

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 4675

FISCAL  
NOTE

BY DELEGATES MCCUSKEY AND HANSHAW

[Introduced February 23, 2016; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §3-1-17 of the Code of West Virginia, 1931, as amended; to amend  
 2 and reenact §3-4A-11A of said code; to amend said code by adding thereto a new section,  
 3 designated §3-5-6e; to amend and reenact §3-5-7 and §3-5-13 of said code; and, to  
 4 amend and reenact §3-10-3 and §3-10-8 of said code, all relating to requiring the election  
 5 of prosecuting attorneys be on a nonpartisan basis; providing for the timing and frequency  
 6 of election; providing for the commencement of terms of office; establishing ballot design  
 7 and printing; providing that, commencing with the election of 2020, elections for  
 8 prosecuting attorney are to be held on the same date as the primary election; requiring  
 9 nonpartisan ballots be used; establishing filing announcement of candidacies, including  
 10 the timing, location and information necessary thereto; providing for the order of  
 11 appearance of offices on the ballot; establishing ballot content; providing the procedures  
 12 for the filling of vacancies in the offices of prosecuting attorney; and providing occasions  
 13 for special elections to be held to fill vacancies.

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

1 That §3-1-17 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted; that §3-4A-11a of said code be amended and reenacted; that said code be amended  
 3 by adding thereto a new section, designated §3-5-6e; that §3-5-7 and §3-5-13 of said code be  
 4 amended and reenacted; and that §3-10-3 and §3-10-8 of said code be amended and reenacted,  
 5 all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

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

1 (a) There shall be elected, at the time of the primary election to be held in 2016, and every  
 2 eighth year thereafter, one judge of the circuit court of every judicial circuit entitled to one judge,  
 3 and one judge for each numbered division of the judicial circuit in those judicial circuits entitled to  
 4 two or more circuit judges; and at the time of the primary election to be held in 2016, and in every

5 fourth year thereafter, the number of magistrates prescribed by law for the county. Beginning with  
6 the election held in the year 2016, an election for the purpose of electing judges of the circuit  
7 court, or an election for the purpose of electing magistrates, shall be upon a nonpartisan ballot  
8 printed for the purpose.

9 (b) There shall be elected, at the general election to be held in 1992, and every fourth year  
10 thereafter, a sheriff, prosecuting attorney, surveyor of lands, and the number of assessors  
11 prescribed by law for the county; and at the general election to be held in 1990, and every second  
12 year thereafter, a commissioner of the county commission for each county; and at the general  
13 election to be held in 1992, and every sixth year thereafter, a clerk of the county commission and  
14 a clerk of the circuit court for each county.

15 (c) Effective with the primary election of 2016, all elections for judge of the circuit courts in  
16 the respective circuits and magistrates in each county will be elected on a nonpartisan basis and  
17 by division as set forth more fully in article five of this chapter.

18 (d) Effective with the primary election of 2020, all elections for prosecuting attorney in each  
19 county will be elected on a nonpartisan basis as set forth more fully in article five of this chapter.

## **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

### **§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.**

1 (a) The board of ballot commissioners in counties using ballots upon which votes may be  
2 recorded by means of marking with electronically sensible ink or pencil and which marks are  
3 tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the  
4 electronic voting system for use in elections.

5 (b) (1) For the primary election, the heading of the ballot, the type faces, the names and  
6 arrangement of offices and the printing of names and arrangement of candidates within each  
7 office are to conform as nearly as possible to sections thirteen and thirteen-a, article five of this  
8 chapter.

9 (2) For the general election, the heading of the ballot, the straight ticket positions, the  
10 instructions to straight ticket voters, the type faces, the names and arrangement of offices and  
11 the printing of names and the arrangement of candidates within each office are to conform as  
12 nearly as possible to section two, article six of this chapter, except as otherwise provided in this  
13 article.

