

COMMITTEE SUBSTITUTE

FOR

**H. B. 2533**

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(BY DELEGATES TALBOTT, HUNT, BOGGS, VARNER,  
SHAVER, PERRY AND FLEISCHAUER)

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(Originating in the Committee on the Judiciary)  
[January 17, 2012]

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

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

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

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

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

1 (a) Groups of citizens having no party organization may  
2 nominate candidates who (1) are not ~~already~~ candidates in the  
3 primary election; or (2) were not candidates in the primary  
4 election immediately preceding the general election, for  
5 public office otherwise than by conventions or primary  
6 elections. In that case, the candidate or candidates, jointly or  
7 severally, shall file a nomination certificate in accordance  
8 with the provisions of this section and the provisions of  
9 section twenty-four of this article.

10 (b) The person or persons soliciting or canvassing  
11 signatures of duly qualified voters on the certificate or  
12 certificates, may solicit or canvass duly registered voters  
13 residing within the county, district or other political division  
14 represented by the office sought, but must first obtain from  
15 the clerk of the county commission credentials which must be  
16 exhibited to each voter canvassed or solicited, which  
17 credentials may be in the following form or effect:

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

19 This certifies that the holder of this credential is hereby  
20 authorized to solicit and canvass duly registered voters  
21 residing in ..... (here place the county, district or  
22 other political division represented by the office sought) to  
23 sign a certificate purporting to nominate .....  
24 (here place name of candidate heading list on certificate) for  
25 the office of ..... and others, at the general  
26 election to be held on ....., 20.....

27 Given under my hand and the seal of my office this  
28 ..... day of ....., 20.....  
29 .....

30 Clerk, county commission of ..... County.

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

34 (c) The certificate shall be personally signed by duly  
35 registered voters, in their own proper handwriting or by their  
36 marks duly witnessed, who must be residents within the  
37 county, district or other political division represented by the  
38 office sought wherein the canvass or solicitation is made by  
39 the person or persons duly authorized. The signatures need  
40 not all be on one certificate. The number of signatures shall

41 be equal to not less than one percent of the entire vote cast at  
42 the last preceding general election for the office in the state,  
43 district, county or other political division for which the  
44 nomination is to be made, but in no event shall the number be  
45 less than twenty-five. The number of signatures shall be  
46 equal to not less than one percent of the entire vote cast at the  
47 last preceding general election for any statewide,  
48 congressional or presidential candidate, but in no event shall  
49 the number be less than twenty-five. Where two or more  
50 nominations may be made for the same office, the total of the  
51 votes cast at the last preceding general election for the  
52 candidates receiving the highest number of votes on each  
53 ticket for the office shall constitute the entire vote. A  
54 signature on a certificate may not be counted unless it be that  
55 of a duly registered voter of the county, district or other  
56 political division represented by the office sought wherein the  
57 certificate was presented. All certificates shall be of public  
58 record and shall be made available upon request by the  
59 Secretary of State or the clerk of the county commission, as  
60 the case may be.

61 (d) The certificates shall state the name and residence of  
62 each of the candidates; that he or she is legally qualified to  
63 hold the office; that the subscribers are legally qualified and

64 duly registered as voters and desire to have the candidates  
65 placed on the ballot; and may designate, by not more than  
66 five words, a brief name of the party which the candidates  
67 represent and may adopt a device or emblem to be printed on  
68 the official ballot. All candidates nominated by the signing  
69 of the certificates shall have their names placed on the  
70 official ballot as candidates, as if otherwise nominated under  
71 the provisions of this chapter.

72 The Secretary of State shall prescribe the form and  
73 content of the nomination certificates to be used for soliciting  
74 signatures.

75 Offices to be filled by the voters of more than one county  
76 shall use separate petition forms for the signatures of  
77 qualified voters for each county.

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

82 (e) The Secretary of State, or the clerk of the county  
83 commission, as the case may be, ~~may~~ shall investigate the  
84 validity of the certificates and the signatures thereon. If an  
85 investigation of the validity of a certificate or the signatures

86 contained therein is initiated by either the Secretary of State  
87 or a clerk of a county commission, it shall be the duty of the  
88 Secretary of State to verify the signatures on those  
89 certificates of candidates seeking an office to be filled by the  
90 voters of more than one county. If, upon investigation, there  
91 is doubt as to the legitimacy and the validity of certificate, the  
92 Secretary of State may ask the Attorney General of the state,  
93 or the clerk of the county commission may ask the  
94 prosecuting attorney of the county, to institute a quo warranto  
95 proceeding against the nominee by certificate to determine  
96 his or her right to the nomination to public office and upon  
97 request being made, the Attorney General or prosecuting  
98 attorney shall institute the quo warranto proceeding. The  
99 clerk of the county commission shall, at the request of the  
100 Secretary of State or the clerk of the circuit court, compare  
101 the information from any certificate to the county voter  
102 registration records in order to assist in determining the  
103 validity of any certificates.

104 (f) In addition to penalties prescribed elsewhere for  
105 violation of this chapter, any person violating the provisions  
106 of this section is guilty of a misdemeanor and, upon  
107 conviction, shall be fined not more than \$1,000, or confined

108 in jail not more than one year, or both fined and imprisoned:  
109 *Provided*, That a criminal penalty may not be imposed upon  
110 anyone who signs a nomination certificate and votes in the  
111 primary election held after the date the certificate was signed.