.

Voter registration services will be provided to applicants for services through:

4.1. the WV Bureau of Senior Services under the Governor's Office;

4.2. programs offered by the WV Commission for the Deaf and Hard-of-Hearing within the West Virginia Department of Health and Human Resources;

4.3. the early Intervention program and the Handicapped Children program under the Infant and Child Health section within the West Virginia Department of Health and Human Resources;

4.4. the Behavioral Health Services program within the West Virginia Department of Health and Human Resources;

4.5. programs offered by the Blind and Handicapped Division of the Library Commission and the Division of Rehabilitation Services within the West Virginia Department of Education and the Arts;

4.6. programs offered by the West Virginia School for the Deaf and Blind within the West Virginia State Board of Education; and

4.7. programs offered by the Division of Veteran Affairs within the West Virginia Department of Public Safety.

§ 153-28-5. Designated County Marriage License Offices.

The county offices which issue marriage licenses within the office of the clerk of the county commission in each county of the state are designated to provide voter registration services.

SERIES 37

ADMINISTRATION OF THE ADDRESS CONFIDENTIALITY PROGRAM

Sec.

153-37-1. General.

153-37-2. Definitions.

153-37-3. Application Assistant Registration.

153-37-4. Program Participant Application and Certification Process.

153-37-5. Exercise of Program Participant's Privileges.

153-37-6. Program Participant Renewal.

153-37-7. Cancellation of Program Certification.

153-37-8. Withdrawal and Expiration.

153-37-9. Disclosure to Law Enforcement.

153-37-10. Agency Disclosure Request.

153-37-11. Service of Process.

153-37-12. Protected Records Voter Registration.

153-37-13. Maintaining Protected Records Voter Information.

153-37-14. Undeliverable Ballot.

153-37-15. Election Contest Procedures.

153-37-16. Confidentiality.

153-37-17. Mail Procedures.

§ 153-37-1. General.

1.1. Scope.—This legislative rule is written to facilitate the administration of the Address Confidentiality Program. The rule describes the manner and process for application to the program by prospective participants and application assistants. The rule further includes sections on cancellation of program certification, exercise of program participant privileges, program participation renewal, application for agency disclosure requests, disclosure to law enforcement, service of process and establishes uniform statewide procedures for maintaining the confidentiality of a program participant's name and address information in voting records.

1.2. Authority.—W.Va. Code 48-28A-110.

1.3. Filing Date.—

1.4. Effective Date.—

§ 153-37-2. Definitions.

2.1. "Agency" means an office, department, division, bureau, board, commission, or other statutory unit of state or local government or any functional subdivision of that agency.

2.2. Applicant means an adult, a parent or guardian acting on behalf of an eligible minor, or a guardian on behalf of an incapacitated person applying for certification in the Address Confidentiality Program as a program participant.

2.3. Application means a standard application form provided by the Secretary of State which must be completed by an applicant with an application assistant.

2.4. Application assistant means an employee of a state or local agency, or of a nonprofit program that provides counseling, referral, shelter or other specialized service to victims of domestic abuse, rape, sexual assault or stalking, and who has been designated by the respective agency or nonprofit program, and trained, accepted and registered by the Secretary of State to

assist individuals in the completion of program participation applications.

2.5. Authorization card means a card issued by the Secretary of State to a program participant upon certification, which includes program participant's name, authorization code, designated address and certification expiration date.

2.6. Authorization code means a number assigned to a program participant upon acceptance into the program.

2.7. Certification means the process by which an applicant is determined eligible to participate in the program.

2.8. Critical precinct list means a list of precincts maintained by each county clerk's office in which program participants are registered to vote.

2.9. Designated address means the address assigned to a program participant by the Secretary of State.

2.10. Designated county contact means the county clerk or her or his designee who will be the primary contact for the Secretary of State for this program.

2.11. Mailing address means an address that is recognized for delivery by the United States Postal Service.

2.12. Program means the Address Confidentiality Program established by WV Code 48-28A-101.

2.13. Program manager means the employee, within the Office of the Secretary of State, designated by the Secretary of State to operate and manage the Address Confidentiality Program.

2.14. Program participant means a person certified by the Secretary of State to participate in the Address Confidentiality Program.

2.15. "Protected records voter" means a program participant who has applied and qualified as a registered voter during the time she or he is certified as a program participant.

2.16. "Record" means any information relating to the conduct or performance of a governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

2.17. Residential address means a residential street, school or work address of an individual, as specified on the individual's application to be a program participant.

§ 153-37-3. Application Assistant Registration.

3.1. All application assistants must be registered by the Secretary of State to participate in this program, and application assistants will be given a registration number once registered.

3.2. Application assistant registration will only be awarded when the prospective application assistant:

3.2.a. Is a service provider or works with an agency and can demonstrate to the Secretary of State relevant qualifications to work with victims of domestic abuse, rape, sexual assault or stalking;

3.2.b. Successfully completes any program orientation or training session sponsored by the Office of the Secretary of State;

3.2.c. Completes an application for prospective application assistants which includes the applicant's name, address, service provider or agency, supervisor's name and relevant qualifications;

3.2.d. Agrees to adhere to the policies, procedures and directions provided by the Secretary of State for rendering assistance to program applicants; and

3.2.e. Agrees to adhere to the instructions and terms provided in the application assistant agreement proscribed by the Secretary of State.

3.3. Application assistant registration shall be valid for two years, unless terminated sooner as provided herein.

3.4. The application assistant agrees not to discriminate against any client, or potential program participant, because of race, creed, color, national origin, gender, sexual orientation, age, or mental, physical or sensory disability.

3.5. The application assistant performing under this agreement is not deemed to be an employee of the Secretary of State or an agent of the Secretary of State in any manner whatsoever. The application assistant will not hold herself or himself out as, nor claim to be an agent or employee of the Secretary of State or the State of West Virginia simply because she or he is a program application assistant and will not make any claim, demand, or application to or for any right or privilege applicable to an agent or employee of the Secretary of State or the State of West Virginia.

3.6. An application assistant's registration may be terminated by the Secretary of State for failing to abide by any requirement set forth by the Secretary of State or for failing to act in accordance with requirements of the Address Confidentiality Program.

§ 153-37-4. Program Participant Application and Certification Process.

4.1. An applicant shall complete, date, sign and provide all the information required under W.Va. Code § 48-28A-103, and as requested on the application.