14 (3) Effective with the primary election held in 2016, and thereafter, the following  
15 nonpartisan elections are to be separated from the partisan ballot and separately headed in  
16 display type with a title clearly identifying the purpose of the election and constituting a separate  
17 ballot wherever a separate ballot is required under this chapter:

18 (A) Nonpartisan elections for judicial offices, by division, of:

19 (i) Justice of the Supreme Court of Appeals;

20 (ii) Judge of the circuit court;

21 (iii) Family court judge; and

22 (iv) Magistrate;

23 (B) Nonpartisan elections for Board of Education; and

24 (C) Any question to be voted upon.

25 (4) Effective with the primary election held in 2020, and thereafter, the following  
26 nonpartisan elections are to be separated from the partisan ballot and separately headed in  
27 display type with a title clearly identifying the purpose of the election and constituting a separate  
28 ballot wherever a separate ballot is required under this chapter:

29 (A) Nonpartisan elections for judicial offices, by division, of:

30 (i) Justice of the Supreme Court of Appeals;

31 (ii) Judge of the circuit court;

32 (iii) Family court judge; and

33 (iv) Magistrate;

34 (B) Prosecuting attorney

35 (C) Nonpartisan elections for Board of Education; and

36 (D) Any question to be voted upon.

37 ~~(4)~~ (5) Both the face and the reverse side of the ballot may contain the names of  
38 candidates only if means to ensure the secrecy of the ballot are provided and lines for the  
39 signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited  
40 in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

41 ~~(5)~~ (6) The arrangement of candidates within each office is to be determined in the same  
42 manner as for other electronic voting systems, as prescribed in this chapter. On the general  
43 election ballot for all offices, and on the primary election ballot only for those offices to be filled by  
44 election, except delegate to national convention, lines for entering write-in votes are to be  
45 provided below the names of candidates for each office, and the number of lines provided for any  
46 office shall equal the number of persons to be elected, or three, whichever is fewer. The words  
47 "WRITE-IN, IF ANY" are to be printed, where applicable, directly under each line for write-ins.  
48 The lines are to be opposite a position to mark the vote.

49 (c) Except for electronic voting systems that utilize screens upon which votes may be  
50 recorded by means of a stylus or by means of touch, the primary election ballots are to be printed  
51 in the color of ink specified by the Secretary of State for the various political parties, and the  
52 general election ballot is to be printed in black ink. For electronic voting systems that utilize  
53 screens upon which votes may be recorded by means of a stylus or by means of touch, the  
54 primary ballots and the general election ballot are to be printed in black ink. All ballots are to be  
55 printed, where applicable, on white paper suitable for automatic tabulation and are to contain a  
56 perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the  
57 same manner as provided in section thirteen, article five of this chapter, or are to be displayed on  
58 the screens of the electronic voting system upon which votes are recorded by means of a stylus  
59 or touch. The number of ballots printed and the packaging of ballots for the precincts are to  
60 conform to the requirements for paper ballots provided in this chapter.

61 (d) In addition to the official ballots, the ballot commissioners shall provide all other  
62 materials and equipment necessary to the proper conduct of the election.

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

### **§3-5-6e. Election of prosecuting attorneys.**

1 (a) An election for the purpose of electing a prosecuting attorney shall be held on the same  
2 date as the primary election, as provided by law, upon a nonpartisan ballot.

3 (b) In case of a tie vote under this section, section twelve, article six of this chapter controls  
4 in breaking the tie vote.

### **§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.**

1 (a) Any person who is eligible and seeks to hold an office or political party position to be  
2 filled by election in any primary or general election held under the provisions of this chapter shall  
3 file a certificate of announcement declaring his or her candidacy for the nomination or election to  
4 the office.

5 (b) The certificate of announcement shall be filed as follows:

6 (1) Candidates for the House of Delegates, the State Senate, circuit judge, family court  
7 judge, and any other office or political position to be filled by the voters of more than one county  
8 shall file a certificate of announcement with the Secretary of State.

