

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4742

**FISCAL
NOTE**

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HORNBUCKLE AND DOYLE

[Introduced February 07, 2020; Referred to the
Committee on Government Organization then the
Judiciary]

1 A BILL to amend the Code of West Virginia by adding thereto a new article designated §3-3C-1,
 2 §3-3C-2, §3-3C-3, §3-3C-4, §3-3C-5, §3-3C-6, §3-3C-7, §3-3C-8, §3-3C-9, §3-3C-10, §3-
 3 3C-11, §3-3C-12, §3-3C-13, §3-3C-14, §3-3C-15, §3-3C-16, §3-3C-17, §3-3C-18, §3-3C-
 4 19, §3-3C-20, §3-3C-21, and §3-3C-22, all relating to establishing a vote by mail program
 5 for the state.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. WEST VIRGINIA VOTE BY MAIL PROGRAM.

§3-3C-1. Legislative findings.

1 (a) Voting is essential for preserving our democracy, yet, West Virginia has a recent history
 2 of low voter participation. Less than half of West Virginia registered voters cast ballots in the 2016
 3 general election. West Virginia ranked 47th in voter participation among the 50 states.

4 (b) For election administration, the costs borne by local governments in West Virginia are
 5 high on a per ballot basis. Recruitment, training, management of poll workers, procurement and
 6 staffing of numerous polling places, and processing of absentee ballot requests add to taxpayer
 7 costs. Procurement, maintenance, storage, security, and transportation of voting machines to
 8 supply every polling place also contribute to local costs.

9 (c) For voters, demanding jobs, inflexible work schedules, family and childcare demands,
 10 disability, and lack of transportation are examples of the numerous barriers that impede voter
 11 turnout.

12 (d) Other states that faced these same issues have found a bipartisan solution in vote by
 13 mail. West Virginia tried a vote by mail pilot for selected municipalities (§3-3A) in 2011. Given the
 14 need to reinvigorate our democracy, it is time to try again by adopting features of successful
 15 models from other states.

16 (e) The Legislature finds that conversion to vote by mail would significantly reduce
 17 logistical barriers for voters and costs to local election administration.

§3-3C-2. Definitions.

1 (a) For the purposes of this article:

2 (1) "Assistance in voting" means assistance in physically marking the vote by mail ballot
3 for a voter, or in reading or directing the voter's attention to any part of the official vote by mail
4 ballot.

5 (2) "Ballot deposit box" means a secure indoor or outdoor container used to collect
6 completed ballots at a ballot deposit location.

7 (3) "Ballot package" means all information mailed to the voter pursuant to section four of
8 this article.

9 (4) "Clerk" means the officer authorized by charter, ordinance, or statute to conduct voting
10 for any election held by a participating jurisdiction. The clerk may designate someone to perform
11 duties assigned to the clerk.

12 (5) "Counting Board" means those election officials appointed by the clerk pursuant to
13 W.Va. Code §§3-1-28, 3-1-29, and 3-1-30.

14 (6) "Designated observer" means an individual selected by the clerk to observe, but not
15 participate in, the tallying of votes to ensure the integrity of the process. If designated observers
16 are used, the clerk shall appoint at least two representing differing partisan affiliations.

17 (7) "Statewide Voter Registration Database" means the database described in W.Va.
18 Code §3-2-4a.

19 (8) "Participating jurisdiction" means a county or municipality that opted in to the West
20 Virginia Vote by Mail Program in accordance with this article with an approved implementation
21 plan pursuant to section 20 of this article.

§3-3C-3. Authority to conduct vote by mail.

1 (a) A county or municipality may choose to participate in the West Virginia Vote by Mail
2 Program beginning with the primary election of 2022.

3 (b) Each county or municipality wishing to adopt vote by mail shall adopt an order or
4 ordinance declaring the jurisdiction's intent to conduct vote by mail in lieu of traditional voting

5 methods and directing the jurisdiction’s clerk to prepare and submit the implementation plan
6 described in section 22 of this article to the Secretary of State for approval.

7 (c) Each jurisdiction wishing to conduct vote by mail shall have its clerk notify the Secretary
8 of State in writing by providing a copy of the jurisdiction’s vote by mail order or ordinance and an
9 implementation plan meeting the requirements of section 22 of this article.