4.2. The application shall include an attestation by the applicant that disclosure of the applicant's address threatens the safety of the applicant or the applicant's children or the minor or incapacitated person on whose behalf the application is made.

4.3. An applicant shall specify a residential or mailing address in West Virginia for which confidentiality is requested and a telephone number where the applicant may be contacted by the Office of the Secretary of State.

4.4. The application form shall include, but not be limited to, the applicant's name and date of birth, a listing of all minor children residing with the applicant, including each minor child's date of birth, and each minor child's relationship to the applicant, a statement that the applicant shall not disclose her or his residential or mailing address to the alleged batterer, stalker, or person threatening her or his safety or that of her or his minor children, the application preparation date, the printed name and signature and recommendation of the application assistant.

4.5. Acceptance into the program shall be effective on the day an applicant is certified by the program manager.

4.6. An individual who is certified as a program participant shall be issued a program participant's authorization card which includes her or his name, authorization code, designated address and certification expiration date.

4.7. The term of a program participant's certification shall be four years unless the certification is withdrawn or canceled pursuant to W.Va. Code § 48-28A-104.

4.8. If there is a change in the program participant's residential or mailing address from the one listed on the application, the program participant shall notify the program manager in writing of such change within 10 days of the change in residence.

§ 153-37-5. Exercise of Program Participant's Privileges.

5.1. A program participant shall request, at the time of creation of a new record, that an agency use the designated address assigned by the Secretary of State as her or his residential or mailing address.

5.2. A program participant shall show her or his authorization card to the agency official creating a new record and request address confidentiality through use of the designated address in lieu of her or his residential or mailing address. The designated address shall appear on the program participant's authorization card.

5.3. Agency personnel may make a file photocopy of the authorization card and shall immediately return the authorization card to the program participant.

5.4. An agency shall accept the designated address. However, an agency may obtain the program participant's residential or mailing address pursuant to Section 10 of this rule.

5.5. An agency shall not question the program participant about the details or circumstances of her or his inclusion in the program. Rather, the agency shall accept the determination made by the Secretary of State that she or he is a qualified program participant.

§ 153-37-6. Program Participant Renewal.

6.1. A program participant may renew her or his program participation by filing a reapplication form accompanied by the printed name, signature and recommendation of the application assistant. The Secretary of State shall send

a reapplication form to the program participant at least four weeks before the expiration of the current authorization.

6.2. The Secretary of State may certify a program participant, who has filed a reapplication form, to participate in the program for an additional four year term unless the certification is withdrawn or canceled before that date.

6.3. Upon renewal, the program manager shall issue to the program participant a new authorization card which includes the program participant's name, authorization code, designated mailing address and certification expiration date.

6.4. Upon receipt of the renewed authorization card, the participant shall return his or her expired authorization card to the Secretary of State to be destroyed.

§ 153-37-7. Cancellation of Program Certification.

7.1. Program certification shall be canceled if any of the following occur:

7.1.a. The program participant fails to notify the program manager in writing of a change in the program participant's residential or mailing address or a change in the program participant's name within 10 days;

7.1.b. Any one of the cancellation conditions provided for by W.Va. Code § 48-28A-103(f); or,

7.1.c. The program participant discloses her or his residential or mailing address to the alleged batterer, stalker, or person threatening her or his safety or that of her or his minor children.

7.2. If certification for the program is canceled, the program manager will notify the program participant of the cancellation by mail addressed to the participant's last known residential or mailing address.

7.3. Upon cancellation of program certification, the program participant shall return the authorization card to the Secretary of State.

§ 153-37-8. Withdrawal and Expiration.

8.1. A program participant may withdraw from program participation by submitting to the Secretary of State written notification of withdrawal and her or his current authorization card. Certification shall be terminated on the date of receipt of this notification.

8.2. If the program participant verbally requests withdrawal from the program, but does not return her or his current authorization card, the Secretary of State may, at her or his discretion, cancel program participation based solely on the verbal request. However, before cancellation is effective based on a verbal request, the program manager shall send, via certified mail return receipt requested, written notification to the program participant stating that the verbal request has been received and that the program participant has thirty (30) days from receipt of the letter to inform the program manager that she or he objects to the cancellation.

8.3. A program participant's certification shall expire if the program participant's certification term has lapsed and certification has not been renewed.

8.4. The Secretary of State shall send written notification of the expiration to the participant's last known mailing or residential address. The program participant shall have ten business days in which to appeal the expiration under procedures developed by the Secretary of State.

§ 153-37-9. Disclosure to Law Enforcement.

9.1. A law enforcement agency requesting a program participant's residential or mailing address must provide the request to the Secretary of State, in the following manner:

9.1.a. The request shall be submitted in writing by the county prosecutor or the United States Attorney having the appropriate jurisdiction for the requesting law enforcement agency.

9.1.b. The request shall be on the letterhead of the county prosecutor or the United States Attorney, shall state the reason the address is required by that law enforcement officer or agency and shall state the identification of the individuals who will have access to the record.

9.2. Once a properly submitted request is received, the program manager shall provide the county prosecutor or United States Attorney with the program participant's address and document the program participant's file with the request from law enforcement.

§ 153-37-10. Agency Disclosure Request.

10.1. An agency requesting a disclosure of the program participant's residential or mailing address under W.Va. Code § 48-28A-106(a)(2), must provide in writing to the Secretary of State:

10.1.a. Identification of the statute or administrative rule which demonstrates the agency's bona fide requirement and authority for the use of the residential address of an individual;

10.1.b. Identification and description of the specific record or record series for which the disclosure is requested; and

10.1.c. Identification of the individuals who will have access to the record.

10.2. The Secretary of State shall review an agency's request for a disclosure.

10.3. During the review and evaluation or reconsideration of an agency's disclosure request, the agency shall accept the use of a program participant's designated address.

10.4. The Secretary of State's determination to grant or deny a disclosure request shall be based on, but not limited to, an evaluation of the information provided by the agency in conformance with the statutory standard of a bona

fide statutory or administrative requirement for the use of a program participant's residential address.