9 (2) Candidates for an office or political position to be filled by the voters of a single county  
10 or a subdivision of a county, except for candidates for the House of Delegates, State Senate,  
11 circuit judge or family court judge, shall file a certificate of announcement with the clerk of the  
12 county commission.

13 (3) Candidates for an office to be filled by the voters of a municipality shall file a certificate  
14 of announcement with the recorder or city clerk.

15 (c) The certificate of announcement shall be filed with the proper officer not earlier than  
16 the second Monday in January before the primary election day and not later than the last Saturday

17 in January before the primary election day and must be received before midnight, eastern  
18 standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service  
19 before that hour. This includes the offices of justice of the Supreme Court of Appeals, circuit court  
20 judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis  
21 at the primary election. This shall also include the office of prosecuting attorney, which is to be  
22 filled on a nonpartisan basis at the primary election.

23 (d) The certificate of announcement shall be on a form prescribed by the Secretary of  
24 State on which the candidate shall make a sworn statement before a notary public or other officer  
25 authorized to administer oaths, containing the following information:

26 (1) The date of the election in which the candidate seeks to appear on the ballot;

27 (2) The name of the office sought; the district, if any; and the division, if any;

28 (3) The legal name of the candidate and the exact name the candidate desires to appear  
29 on the ballot, subject to limitations prescribed in section thirteen, article five of this chapter;

30 (4) The county of residence and a statement that the candidate is a legally qualified voter  
31 of that county; and the magisterial district of residence for candidates elected from magisterial  
32 districts or under magisterial district limitations;

33 (5) The specific address designating the location at which the candidate resides at the  
34 time of filing, including number and street or rural route and box number and city, state and zip  
35 code;

36 (6) For partisan elections, the name of the candidate's political party and a statement that  
37 the candidate: (A) Is a member of and affiliated with that political party as evidenced by the  
38 candidate's current registration as a voter affiliated with that party; and (B) has not been registered

39 as a voter affiliated with any other political party for a period of sixty days before the date of filing  
40 the announcement;

41 (7) For candidates for delegate to national convention, the name of the presidential  
42 candidate to be listed on the ballot as the preference of the candidate on the first convention  
43 ballot; or a statement that the candidate prefers to remain “uncommitted”;

44 (8) A statement that the person filing the certificate of announcement is a candidate for  
45 the office in good faith;

46 (9) The words “subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
47 20\_\_\_\_” and a space for the signature of the officer giving the oath.

48 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may  
49 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a  
50 certified copy of the voter’s registration record of the candidate showing that the candidate was  
51 registered as a voter in a party other than the one named in the certificate of announcement during  
52 the sixty days immediately preceding the filing of the certificate: *Provided*, That unless a signed  
53 formal complaint of violation of this section and the certified copy of the voter’s registration record  
54 of the candidate are filed with the officer receiving that candidate’s certificate of announcement  
55 no later than ten days following the close of the filing period, the candidate may not be refused  
56 certification for this reason.

57 (f) The certificate of announcement shall be subscribed and sworn to by the candidate  
58 before some officer qualified to administer oaths, who shall certify the same. Any person who  
59 knowingly provides false information on the certificate is guilty of false swearing and shall be  
60 punished in accordance with section three, article nine of this chapter.



61 (g) Any candidate for delegate to a national convention may change his or her statement  
62 of presidential preference by notifying the Secretary of State by letter received by the Secretary  
63 of State no later than the third Tuesday following the close of candidate filing. When the rules of  
64 the political party allow each presidential candidate to approve or reject candidates for delegate  
65 to convention who may appear on the ballot as committed to that presidential candidate, the  
66 presidential candidate or the candidate's committee on his or her behalf may file a list of approved  
67 or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any  
68 candidate for delegate who is disapproved by the presidential candidate.