10 (d) The jurisdiction is eligible to participate in the Vote by Mail Program for all future
11 primary, general, and special elections upon approval by the Secretary of State of the
12 implementation plans described in section 22 of this article.

13 (e) The Vote by Mail Program shall be supervised and conducted by the clerk. All other
14 provisions of this article for participating in the Vote by Mail Program and conducting an election
15 shall apply.

§3-3C-4. Ballot packages.

1 Ballot packages for the Vote by Mail Program shall include:

2 (1) The official ballot the voter is eligible to vote, prepared according to law;

3 (2) One envelope, unsealed, designated “Voter’s Ballot Secrecy Envelope”;

4 (3) One preaddressed mailing envelope, unsealed, designated “Voter’s Ballot Return
5 Identification Envelope”;

6 (4) Instructions for voting by mail including:

7 (A) Marking the ballot;

8 (B) Inserting the marked ballot in the secrecy envelope;

9 (C) Inserting the secrecy envelope with the marked ballot in the ballot return identification
10 envelope;

11 (D) Signing the ballot return identification envelope before mailing or delivering the ballot
12 return identification envelope containing the secrecy envelope with the marked ballot.

13 (5) A warning that the ballot return identification envelope must be signed by the voter or
14 the ballot will not be counted;

15 (6) A warning that altering someone else's ballot, signing someone else's ballot return
16 identification envelope, or attempting to unduly influence a voter is illegal and that violation may
17 subject the voter or other individual, upon conviction, to imprisonment, a fine, or both;

18 (7) An alternative procedure consistent with W.Va. Code §3-1-34(e)(1) and §3-1-34(e)(2)
19 for any person who is unable to sign a ballot return identification envelope;

20 (8) A prominently displayed notice that the ballot must be received by the clerk by 7:30
21 p.m. on election day by mail or by dropping the ballot in a ballot deposit box, and that ballots
22 postmarked by election day but received by the clerk after 7:30 p.m. on election day will not be
23 counted;

24 (9) Instructions for replacing a spoiled ballot if the voter makes a mistake or otherwise
25 needs a new ballot;

26 (10) Notice that a list of write-in candidates is available upon request;

27 (11) Notice of any other supplies required for voting in the particular voting system;

28 (12) Notice of the amount of postage required to return the ballot using first class United
29 States Postal Service mail;

30 (13) The locations and available hours of all ballot deposit locations; and

31 (14) Notice that privacy booths are available at a designated location for optional use by
32 voters.

§3-3C-5. Casting a ballot.

1 (a) After a voter receives a ballot package, the voter shall comply with the instructions
2 included in the ballot package in order to cast a valid vote.

3 (b) Once a voter has returned a signed ballot return identification envelope containing the
4 secrecy envelope with the marked ballot, that voter's ballot shall be deemed cast and may not be
5 cast again in the election.

§3-3C-6. Absentee ballots; voting by homeless or transient voters; voting if concerned for **personal safety.**

1 (a) Any registered voter who is unable to receive a ballot package at their registration
 2 address of record during the voting period may request an absentee ballot by submitting an
 3 absentee ballot request form to the clerk. Notwithstanding any other provisions of this chapter,
 4 the absentee ballot request form shall contain the following information:

5 (1) Name of voter;

6 (2) Registration address of voter;

7 (3) Date of birth of voter;

8 (4) County of residence;

9 (5) Mailing address, if different than registration address;

10 (6) Absentee address (the address to which the ballot will be mailed);

11 (7) The election or elections for which the absentee ballot is requested;

12 (8) Signature of voter; and

13 (9) Date of request.

14 (b) The absentee ballot request form may be mailed to or dropped off at the clerk’s office.

15 To be counted, the ballot must be received by the clerk issuing the ballot no later than 7:30 p.m.
 16 on election day. The absentee ballot will be processed and counted pursuant to this article.

17 (c) Notwithstanding any other provisions of this chapter, a registered voter who has no
 18 address where a ballot can be reliably received by mail or a voter who resides where mail service
 19 is unavailable may use the office of the county clerk as their mailing address. Such voters can
 20 pick up their ballots and vote at the county clerk’s office. The ballot will be processed and counted
 21 pursuant to this article.

22 (c) Ballot packages for participants in the Address Confidentiality Program shall be mailed
 23 to the designated addresses registered pursuant to W. Va. Code §48-28A-105.

§3-3C-7. Assistance in voting by mail.