10.5. If the Secretary of State determines that an agency has a bona fide statutory or administrative requirement for the use of a program participant's residential or mailing address information which will only be used for those statutory and administrative purposes, the Secretary may issue the granted disclosure in writing. When granting a disclosure request, the Secretary may include:

10.5.a. Any obligations for the agency to maintain the confidentiality of a program participant's residential or mailing address;

10.5.b. Any limitations on use and access to the residential or mailing address;

10.5.c. Any term during which the granted disclosure is authorized for the agency;

10.5.d. Any designation of the record format on which the residential or mailing address may be maintained;

10.5.e. A date by which an agency may no longer maintain a record of the residential or mailing address; and

10.5.f. Any other provisions and qualifications determined appropriate by the Secretary of State including addressing any particular provisions pertinent to the requesting agency.

10.5.g. If an agency request is based on the safety and welfare of a minor or a protected person, then the Secretary of State shall respond to such request in an expedited manner.

10.6. The Secretary of State's denial of an agency's disclosure request shall be made in writing and include a statement of the specific reasons therefore.

10.7. An agency may seek reconsideration of the denial of its request by resubmitting its written request within 60 days of the issuance of a denial. The request may be accompanied by additional information and an explanation of corrective action taken to alleviate concerns and considerations included in the Secretary of State's denial determination. Final administrative determination shall be made by the Secretary of State.

§ 153-37-11. Service of Process.

11.1. The Secretary of State shall be an agent of the program participant upon whom any service of process, notice or demand may be served.

11.2. Service on the Secretary of State of any such service of process, notice or demand shall be made by mail or delivery to the Secretary of State at her or his office two copies of the process, notice or demand. If by mail, such service of process, notice or demand shall be made on the Secretary of State at her or his regular mailing address and not at the designated address of the program participant.

11.3. If such service of process, notice or demand is served on the Secretary of State on behalf of the program participant, the Secretary of State shall immediately forward, via certified mail return receipt requested, a copy to the program participant at the participant's residential or mailing address.

11.4. The Secretary of State shall maintain, in the program participant's file, a record of any service of process, notice or demand served upon the Secretary of State for that participant. The Secretary of State shall include in the file the date of such service and the Secretary of State's action.

11.5. Service or acceptance of process or notice is sufficient if return receipt is signed by the program participant, or if the registered or certified mail sent by the Secretary of State is refused by the program participant and the registered or certified mail is returned to the Secretary of State, or to her or his office, showing the stamp of the United States Postal Service that delivery has been refused, and the return receipt or registered or certified mail is appended to the original process or notice and filed in the clerk's office of the court from which the process or notice was issued. The Secretary of State may redact the residential address from any document filed with the court unless otherwise ordered by the court.

§ 153-37-12. Protected Records Voter Registration.

12.1. A program participant shall have the opportunity to apply through the Secretary of State's office for a new voter's registration using her or his designated address and may cancel any previous registration.

12.2. The Secretary of State determine the correct precinct for the program participant and notify the designated county contact.

12.3. The designated county contact will add the determined precinct to the critical precinct list and notify the program manager of any changes made to precincts maintained on the list.

12.4. The program manager will maintain a list of precincts and program participants' residential and mailing addresses.

§ 153-37-13. Maintaining Protected Records Voter Information.

13.1. The residential or mailing address for a protected records voter shall not be maintained on any voter registration data base and shall not be publicly accessible regardless of the type of records management system.

13.2. At least sixty days before every special, primary, or general election, the designated county contact shall review all critical precinct lists and update the appropriate voter records as necessary. Notification shall be sent to the affected program participant.

13.3. A program participant shall have the right to vote in the same manner as any other qualified voter within the state.

13.4. The designated county contact shall maintain a record of absentee ballots sent to protected records voters and a record of ballots returned.

§ 153-37-14. Undeliverable Ballot.

14.1. If any protected records voter's absentee ballot is declared undeliverable by the post office and returned to the Secretary of State, the program manager shall attempt to determine the cause of this occurrence and inform the designated county contact of any relevant information regarding the reason for the ballot's return.

§ 153-37-15. Election Contest Procedures.

15.1. If any post election challenges are brought pertaining to the outcome of any election and it becomes necessary to check the validity of all absentee ballots cast in the election by verifying the names and addresses of all voters casting absentee ballots, a protected records voter's ballot shall not be included in the review unless the county canvassing board determines that such a ballot would be determinative of a county election outcome. When the county canvassing board has determined that review of a protected records voter's ballot is necessary, the designated county contact shall verify the protected records voter's ballot, in executive session, using extreme caution to ensure continued confidentiality.

15.2. When the Secretary of State determines the review of a protected records voter's ballot is necessary to determine the outcome of any election that would be determined by voters outside that county, the county canvassing board shall review the protected ballots.".

§ 153-37-16. Confidentiality.

16.1. All records pertaining to the program participant shall be kept confidential. A request to ascertain if an individual is a program participant shall be in writing and addressed to the program manager. Upon receipt of a written request, the program manager shall confirm, in writing within ten (10) days, whether or not an individual is a program participant, but the program manager shall not disclose any further information about the program participant. A copy of such written confirmation shall also be sent to the program participant.

§ 153-37-17. Mail Procedures.

17.1. The Secretary of State shall take reasonable precautions to ensure outgoing mail from the Secretary of State's office addressed to participants at their residential or mailing address remains secure and confidential.

17.2. In the event that a person is no longer a program participant for any reason, including but not limited to, cancellation, termination or expiration, the Secretary of State shall:

17.2.a. Notify the designated county contact and the Division of Motor Vehicles that the person is no longer a program participant and provide the person's last known residential and mailing address.

17.2.b. Return any mail received from an agency with a letter explaining the person is no longer a program participant and provide the person's last known

residential and mailing address.

17.2.c. Return all other mail that is not sent from an agency with an indication on the envelope that the person can no longer receive mail at the designated address.

SERIES 38

VOTE-BY-MAIL PILOT PROJECT PHASE 1: CLASS IV EARLY VOTING BY MAIL

Sec.

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153-38-11. Secretary of State Authority to Conduct Pilot Program

§ 153-38-1. General.

1.1. Scope.—This rule establishes the guidelines for conducting early voting by mail which are to be used by the municipal recorder or other officer, hereafter Clerk, authorized by charter or ordinance provisions to conduct voting for any election held entirely within a Class IV municipality.

1.2. Authority.—W.Va. Code § 3-3A-3.

1.3. Filing Date.—

1.4. Effective Date.—

§ 153-38-2. Definitions.