69 (h) A person may not be a candidate for more than one office or office division at any  
70 election: *Provided*, That a candidate for an office may also be a candidate for President of the  
71 United States, for membership on political party executive committees or for delegate to a political  
72 party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan  
73 office in an election held concurrently with the primary election may be appointed under the  
74 provisions of section nineteen of this article to fill a vacancy on the general ballot.

75 (i) A candidate who files a certificate of announcement for more than one office or division  
76 and does not withdraw, as provided by section eleven, article five of this chapter, from all but one  
77 office prior to the close of the filing period may not be certified by the Secretary of State or placed  
78 on the ballot for any office by the board of ballot commissioners.

### **§3-5-13. FORM AND CONTENTS OF BALLOTS**

1 The following provisions apply to the form and contents of election ballots:

2 (1) The face of every primary election ballot shall conform as nearly as practicable to that  
3 used at the general election

4           (2) The heading of every ballot is to be printed in display type. The heading is to contain  
5 a ballot title, the name of the county, the state, the words "Primary Election" and the month, day  
6 and year of the election. The ballot title of the political party ballots is to contain the words "Official  
7 Ballot of the (Name) Party" and the official symbol of the political party may be included in the  
8 heading.

9           (A) The ballot title of any separate paper ballot or portion of any electronic or voting  
10 machine ballot for all judicial officer shall commence with the words "Nonpartisan Ballot of Election  
11 of Judicial Officers" and each such office shall be listed in the following order:

12           (i) The ballot title of any separate paper ballot or portion of any electronic or voting machine  
13 ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot  
14 of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the  
15 candidates for the Supreme Court of Appeals shall be printed by division without references to  
16 political party affiliation or registration.

17           (ii) The ballot title of any separate paper ballot or portion of any electronic or voting  
18 machine ballot for all circuit court judges in the respective circuits shall contain the words  
19 "Nonpartisan Ballot of Election of circuit court Judge(s)". The names of the candidates for the  
20 respective circuit court judge office shall be printed by division without references to political party  
21 affiliation or registration.

22           (iii) The ballot title of any separate paper ballot or portion of any electronic or voting  
23 machine ballot for all family court judges in the respective circuits shall contain the words  
24 "Nonpartisan Ballot of Election of Family Court Judge(s)". The names of the candidates for the  
25 respective family court judge office shall be printed by division without references to political party  
26 affiliation or registration.

27 (iv) The ballot title of any separate paper ballot or portion of any electronic or voting  
28 machine ballot for all magistrates in the respective circuits shall contain the words “Nonpartisan  
29 Ballot of Election of Magistrate(s)”. The names of the candidates for the respective magistrate  
30 office shall be printed by division without references to political party affiliation or registration.

31 (v) The ballot title of any separate paper ballot or portion of any electronic or voting  
32 machine ballot for prosecuting attorney shall contain the words “Nonpartisan Ballot of Election of  
33 prosecuting attorney”. The names of the candidates for prosecuting attorney shall be printed  
34 without references to political party affiliation or registration.

35 (B) The ballot title of any separate paper ballot or portion of any electronic or voting  
36 machine ballot for the board of Education is to contain the words “Nonpartisan Ballot of Election  
37 of Members of the \_\_\_\_\_ County Board of Education”. The districts for which less  
38 than two candidates may be elected and the number of available seats are to be specified and  
39 the names of the candidates are to be printed without reference to political party affiliation and  
40 without designation as to a particular term of office.

41 (C) Any other ballot or portion of a ballot on a question is to have a heading which clearly  
42 states the purpose of the election according to the statutory requirements for that question.

43 (3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the  
44 ballot by heavy lines and the offices shall be arranged in columns with the following headings,  
45 from left to right across the ballot: “National Ticket”, “State Ticket”, “County Ticket” and, in a  
46 presidential election year, “National Convention” or, in a nonpresidential election year, “District  
47 Ticket”. The columns are to be separated by heavy lines. Within the columns, the offices are to  
48 be arranged in the order prescribed in section thirteen-a of this article.

