

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 2533**

4 (By Delegates Talbott, Caputo, Hunt, Boggs,
5 Varner, Shaver, Perry and Fleischauer)

6
7 (Originating in the Committee on the Judiciary.)

8 [February 10, 2011]

9
10 A BILL to amend and reenact §3-5-23 of the Code of West Virginia,
11 1931, as amended, relating to nomination certificates for
12 candidates for public office; requiring the identities of
13 signatories to a nominating certificate for a person seeking
14 ballot access to be made public; requiring the investigation
15 of the validity of signatures; and the verification of
16 signatures by the Secretary of State if the office covers more
17 than one county.

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

19 That §3-5-23 of the Code of West Virginia, 1931, as amended,
20 be amended and reenacted to read as follows:

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

22 **§3-5-23. Certificate nominations; requirements and control;**
23 **penalties.**

24 (a) Groups of citizens having no party organization may
25 nominate candidates who are not already candidates in the primary
26 election for public office otherwise than by conventions or primary
27 elections. In that case, the candidate or candidates, jointly or
28 severally, shall file a nomination certificate in accordance with
29 the provisions of this section and the provisions of section

1 twenty-four of this article.

2 (b) The person or persons soliciting or canvassing signatures
3 of duly qualified voters on the certificate or certificates, may
4 solicit or canvass duly registered voters residing within the
5 county, district or other political division represented by the
6 office sought, but must first obtain from the clerk of the county
7 commission credentials which must be exhibited to each voter
8 canvassed or solicited, which credentials may be in the following
9 form or effect:

10 State of West Virginia, County of, ss:

11 This certifies that the holder of this credential is hereby
12 authorized to solicit and canvass duly registered voters residing
13 in (here place the county, district or other
14 political division represented by the office sought) to sign a
15 certificate purporting to nominate
16 (here place name of candidate heading list on certificate) for the
17 office of and others, at the general
18 election to be held on, 20.....

19 Given under my hand and the seal of my office this
20 day of, 20.....

21

22 Clerk, county commission of County.

23 The clerk of each county commission, upon proper application
24 made as herein provided, shall issue such credentials and shall
25 keep a record thereof.

26 (c) The certificate shall be personally signed by duly
27 registered voters, in their own proper handwriting or by their
28 marks duly witnessed, who must be residents within the county,

1 district or other political division represented by the office
2 sought wherein the canvass or solicitation is made by the person or
3 persons duly authorized. The signatures need not all be on one
4 certificate. The number of signatures shall be equal to not less
5 than one percent of the entire vote cast at the last preceding
6 general election for the office in the state, district, county or
7 other political division for which the nomination is to be made,
8 but in no event shall the number be less than twenty-five. The
9 number of signatures shall be equal to not less than one percent of
10 the entire vote cast at the last preceding general election for any
11 statewide, congressional or presidential candidate, but in no event
12 shall the number be less than twenty-five. Where two or more
13 nominations may be made for the same office, the total of the votes
14 cast at the last preceding general election for the candidates
15 receiving the highest number of votes on each ticket for the office
16 shall constitute the entire vote. A signature on a certificate may
17 not be counted unless it be that of a duly registered voter of the
18 county, district or other political division represented by the
19 office sought wherein the certificate was presented. All
20 certificates shall be of public record and shall be made available
21 upon request by the Secretary of State or the clerk of the county
22 commission, as the case may be.

23 (d) The certificates shall state the name and residence of
24 each of the candidates; that he or she is legally qualified to hold
25 the office; that the subscribers are legally qualified and duly
26 registered as voters and desire to have the candidates placed on
27 the ballot; and may designate, by not more than five words, a brief
28 name of the party which the candidates represent and may adopt a

1 device or emblem to be printed on the official ballot. All
2 candidates nominated by the signing of the certificates shall have
3 their names placed on the official ballot as candidates, as if
4 otherwise nominated under the provisions of this chapter.

5 The Secretary of State shall prescribe the form and content of
6 the nomination certificates to be used for soliciting signatures.

7 Offices to be filled by the voters of more than one county
8 shall use separate petition forms for the signatures of qualified
9 voters for each county.

10 Notwithstanding any other provision of this code to the
11 contrary, a duly registered voter may sign the certificate provided
12 in this section and may vote for candidates of his or her choosing
13 in the corresponding primary election.

14 (e) The Secretary of State, or the clerk of the county
15 commission, as the case may be, ~~may~~ shall investigate the validity
16 of the certificates and the signatures thereon. If an investigation
17 of the validity of a certificate or the signatures contained
18 therein is initiated by either the Secretary of State or a clerk
19 of a county commission, it shall be the duty of the Secretary of
20 State to verify the signatures on those certificates of candidates
21 seeking an office to be filled by the voters of more than one
22 county. If, upon investigation, there is doubt as to the legitimacy
23 and the validity of certificate, the Secretary of State may ask the
24 Attorney General of the state, or the clerk of the county
25 commission may ask the prosecuting attorney of the county, to
26 institute a quo warranto proceeding against the nominee by
27 certificate to determine his or her right to the nomination to
28 public office and upon request being made, the Attorney General or

1 prosecuting attorney shall institute the quo warranto proceeding.
2 The clerk of the county commission shall, at the request of the
3 Secretary of State or the clerk of the circuit court, compare the
4 information from any certificate to the county voter registration
5 records in order to assist in determining the validity of any
6 certificates.

7 (f) In addition to penalties prescribed elsewhere for
8 violation of this chapter, any person violating the provisions of
9 this section is guilty of a misdemeanor and, upon conviction, shall
10 be fined not more than \$1,000, or confined in jail not more than
11 one year, or both fined and imprisoned: *Provided*, That a criminal
12 penalty may not be imposed upon anyone who signs a nomination
13 certificate and votes in the primary election held after the date
14 the certificate was signed.