1.1. For the purposes of this rule:

1.1.1. Clerk means the municipal recorder or other officer authorized by charter or ordinance provisions to conduct voting for any election held

entirely within a Class IV municipality.

§ 153-38-3. Intent to Conduct Early Voting by Mail.

3.1. Each Class IV municipality wishing to conduct early voting by mail shall adopt an ordinance expressing the municipality's intent to conduct early voting by mail in lieu of early in-person absentee voting.

3.2. Each Class IV municipality having met the provisions of 3.1 of this rule, shall notify the public as prescribed in section 4 of this rule, and, in addition, may give public notice in any other manner considered appropriate by the municipality.

3.3. Each Class IV municipality wishing to conduct early voting by mail shall notify the Secretary of State in writing no later than the end of business on the last day of January of the year in which the election will be held or such notice may be postmarked by midnight on the last day of January in which the election will be held.

3.4. Each Class IV municipality wishing to conduct early voting by mail shall attend mandatory training provided by the Secretary of State or forfeit participation in the early voting by mail program.

§ 153-38-4. Notice of Early Voting by Mail.

4.1. Notice of early voting by mail shall be mailed to each registered voter in the municipality no more than four weeks nor less than two weeks prior to the start of the early voting period.

4.2. Notice may be included in any utility or service statement or invoice mailed to every household in the municipality or by a postcard sent to all registered voters in the municipality.

4.3. Notice shall include:

4.3.1. _____(municipality name)_____ ordinance (ordinance reference) provides that early voting will be conducted by mail instead of voting in person at (usual early voting location).

4.3.2. The procedure for requesting an early voting by mail ballot including:

4.3.2.a. Appropriate election official to be contacted to request an early voting by mail ballot.

4.3.2.b. Manner(s) in which to contact the appropriate election official.

4.3.2.c. Notice that voter must fill out and return an early voting by mail ballot application.

4.3.3. The deadline a request for an early voting by mail ballot must be received in the office.

4.3.4. The deadline for casting an early voting by mail ballot.

4.3.5 Any other information necessary to request an early voting by mail ballot.

§ 153-38-5. Voting an Early Voting Ballot by Mail.

5.1. Upon oral or written request, the clerk shall provide to any voter of the municipality, in person, by mail, by electronic mail or by facsimile the appropriate application for voting early by mail as provided in W.Va. Code § 3-3A. 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.

5.2. Completed applications for voting early by mail are to be accepted when received by the clerk in person, by mail, by electronic mail or by facsimile no more than four weeks prior to the start of early voting, nor less than six days prior to Election Day.

5.3. Upon acceptance of a completed application, the clerk shall determine whether the following requirements have been met:

5.3.1. The application has been completed as required by law;

5.3.2. 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; and

5.3.3. 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.

5.4. If the clerk 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 clerk determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the clerk shall give notice to the voter that the voter's early voting by mail ballot will be challenged as provided in this rule and shall enter that challenge.

5.5. Within one day after the clerk has both the completed application and the ballot, the clerk 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:

5.5.1. One of each type of official early voting by mail ballot the voter is eligible to vote, prepared according to law;

5.5.2. One envelope, unsealed, which may have no marks except the designation "Early Voter's Ballot Envelope No. 1" and printed instructions to the voter;

5.5.3. One mailing envelope, unsealed, designated "Early Voter's Ballot

Envelope No. 2";

5.5.4. Instructions for voting early by mail including:

5.5.4.a. Instructions for marking the ballot, placing it in the secrecy envelope (Envelope No. 1) and the ballot return envelope (Envelope No. 2) and signing the ballot return envelope;

5.5.4.b. A warning that the ballot return envelope must be signed or the ballot will not be counted;

5.5.4.c. A warning that signing someone else's ballot return envelope is illegal;

5.5.4.d. An alternative procedure for any person who is unable to sign a ballot return envelope;

5.5.4.e. A procedure for returning a spoiled ballot should the voter make a mistake or otherwise need a new ballot; and

5.5.4.f. A prominently displayed notice that each ballot must be mailed or brought to the municipal precinct by the close of the early voting period.

5.5.5. For electronic systems, a device for marking by electronically sensible pen or ink, as may be appropriate;

5.5.6. Notice of the amount of postage required to return the ballot using First Class USPS postage;

5.5.7. Notice that a list of write-in candidates is available upon request; and

5.5.8. Any other supplies required for voting in the particular voting system.

5.6. The voter shall mark the ballot alone: *Provided,* That the voter may have assistance in voting according to the provisions of W.Va. Code § 3-3-6.

5.7. After the voter has voted the ballot or ballots to be returned by mail, the voter shall:

5.7.1. Place the ballot or ballots in Envelope no. 1 and seal that envelope;

5.7.2. Place the sealed envelope no. 1 in Envelope no. 2 and seal Envelope no. 2;

5.7.3. Complete and sign the forms on Envelope no. 2; and

5.7.4. Return that Envelope to the clerk.

5.8. Early voting by mail ballots returned by United States mail or other express shipping service are to be accepted if:

5.8.1. The ballot is received by the clerk no later than the close of the early voting period; or

5.8.2. The ballot bears a postmark of the United States Postal Service dated no later than the close of the early voting period and the ballot is received by the clerk no later than the hour at which the board of canvassers convenes to begin the canvass.

5.9. 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.

5.10. Early voting by mail ballots which are hand delivered are to be accepted if they are received by the clerk no later than the close of the early voting period: *Provided,* That no person may hand deliver more than two early voting by mail ballots in any election and any person hand delivering an early voting by mail ballot assigned to and voted by a voter, who is not the individual delivering the early voting by mail 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, chapter three of West Virginia State Code and is subject to those provisions.

5.11. Upon receipt of the sealed envelope, the clerk shall:

5.11.1. Enter onto the envelope any other required information;

5.11.2. Enter the challenge, if any, to the ballot;

5.11.3. Enter the required information into the permanent record of persons applying for and voting an early voting by mail ballot in person; and

5.11.4. Place the sealed envelope into a ballot box that is secured by two locks with a key to one lock kept by a member of the city council and a key to the other lock kept by the clerk.

§ 153-38-6. Assistance to Voter in Voting an Early Voting by Mail Ballot.

6.1. No voter shall receive any assistance in voting an early voting by mail ballot unless he or she makes a declaration at the time he or she applies for an early voting by mail ballot that because of blindness, disability, advanced age or inability to read or write he or she requires assistance in voting an early voting by mail ballot.