49 (B) For voting machines, electronic voting devices and any ballot tabulated by electronic  
50 means, the offices are to appear in the same sequence as prescribed in section thirteen-a of this  
51 article and under the same headings as prescribed in paragraph (A) of this subdivision. The  
52 number of pages, columns or rows, where applicable, may be modified to meet the limitations of  
53 ballot size and composition requirements subject to approval by the Secretary of State.

54 (C) The title of each office is to be separated from preceding offices or candidates by a  
55 line and is to be printed in bold type no smaller than eight point. Below the office is to be printed  
56 the number of the district, if any, the number of the division, if any, and the words "Vote for  
57 \_\_\_\_\_" with the number to be nominated or elected or "Vote For Not More Than \_\_\_\_\_"  
58 in multicandidate elections. For offices in which there are limitations relating to the number of  
59 candidates which may be nominated, elected or appointed to or hold office at one time from a  
60 political subdivision within the district or county in which they are elected, there is to be a clear  
61 explanation of the limitation, as prescribed by the Secretary of State, printed in bold type  
62 immediately preceding the names of the candidates for those offices on the ballot in every voting  
63 system. For counties in which the number of county commissioners exceeds three and the total  
64 number of members of the county commission is equal to the number of magisterial districts within  
65 the county, the office of county commission is to be listed separately for each district to be filled  
66 with the name of the magisterial district and the words "Vote for One" printed below the name of  
67 the office: *Provided*, That the office title and applicable instructions may span the width of the  
68 ballot so as it is centered among the respective columns.

69 (D) The location for indicating the voter's choices on the ballot is to be clearly shown. For  
70 paper ballots, other than those tabulated electronically, the official primary ballot is to contain a

71 square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular  
72 column of squares before each column of names.

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

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

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

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

92 (5) When an insufficient number of candidates has filed for a party to make the number of  
93 nominations allowed for the office or for the voters to elect sufficient members to the Board of

94 Education or to executive committees, the vacant positions on the ballot shall be filled with the  
95 words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to  
96 be made directly on the ballot, a blank line shall be placed in any vacant position in the office of  
97 Board of Education or for election to any party executive committee. A line shall separate each  
98 candidate from every other candidate for the same office. Notwithstanding any other provision of  
99 this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant  
100 positions which would otherwise be filled with the words "No Candidate Filed" may be replaced  
101 with a brief detailed description, approved by the Secretary of State, indicating that there are no  
102 candidates listed for the vacant positions.

103 (6) In presidential election years, the words "For election in accordance with the plan  
104 adopted by the party and filed with the Secretary of State" is to be printed following the names of  
105 all candidates for delegate to national convention.

106 (7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the  
107 printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted  
108 pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens  
109 Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper  
110 type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using  
111 electronically sensible ink are to meet minimum requirements of the tabulating systems and are  
112 to conform in size and weight to ensure ease in tabulation.

113 (8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with  
114 unique sequential numbers from one to the highest number representing the total number of  
115 ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth  
116 of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

117 (9) On the back of every official ballot or ballot card the words "Official Ballot" with the  
118 name of the county and the date of the election are to be printed. Beneath the date of the election  
119 there are to be two blank lines followed by the words "Poll Clerks".

120 (10) The face of sample paper ballots and sample ballot labels are to be like other official  
121 ballots or ballot labels except that the word "sample" is to be prominently printed across the front  
122 of the ballot in a manner that ensures the names of candidates are not obscured and the word  
123 "sample" may be printed in red ink. No printing may be placed on the back of the sample.

**§3-5-13. Form and contents of ballots.**

124 The following provisions apply to the form and contents of election ballots:

125 (1) The face of every primary election ballot shall conform as nearly as practicable to that  
126 used at the general election

127 (2) The heading of every ballot is to be printed in display type. The heading is to contain  
128 a ballot title, the name of the county, the state, the words "Primary Election" and the month, day  
129 and year of the election. The ballot title of the political party ballots is to contain the words "Official  
130 Ballot of the (Name) Party" and the official symbol of the political party may be included in the  
131 heading.

