

1 **H. B. 2533**

2  
3 (By Delegates Talbott, Caputo, Hunt, Boggs,  
4 Varner, Shaver, Perry and Fleischauer)

5  
6 [Introduced January 18, 2011; referred to the  
7 Committee on the Judiciary.]

8  
9  
10 A BILL to amend and reenact §3-5-23 of the Code of West Virginia,  
11 1931, as amended, relating to requiring the identities of  
12 signatories to a certificate for a person seeking ballot  
13 access to be made public and verified by the Secretary of  
14 State if the office covers more than one county.

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

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

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

19 **§3-5-23. Certificate nominations; requirements and control;**  
20 **penalties.**

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

28 (b) The person or persons soliciting or canvassing signatures

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

8 State of West Virginia, County of ....., ss:

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

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

19 .....

20 Clerk, county commission of ..... County.

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

24 (c) The certificate shall be personally signed by duly  
25 registered voters, in their own proper handwriting or by their  
26 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

1 the ballot; and may designate, by not more than five words, a brief  
2 name of the party which the candidates represent and may adopt a  
3 device or emblem to be printed on the official ballot. All  
4 candidates nominated by the signing of the certificates shall have  
5 their names placed on the official ballot as candidates, as if  
6 otherwise nominated under the provisions of this chapter.

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

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

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

16 (e) The Secretary of State, or the clerk of the county  
17 commission, as the case may be, may investigate the validity of the  
18 certificates and the signatures thereon. However, the Secretary of  
19 State should verify the signatures on those certificates of  
20 candidates seeking offices covering more than one county. If, upon  
21 investigation, there is doubt as to the legitimacy and the validity  
22 of certificate, the Secretary of State may ask the Attorney General  
23 of the state, or the clerk of the county commission may ask the  
24 prosecuting attorney of the county, to institute a quo warranto  
25 proceeding against the nominee by certificate to determine his or  
26 her right to the nomination to public office and upon request being

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

NOTE: The purpose of this bill is to require the identities of signatories to a certificate for a person seeking ballot access to be made public. The bill also permits the Secretary of State to verify the signatories' identities if the office sought covers more than one county.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.