6.2. Upon receipt of an early voting ballot by mail, the voter who requires assistance in voting such ballot and who has indicated he or she requires such assistance and the reasons therefor on the application may select any eligible person to assist him or her in voting.

6.3. The person providing assistance in voting an early voting by mail ballot shall make an affidavit on a form as provided by the Secretary of State, that he or she will not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and that he or she will not keep or make any memorandum or entry of anything occurring while assisting the voter, and that he or she will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he or she had voted, or

how he or she had voted on any public question, or anything occurring while assisting the voter, except when required pursuant to law to give testimony as to such matter in a judicial proceeding.

6.4. The term "assistance in voting" as used in this rule shall mean assistance in physically marking the official early voting by mail ballot for a voter, or reading or directing the voter's attention to any part of the official early voting by mail ballot.

§ 153-38-7. Delivery of Early Voting by Mail Ballots to Polling Places.

7.1. Except as otherwise provided in this rule, in municipalities using paper ballot systems or voting machines, the early voting by mail ballots of each precinct, together with the applications for the early voting by mail ballots, the affidavits made in connection with assistance in voting and any forms, lists and records as may be designated by the Secretary of State, are to be delivered in a sealed carrier envelope to the election commissioner of the precinct at the time he or she picks up the official ballots and other election supplies as provided by W.Va. Code § 3-1-24.

7.2. Early voting by mail ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct are to be delivered to the election commissioner of the precinct who has been designated pursuant to W.Va. Code § 3-1-24, by the clerk in person or by messenger before the closing of the polls, provided the ballots are received by the official in time to make the delivery. Any ballots received by the official after the time that delivery may reasonably be made but within the time required as provided in section five of this rule are to be delivered to the board of canvassers along with the provisional ballots.

§ 153-38-8. Disposition and Counting of Early Voting by Mail Ballots.

8.1 Upon receipt of an early voting by mail ballot, the clerk or clerk's designee shall mark the voter's record in the poll book indicating the voter has voted in the election. The ballot shall be sorted according to precinct and shall be placed in the ballot box designated for the precinct to be kept locked until ballots are counted after the polls close on Election Day.

8.2 In municipalities using paper ballots, all early voting by mail ballots shall be processed as follows:

8.2.1. The ballot boxes containing the early voting by mail ballots shall be opened in the presence of the clerk and two representatives of opposite political parties;

8.2.2. The ballots shall be separated by precincts as stated on the sealed envelopes containing the ballots; and

8.2.3. Early voting by mail ballots shall be delivered to the polls to be opened and counted in accordance with W.Va. Code §§ 3-1-33, 3-5-15, and 3-6-6. Disclosure of any results before the voting has been closed and the precinct returns posted on the door of the polling place shall be a *per se* violation of the oath taken by the counting board. In all other municipalities, counting is to begin immediately after closing of the polls.

8.3. In municipalities using optical scan systems, the early voting by mail ballots shall be processed as follows:

8.3.1. On election day, the ballot boxes containing the early voting by mail ballots shall be delivered to the central counting center and opened in the presence of the clerk and two representatives of opposite political parties; and

8.3.2. The early voting by mail ballots shall be counted in accordance with W.Va. Code § 3-4A-27.

8.4. In municipalities using direct recording elections systems, the early voting by mail ballots shall be counted as follows:

8.4.1. On election day, the ballot boxes containing the paper early voting by mail ballots shall be delivered to the central counting center and opened in the presence of the clerk and two representatives of opposite political parties; and

8.4.2. Each early voting by mail ballot shall be recorded on a direct recording voting terminal designated by the clerk as the terminal for early voting by mail tabulations, after being read aloud by a separate team of two representatives of opposite political parties;

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

8.4.4. The appropriate election officials shall follow the procedures set out in W.Va. Code § 3-4A-27(a), (b), (d), and (e) and W.Va. Code § 3-4A-27 (c)(3-6).

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

8.6. Any election official who determines a person has voted an early voting by mail ballot and has also voted at the polls on election day must report the fact to the prosecuting attorney of the county in which the votes were cast.

§ 153-38-9. Voting in Person After Having Received and After Having Voted an Early Voting by Mail Ballot.

9.1. Any person who has applied for and received an early voting by mail ballot but has not voted and returned the same to the clerk may vote in person at the polls on election day, provided he or she returns the early voting by mail ballot to the election commissioners at the polling place. Upon return of the early voting by mail ballot, the election commissioners shall destroy the ballot in the presence of the voter, and one of the poll clerks shall make a notation of this fact as directed by instructions issued by the Secretary of State. In the event the person does not return the early voting by mail ballot, he or she will have his or her vote challenged by one or more of the election commissioners or poll clerks.

9.2. No person who has voted an early voting by mail ballot may vote in person

on the day of the election.

§ 153-38-10. Challenging of Early Voting by Mail ballots.

10.1. The clerk may challenge an early voting by mail ballot on any of the following grounds:

10.1.1 That the application for an early voting by mail ballot has not been completed as required by law;

10.1.2. That any statement or declaration contained in the application for an early voting by mail ballot is not true;

10.1.3. That the applicant for an early voting by mail ballot is not registered to vote in the precinct of his or her residence as provided by law;

10.1.4. That the person voting an early voting by mail ballot by personal appearance in his or her office had assistance in voting the ballot when the person was not qualified for voting assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this rule; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she is not so physically disabled as to have been unable to see or mark the absent voter's ballot; and

10.1.5. That the person who voted an early voting by mail ballot by mail and received assistance in voting the ballot was not qualified under the provisions of this rule for assistance.

10.2. Any one or more of the election commissioners or poll clerks in a precinct may challenge an early voting by mail ballot on any of the following grounds:

10.2.1. That the application for an early voting by mail ballot was not completed as required by law;

10.2.2. That any statement or declaration contained in the application for an early voting by mail ballot is not true;

10.2.3. That the person voting an early voting by mail ballot is not registered to vote in the precinct of his or her residence as provided by law;

10.2.4. That the signatures of the person voting an early voting by mail ballot as they appear on his or her registration record, his or her application for an early voting by mail ballot, and the early voting by mail ballot envelope are not in the same handwriting;

10.2.5. That the person voting an early voting by mail ballot by personal appearance had assistance in voting the ballot when the person was not qualified for assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as

to have been unable to read the names on the ballot or that he or she was not so physically disabled as to have been unable to see or mark the early voting by mail ballot;

10.2.6. That the person voted an early voting by mail ballot by mail and received assistance in voting the ballot when not qualified under the provisions of this rule for assistance;

10.2.7. That the person who voted the early voting by mail ballot voted in person at the polls on election day; and

10.2.8. On any other ground or for any reason for which the ballot of a voter voting in person at the polls on election day may be challenged.