132 (A) The ballot title of any separate paper ballot or portion of any electronic or voting  
133 machine ballot for all judicial officer shall commence with the words "Nonpartisan Ballot of Election  
134 of Judicial Officers" and each such office shall be listed in the following order:

135 (i) The ballot title of any separate paper ballot or portion of any electronic or voting machine  
136 ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot  
137 of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the

138 candidates for the Supreme Court of Appeals shall be printed by division without references to  
139 political party affiliation or registration.

140 (ii) The ballot title of any separate paper ballot or portion of any electronic or voting  
141 machine ballot for all circuit court judges in the respective circuits shall contain the words  
142 “Nonpartisan Ballot of Election of circuit court Judge(s)”. The names of the candidates for the  
143 respective circuit court judge office shall be printed by division without references to political party  
144 affiliation or registration.

145 (iii) The ballot title of any separate paper ballot or portion of any electronic or voting  
146 machine ballot for all family court judges in the respective circuits shall contain the words  
147 “Nonpartisan Ballot of Election of Family Court Judge(s)”. The names of the candidates for the  
148 respective family court judge office shall be printed by division without references to political party  
149 affiliation or registration.

150 (iv) The ballot title of any separate paper ballot or portion of any electronic or voting  
151 machine ballot for all magistrates in the respective circuits shall contain the words “Nonpartisan  
152 Ballot of Election of Magistrate(s)”. The names of the candidates for the respective magistrate  
153 office shall be printed by division without references to political party affiliation or registration.

154 (v) The ballot title of any separate paper ballot or portion of any electronic or voting  
155 machine ballot for prosecuting attorney shall contain the words “Nonpartisan Ballot of Election of  
156 prosecuting attorney”. The names of the candidates for prosecuting attorney shall be printed  
157 without references to political party affiliation or registration.

158 (B) The ballot title of any separate paper ballot or portion of any electronic or voting  
159 machine ballot for the board of Education is to contain the words “Nonpartisan Ballot of Election  
160 of Members of the \_\_\_\_\_ County Board of Education”. The districts for which less



161 than two candidates may be elected and the number of available seats are to be specified and  
162 the names of the candidates are to be printed without reference to political party affiliation and  
163 without designation as to a particular term of office.

164 (C) Any other ballot or portion of a ballot on a question is to have a heading which clearly  
165 states the purpose of the election according to the statutory requirements for that question.

166 (3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the  
167 ballot by heavy lines and the offices shall be arranged in columns with the following headings,  
168 from left to right across the ballot: "National Ticket", "State Ticket", "County Ticket" and, in a  
169 presidential election year, "National Convention" or, in a nonpresidential election year, "District  
170 Ticket". The columns are to be separated by heavy lines. Within the columns, the offices are to  
171 be arranged in the order prescribed in section thirteen-a of this article.

172 (B) For voting machines, electronic voting devices and any ballot tabulated by electronic  
173 means, the offices are to appear in the same sequence as prescribed in section thirteen-a of this  
174 article and under the same headings as prescribed in paragraph (A) of this subdivision. The  
175 number of pages, columns or rows, where applicable, may be modified to meet the limitations of  
176 ballot size and composition requirements subject to approval by the Secretary of State.

177 (C) The title of each office is to be separated from preceding offices or candidates by a  
178 line and is to be printed in bold type no smaller than eight point. Below the office is to be printed  
179 the number of the district, if any, the number of the division, if any, and the words "Vote for  
180 \_\_\_\_\_" with the number to be nominated or elected or "Vote For Not More Than \_\_\_\_\_"  
181 in multicandidate elections. For offices in which there are limitations relating to the number of  
182 candidates which may be nominated, elected or appointed to or hold office at one time from a  
183 political subdivision within the district or county in which they are elected, there is to be a clear

184 explanation of the limitation, as prescribed by the Secretary of State, printed in bold type  
185 immediately preceding the names of the candidates for those offices on the ballot in every voting  
186 system. For counties in which the number of county commissioners exceeds three and the total  
187 number of members of the county commission is equal to the number of magisterial districts within  
188 the county, the office of county commission is to be listed separately for each district to be filled  
189 with the name of the magisterial district and the words "Vote for One" printed below the name of  
190 the office: *Provided*, That the office title and applicable instructions may span the width of the  
191 ballot so as it is centered among the respective columns.

192 (D) The location for indicating the voter's choices on the ballot is to be clearly shown. For  
193 paper ballots, other than those tabulated electronically, the official primary ballot is to contain a  
194 square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular  
195 column of squares before each column of names.

196 (4) (A) The name of every candidate certified by the Secretary of State or the board of  
197 ballot commissioners is to be printed in capital letters in no smaller than eight point type on the  
198 ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State,  
199 the name of each candidate is to appear in the form set out by the candidate on the certificate of  
200 announcement, but in no case may the name misrepresent the identity of the candidate nor may  
201 the name include any title, position, rank, degree or nickname implying or inferring any status as  
202 a member of a class or group or affiliation with any system of belief.

203 (B) The city of residence of every candidate, the state of residence of every candidate  
204 residing outside the state, the county of residence of every candidate for an office on the ballot in  
205 more than one county and the magisterial district of residence of every candidate for an office

206 subject to magisterial district limitations are to be printed in lower case letters beneath the names  
207 of the candidates.

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

210 (D) If the number of candidates for an office exceeds the space available on a column or  
211 ballot page and requires that candidates for a single office be separated, to the extent possible,  
212 the number of candidates for the office on separate columns or pages are to be nearly equal and  
213 clear instructions given the voter that the candidates for the office are continued on the following  
214 column or page.

215 (5) When an insufficient number of candidates has filed for a party to make the number of  
216 nominations allowed for the office or for the voters to elect sufficient members to the board of  
217 Education or to executive committees, the vacant positions on the ballot shall be filled with the  
218 words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to  
219 be made directly on the ballot, a blank line shall be placed in any vacant position in the office of  
220 Board of Education or for election to any party executive committee. A line shall separate each  
221 candidate from every other candidate for the same office. Notwithstanding any other provision of  
222 this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant  
223 positions which would otherwise be filled with the words "No Candidate Filed" may be replaced  
224 with a brief detailed description, approved by the Secretary of State, indicating that there are no  
225 candidates listed for the vacant positions.

226 (6) In presidential election years, the words "For election in accordance with the plan  
227 adopted by the party and filed with the Secretary of State" is to be printed following the names of  
228 all candidates for delegate to national convention.

229 (7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the  
230 printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted  
231 pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens  
232 Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper  
233 type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using  
234 electronically sensible ink are to meet minimum requirements of the tabulating systems and are  
235 to conform in size and weight to ensure ease in tabulation.

236 (8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with  
237 unique sequential numbers from one to the highest number representing the total number of  
238 ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth  
239 of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

240 (9) On the back of every official ballot or ballot card the words "Official Ballot" with the  
241 name of the county and the date of the election are to be printed. Beneath the date of the election  
242 there are to be two blank lines followed by the words "Poll Clerks".

243 (10) The face of sample paper ballots and sample ballot labels are to be like other official  
244 ballots or ballot labels except that the word "sample" is to be prominently printed across the front  
245 of the ballot in a manner that ensures the names of candidates are not obscured and the word  
246 "sample" may be printed in red ink. No printing may be placed on the back of the sample.