10.3. Forms for, and the manner of, challenging an early voting by mail ballot under the provisions of this rule are to be prescribed by the Secretary of State.

10.4. Early voting by mail ballots challenged by the clerk under the provisions of this rule are to be transmitted by the clerk directly to the board of canvassers. The early voting by mail ballots challenged by the election commissioners and poll clerks under the provisions of this rule may not be counted by the election officials but are to be transmitted by them to the board of canvassers. Action by the board of canvassers on challenged early voting by mail ballots is to be governed by the provisions of W.Va. Code § 3-1-41.

§ 153-38-11. Secretary of State Authority to Conduct Pilot Program

11.1. The Secretary of State, pursuant to West Virginia Code § 3-3A-3, has been given the authority to implement Phase One of the Vote by Mail Pilot Program; therefore, it is the duty of all officials designated to supervise and conduct the vote by mail program, other municipal officials, and all election commissioners and poll clerks to abide by the Secretary of State's rules, orders and instructions and to use the forms, lists and records prescribed by the Secretary of State.

SERIES 39

VOTE-BY-MAIL PILOT PROJECT PHASE 2: VOTING BY MAIL

Sec.

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§ 153-39-1. General.

1.1. Scope.—This rule establishes the guidelines to be used by the municipal recorder or other officer, hereafter Clerk, authorized by charter or ordinance provisions to conduct voting for any election held entirely within a municipality to conduct municipal elections by mail; including, but not limited to, program participation selection criteria, procedures for conducting voting by mail, requirements for places of deposit and, security of ballots and ballot deposit locations.

1.2. Authority.—W.Va. Code § 3-3A-3.

1.3. Filing Date.—

1.4. Effective Date.—

§ 153-39-2. Definitions.

2.1. For the purposes of this rule:

2.1.1. Authorized personnel means those individuals the clerk chooses to assist with election administration.

2.1.2. Ballot packet means all information mailed to the voter pursuant to section five of this rule.

2.1.3. Clerk means the municipal recorder or other officer authorized by charter or ordinance to conduct voting for any election held entirely within a municipality.

2.1.4. Counting Board means those election officials appointed by the clerk pursuant to W.Va. State Code §§ 3-1-28, 3-1-29, and 3-1-30.

2.1.5. Master Election List means the official record of the election.

2.1.6. Non Affiliated Voter or NAV means a properly registered voter who is not registered as a member of any political party.

2.1.7. Program means Phase 2 of the Vote by Mail Pilot Program as authorized by

W. Va. State Code § 3-3A-3.

2.1.8. Received by the clerk means properly received by the clerk in the designated post office box or official ballot deposit box or clerk's office.

2.2. All references to time of day in this rule mean local time.

§ 153-39-3. Program Participant Selection Process.

3.1. Each municipality choosing to participate in the program shall submit to the Secretary of State the following information:

3.1.1. A copy of a resolution duly passed by the municipality's governing body stating:

3.1.1.a. The municipality's intent to participate in the program; and

3.1.1.b. That it is the duty of all officials designated to supervise and conduct the program, other municipal officials, and all election commissioners to abide by the Secretary of State's rules, orders and instructions and to use the forms, lists and records prescribed by the Secretary of State.

3.1.2. Official voter participation statistics for the most recent two municipal election cycles;

3.1.3. Information relating to the total expenses of the previous two election cycles; and

3.1.4. The municipality's plan, in accordance with the provisions of this Rule, for the conduct of the election including:

3.1.4.1. Method of voting (i.e. direct recording electronic, optical scan, or hand-counted paper ballot);

3.1.4.2. Officials designated to conduct the election, including duties of each official;

3.1.4.3. Proposed number and locations for ballot deposit locations;

3.1.4.4. Provisions for ballot and ballot box security at each ballot deposit location;

3.1.4.5. The date of the next-scheduled municipal election; and

3.1.4.6. The process by which the municipality will notify the pubic of the change in the administration of the election, if selected to participate in the program.

3.2. The Secretary of State shall collect and evaluate all information submitted by the municipalities pursuant to subsection one of this section to determine the viability of each municipality's proposal using the following criteria:

3.2.1. The municipality has legally passed an ordinance stating all information

required in 3.1.1. of this rule;

3.2.2. There is sufficient historical voter participation information provided to allow for comparison of voter turnout with elections conducted in the program;

3.2.3. There is sufficient historical expense information provided to allow for comparison of expenses associated with elections conducted in the program;

3.2.4. The proposed number and locations of ballot deposit locations is reasonable, sufficient and convenient in relation to the number of registered voters in the municipality;

3.2.5. The provisions for security at each ballot deposit location are sufficient to ensure the integrity of ballots and prevent fraud; and

3.2.6. The process by which the municipality will notify the public of the change in the administration of the election is reasonable to ensure the voters in the municipality will know and understand the change.

3.3. If the Secretary of State determines that the information submitted by a municipality is deficient in any way, he or she shall give notice in writing to the municipality outlining the area or areas of deficiency. Such notice shall also state the municipality has five (5) business days to correct the deficiencies and return the information to the Secretary of State before the end of business on the fifth day for continued consideration for program participation.

3.4. If the Secretary of State determines that the information submitted or corrected and resubmitted by a municipality is sufficient, it will be eligible to participate in the program.

3.5. If more than five (5) municipalities are eligible to participate in the program, the five (5) program participants shall be selected using a drawing by lot by the Secretary of State to be held the first Monday in December next preceding the election: *Provided,* That there be no more than two (2) municipalities selected from each size classification unless there are spaces available.

3.6. If five (5) or fewer than five (5) municipalities have submitted the required information to be considered for program participation, all such municipalities shall be considered as having been selected to participate in the program and no drawing by lot will be necessary.

3.7. The Secretary of State shall notify each program participant of their selection into the program in writing within fourteen (14) business days of the selection.

§ 153-39-4. Determining Eligibility to Receive a Ballot.

4.1. All citizens legally registered to vote in the municipality in accordance with the provisions of W.Va. State Code § 3-2, shall be eligible to receive a ballot by mail for the municipal election.

4.2. If non-affiliated voters are permitted by party rules to vote in the primary of a major party, a non-affiliated voter desiring to vote a partisan ballot must notify the clerk of their intention no later than the twentieth (20th) day prior to the election.

§ 153-39-5. Mailing Ballots.

5.1. No sooner than eighteen (18) days nor later than fourteen (14) days before the election, the clerk shall mail the following ballot packet to all voters determined eligible to vote in the municipal election per the provisions of section four of this rule:

5.1.1. One of each type of official ballot the voter is eligible to vote, prepared according to law and signed by two election officials of opposite parties;

5.1.2. One envelope, unsealed, which may have no marks except the designation "Voter's Ballot Envelope No. 1";

5.1.3. One mailing envelope, unsealed, designated Voter's Ballot Envelope No. 2;

5.1.4. Instructions for voting by mail including:

5.1.4.a.Instructions for marking and folding the ballot, to place it in the secrecy envelope (Envelope No. 1) and the ballot return envelope (Envelope No. 2) and how to sign the ballot return envelope;

5.1.4.b.A warning that the ballot return envelope must be signed or the ballot will not be counted;

5.1.4.c.A warning that signing someone else's ballot return envelope is illegal;

5.1.4.d.An alternative procedure for any person who is unable to sign a ballot return envelope;

5.4.1.e.Instructions for returning a spoiled ballot should the voter make a mistake or otherwise need a new ballot; and

5.4.1.f.A prominently displayed notice that each ballot must be received by the clerk by 8:00 p.m. on election day in one of the following three ways:

5.1.4.f.1. By mail;

5.1.4.f.2. By casting the ballot at an official ballot deposit location; or

5.1.4.f.3. By hand delivering the ballot to the clerk or clerk's designee.

5.1.5. For electronic systems, a device for marking by electronically sensible pen or ink, as may be appropriate;

5.1.6. Notice that a list of write-in candidates upon request;

5.1.7. Any other supplies required for voting in the particular voting system;

5.1.8. Notice of the amount of postage required to return the ballot using First Class USPS postage;

5.1.9. The locations and available hours of all ballot deposit sites;

5.1.10. Notice that privacy booths are available at a designated location for optional use by voters; and

5.1.11. A candidates information pamphlet created by the municipality, if applicable.

5.2. The clerk shall indicate on the poll book record of each voter who is sent a ballot that a ballot has been sent to the voter and the date it was mailed.

5.3. The voter shall mark the ballot alone: *Provided,* That the voter may have assistance in voting according to the provisions of W. Va. State Code § 3-3-6.

5.4. After the voter has voted the ballot or ballots, the voter shall:

5.4.1. Place the ballot or ballots in Envelope no.1 and seal that envelope;

5.4.2. Place sealed Envelope no. 1 inside Envelope no. 2 and seal Envelope no. 2;

5.4.3. Complete and sign the forms on Envelope no. 2; and

5.4.4. Return the envelope to the clerk by mail using either the required amount of postage for the USPS or other express shipping service, or by delivering the voted ballot to an official ballot deposit location.

5.5. Ballots returned by USPS mail or other express shipping service are to be accepted if the ballot is received by the clerk no later than 8:00 p.m. on election day. Ballots postmarked by election day but received by the clerk after 8:00 p.m. on election day will not be counted.

5.6. 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.

5.7. Ballots which are hand delivered are to be accepted if they are received by the clerk no later than 8:00 p.m. on election day.

5.8. Prior to the election, the clerk shall arrange with the local Post Office to secure a Post Office box to be used only for the return of mailed ballots.

5.9. The clerk shall coordinate with the Post Office a regularly scheduled mail pick up time for each day and an 8:00 p.m. pick up time on election day.

§ 153-39-6. Official Ballot Deposit Locations.

6.1. Each municipality shall establish the number of official ballot deposit

locations in the following manner:

6.1.1. Each Class I and Class II municipality must establish no fewer than three (3) official ballot deposit locations; and

6.1.2. Each Class III and Class IV municipality must establish no fewer than two (2) official ballot locations.

6.2. An official ballot deposit location must be maintained at the elections office of each municipality.

6.3. Proposed official ballot deposit locations shall be determined using the following criteria:

6.3.1. Security,

6.3.2. Concentration of population,

6.3.3. Convenience for voters,

6.3.4. Access for the physically disabled; and

6.3.5. Parking availability

6.4. Official ballot deposit boxes must be locked and secure from being moved or in view of authorized personnel.

6.5. Official ballot deposit boxes at staffed locations must be locked and sealed and accessible only by authorized personnel or deputized staff. The box may be exchanged for a locked or sealed empty box on a predetermined schedule or it may be re-locked or re-sealed when emptied by at least two people of opposite parties authorized to handle the election material.

6.6. Official ballot deposit boxes at staffed locations must be in view of on-site staff and transported only by election or deputized staff to the elections office on a predetermined schedule or as needed.

6.7. Outdoor official ballot deposit boxes must be accessible only by keys in possession of authorized personnel.

6.8. The clerk shall establish a predetermined schedule (or more frequently if necessary) to empty outdoor official ballot deposit boxes, transfer the voted ballots into a locked or sealed ballot box, bag or pouch and transport them to the elections office.

6.9. The official ballot deposit location at the elections office must be established beginning the first day ballots are mailed and must be accessible during regular business hours through the day next preceding the election; *Provided*, That the location be open and accessible on the final Saturday preceding election day beginning at 9:00 a.m. and ending at 5:00 p.m.

6.10. Official ballot deposit locations other than the elections office must be established no later than five calendar days before election day; *Provided*, That official ballot deposit locations must be open and accessible the Saturday

next preceding election day beginning at 9:00 a.m. and ending at 5:00 p.m.

§ 153-39-7. Ballot Reception, Signature Verification and Sorting.

7.1. The clerk or clerk's designee shall keep a record of ballots returned by the USPS, ballots received from official ballot deposit locations, ballots returned unsigned and ballots returned as undeliverable.