## **ARTICLE 10. FILLING VACANCIES.**

### **§3-10-3. Vacancies in offices of state officials, United States Senators, ~~and judges,~~ and prosecuting attorney.**

1 (a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney  
2 General, Commissioner of Agriculture, or in any office created or made elective to be filled by the

3 voters of the entire state, is filled by the Governor of the state by appointment and subsequent  
4 election to fill the remainder of the term, if required by section one of this article.

5 (b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge  
6 of a circuit court, judge of a family court, or prosecuting attorney is filled by the Governor of the  
7 state by appointment and subsequent election to fill the remainder of the term, as required by  
8 subsection (d) of this section. If an election is required under subsection (d) of this section, the  
9 Governor, circuit court or the chief judge thereof in vacation, is responsible for the proper  
10 proclamation by order and notice required by section one of this article.

11 (c) Any vacancy in the office of magistrate is appointed according to the provisions of  
12 section six, article one, chapter fifty of this code, and subsequent election to fill the remainder of  
13 the term, as required by subsection (d ) of this section.

14 (d) (1) When the vacancy in Justice of the Supreme Court of Appeals, judge of the circuit  
15 court, judge of a family court, magistrate, or prosecuting attorney occurs after the eighty-fourth  
16 day before a general election, and the affected term of office ends on December 31 following the  
17 next election, the person appointed to fill the vacancy shall continue in office until the completion  
18 of the term

19 (2) When the vacancy occurs before the close of the candidate filing period for the primary  
20 election, the vacancy shall be filled by election in the nonpartisan judicial election held  
21 concurrently with the primary election, and the appointment shall continue until a successor is  
22 elected and certified.

23 (3) When the vacancy occurs after the close of candidate filing for the primary election  
24 and not later than eighty-four days before the general election, the vacancy shall be filled by

25 election in a nonpartisan judicial election held concurrently with the general election, and the  
26 appointment shall continue until a successor is elected and certified.

27 (e) When an election to fill a vacancy is required to be held at the general election  
28 according to the provisions of subsection (d) of this section, a special candidate filing period shall  
29 be established. Candidates seeking election to any unexpired term for Justice of the Supreme  
30 Court of Appeals, judge of a circuit court, judge of the family court, magistrate, or prosecuting  
31 attorney shall file a certificate of announcement and pay the filing fee no earlier than the first  
32 Monday in August and no later than seventy-seven days before the general election.

**§3-10-8. Vacancies in offices of ~~prosecuting attorney~~, sheriff, assessor and surveyor.**

1 (a) Any vacancy occurring in the office of ~~prosecuting attorney~~, sheriff, assessor or county  
2 surveyor shall be filled by the county commission within thirty days of the vacancy by appointment  
3 of a person of the same political party as the officeholder vacating the office. The appointed  
4 person shall hold the office for the period stated by section one of this article.

5 (b) Notwithstanding any code provision to the contrary, a county commission may appoint  
6 a temporary successor to the office of ~~prosecuting attorney~~, sheriff, assessor or county surveyor  
7 until the requirements of this section have been met. The temporary successor may serve no  
8 more than thirty days from the date of the vacancy.

9 (c) If an election is necessary under section one of this article, the county commission, or  
10 the president thereof in vacation, shall be responsible for the proper proclamation, by order, and  
11 notice required by section one of this article.

12 (d) Section one of this article shall be followed with respect to any election needed to fill a  
13 vacancy, except that if the vacancy occurs after the primary cutoff date but not later than the  
14 general cutoff date, candidates to fill the vacancy shall be nominated by the county executive

15 committee in the manner provided in section nineteen, article five of this chapter, as in the case  
16 of filling vacancies in nominations, and the names of the persons, so nominated and certified to  
17 the clerk of the county commission of the county, shall be placed upon the ballot to be voted at  
18 the next general election.

NOTE: The purpose of this bill is to change provisions for election of prosecuting attorneys, requiring election of prosecuting attorneys to be on a nonpartisan basis and on the same date as primary elections.

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