7.2. If a ballot is returned in an unsigned envelope the clerk shall make a reasonable attempt to notify the voter that the ballot cannot be processed unless the envelope is signed prior to 8:00 p.m. on election day. A signature may not be faxed or sent via other electronic means. The clerk may:

7.2.1. Issue a replacement ballot;

7.2.2. Have the voter sign the return identification ballot envelope (envelope no. 2) at the elections office; or

7.2.3. Mail the original unsigned envelope to the voter for a signature if time allows.

7.3. If, during a scheduled election, the voter returns a return identification ballot envelope for a previous election date the clerk shall make a reasonable attempt to notify the voter that the ballot cannot be processed unless the ballot is placed in the proper envelope prior to 8:00 p.m. on election day. The clerk may:

7.3.1. Issue a replacement ballot; or

7.3.2. Mail the original envelope to the voter for the voter to return the ballot in the proper envelope.

7.4. When a ballot has been returned by the voter the clerk shall check Envelope no. 2 for valid signatures and compare the voter's signature on Envelope no. 2 with the signature kept on file for the voter's registration. If the clerk is able to determine that the same person signed Envelope no. 2 and the voter registration card, the ballot may be accepted and processed.

7.5. If the clerk determines that the signature on Envelope no. 2 and the voter's registration do not match, the clerk shall issue a challenge to the ballot and send notice in writing to the voter that the ballot has been challenged and the reason for the challenge.

7.6. The clerk shall review all initially rejected signatures using the following criteria:

7.6.1. Capitol letters match;

7.6.2. Letters tail off alike;

7.6.3. Letter spacing is the same;

7.6.4. The beginning and ending of the signature and the slant are consistent;

7.6.5. Unique letters match; and

7.6.6. Overall appearances match.

7.7. When a ballot has been returned by the voter and is accepted, it is included in the master list for the election. If the return identification envelope is unsigned and is returned to the voter for signature, the ballot is not posted until the signed envelope is returned.

7.7.1. Automated reports and computer programs may be used for the master list and logs that track reissued, replacement and challenged ballots.

7.7.2. Reissued and replacement ballots must be identified to ensure only the correct ballot is being counted.

7.7.3. Challenged ballots must be noted on the master list and processed separately according to provisions of section eight of this rule.

7.8. Ballots that have been accepted shall be processed in the following manner:

7.8.1. The clerk or clerk's designee shall mark the voter's record in the poll book indicating the voter has voted in the election; and

7.8.2. The ballot shall be sorted according to precinct and shall be placed in the ballot box designated for the precinct to be kept locked until opened according to provisions of section nine of this rule.

§ 153-39-8. Provisional Ballots.

8.1. Ballots issued pursuant to the rules of the Vote by Mail Pilot Program may be challenged and determined to be provisional ballots for any reason outlined in W.Va. Code § 3-3-10.

8.2. Ballots determined to be provisional prior to mailing shall not be signed by the poll clerks, and notation must be made in the poll book that the voter has been mailed a provisional ballot.

8.3. When a voter returns a provisional ballot the record shall be updated in both the master list and poll book and the ballot shall be kept secure and remain sealed until canvass, but not placed in the ballot box.

8.4. If a ballot is challenged at the time it is returned to the clerk, the clerk shall update the record in both the master list and poll book and the ballot shall be kept secure and remain sealed until canvass, but not placed in the ballot box.

8.5. The clerk shall make every reasonable effort to obtain all information and documentation necessary to resolve challenges to a ballot prior to the start of canvass.

§ 153-39-9. Opening Ballot Return Envelopes.

9.1. The clerk shall appoint one or more Counting Boards as necessary for the

efficient processing and counting of ballots on election day.

9.2. The clerk shall maintain a record of all Counting Board members, including each member's political party affiliation, oath and board assignments. If there is more than one Counting Board the clerk shall maintain a record specifying the precincts processed by each counting board.

9.3. No sooner than 5:00 p.m. on election day, the Counting Board or Boards may open the ballot boxes, process the ballots by removing the ballots from the envelopes and returning the ballots to the locked box for their specified precinct; *Provided*, That no ballot shall be unfolded or read prior to being returned to the ballot box.

9.4. Ballot envelopes received after 5:00 p.m., but no later than 8:00 p.m. on election day shall be accepted or rejected pursuant to provisions of section seven of this rule. Accepted ballot envelopes shall be processed by the Counting Board or Boards and the folded and unread ballots shall be placed in the appropriate ballot box.

§ 153-39-10. Ballot Counting Procedures in Paper Ballot Systems.

10.1. After all ballots determined to have been received by the clerk by 8:00 p.m. on election day have been returned to the election office, they shall be accepted or rejected according to provisions of section seven of this rule. Accepted ballots shall be processed as outlined in 9.3 of this rule. The ballot box or boxes shall then be opened separately and all votes shall be tallied in the presence of the entire election board.

10.2. Ballots shall be counted and recorded pursuant to provisions of W.Va. State Code §§ 3-6-6, 3-6-7, and 3-6-8, unless otherwise provided for in this rule.

§ 153-39-11. Ballot Counting Procedures in Optical Scan Ballot Systems.

11.1. After all ballots determined to have been received by the clerk by 8:00 p.m. on election day have been returned to the election office, they shall be accepted or rejected according to provisions of section seven of this rule. Accepted ballots shall be processed as outlined in 9.3 of this rule, except that the ballots shall not be folded. The ballot box or boxes shall be opened separately and the ballots prepared for counting.

11.2. Ballots shall be counted and recorded pursuant to provisions of W.Va. State Code §§ 3-4A-19, 3-4A-27, and W.Va. Code of State Rules 153-27, unless inapplicable or otherwise provided for in this rule.

§ 153-39-12. Ballot Counting Procedures in Direct Recording Electronic Systems.

12.1. After all ballots determined to have been received by the clerk by 8:00 p.m. on election day have been returned to the election office, they shall be accepted or rejected according to provisions of section seven of this rule. Accepted ballots shall be processed as outlined in 9.3 of this rule, except that the ballots shall not be folded. The ballot box or boxes shall be opened separately and the ballots prepared for counting.

12.2. Ballots shall be counted and recorded pursuant to provisions of W.Va. State Code § 3-3-8, unless inapplicable or otherwise provided for in this rule.

§ 153-39-13. Training of Election Officials.

13.1. Each municipality shall attend mandatory training provided by the Secretary of State. Failure to attend training constitutes forfeiture of participation in the program.