1 (a) Any registered voter who requires assistance to vote may be given assistance by a
 2 person of the voter’s choice: *Provided*, That the assistance may not be given by the voter’s

3 present or former employer or agent of that employer, by the officer or agent of a labor union of
4 which the voter is a past or present member, or by a candidate on the ballot.

5 (b) If no person of the voter's choice is available, the voter may request assistance from
6 the clerk, whereupon assistance may be provided by two election officers of different political
7 party affiliations.

8 (c) To the extent practicable, the assistance of election officers may be provided at a
9 location convenient to the voter.

10 (d) Any person assisting a voter shall communicate to the voter all instructions on the
11 ballot, that voting for more candidates than allowed or both yes and no on a ballot question will
12 result in the vote not being counted, and that the voter is not required to vote on every contest.

13 (e) The voter shall thereupon declare his or her choice of candidates and his or her position
14 on questions appearing on the ballot. The person assisting the voter, in the presence of the voter,
15 shall thereupon cause the voter's declared choices to be recorded on the ballot.

16 (f) Any person who assists a voter in voting under the provisions of this section shall sign
17 a written oath or affirmation, which shall be submitted with the voted ballot. This oath shall state
18 that:

19 (1) He or she did communicate the required instructions to the voter;

20 (2) He or she did not override any of the preferences declared by the voter being assisted;

21 (3) He or she did not mislead the voter into voting for any choice other than the voter's;

22 (4) He or she attests that the voter is voting free of intimidation or manipulation; and

23 (5) If the ballot identification envelope is unsigned, the voter was not capable of signing it.

§3-3C-8. Mailing ballots by the clerk.

1 (a) Not sooner than 21 days nor later than 14 days before the election, the clerk shall send
2 ballot packages by nonforwardable mail to all citizens legally registered to vote and who appear
3 in the active voter files in accordance with the provisions of W.Va. Code §3-2-1 et seq.: Provided,
4 That the clerk may send ballot packages prior to 21 days before the election to military and

5 overseas voters and voters on the special absentee voting list so that they may cast their ballots
6 consistent with section 6 of this article.

7 (b) The clerk shall continue sending ballot packages to voters who update their voter
8 registration address pursuant to W.Va. Code §3-3-6 et seq. The clerk shall not mail a ballot
9 package to any voter in the official register who is identified as having an outdated or
10 nondeliverable mailing address.

11 (c) The clerk shall make a record of each voter who is sent a ballot that a ballot has been
12 sent to the voter and the date it was mailed.

13 (d) Prior to the preparation and mailing of ballots, the clerk shall arrange with the local post
14 office to secure a post office box to be used only for the return of mailed ballots.

15 (e) The clerk shall coordinate with the post office a predetermined schedule to empty the
16 post office box, including a 7:30 p.m. pick-up time on election day, but may have it emptied more
17 frequently than scheduled if necessary to prevent it from becoming overfilled. Voted ballots shall
18 be transferred into a locked ballot box, bag, or pouch and transported by two designees of differing
19 political affiliation to the clerk's office. The ballot box, bag, or pouch must be locked, before
20 transfer, with two separate locks. Each of the two designees of different political affiliation shall
21 have one key to one lock. The ballot box, bag, or pouch shall be locked by both designees at the
22 post office box location and unlocked at the clerk's office only in the presence of both designees
23 and the clerk.

§3-3C-9. Replacement ballots.

1 (a) If the ballot was destroyed, spoiled, or lost, a voter may obtain a replacement ballot by
2 contacting the clerk using the clerk's official phone number or electronic mail address. The clerk
3 shall keep a record of each replacement ballot as provided under this section.

4 (b) To obtain a replacement ballot, the voter must complete and sign a replacement ballot
5 request form. The request for a replacement ballot may be made electronically, by telephone, in
6 writing, or in person. The replacement ballot request form must be returned to the clerk for a valid

7 replacement ballot to be counted.

8 (c) Upon receiving a request for a replacement ballot, the clerk shall:

9 (1) Verify the registration of the voter and ensure that a ballot has not been returned by
10 the voter;

11 (2) Note in the list of voters that the voter has requested a replacement ballot;

12 (3) Mark the ballot return identification envelope clearly so that it may be readily identified
13 as containing a replacement ballot; and

14 (4) Issue the replacement ballot by mail or other means.

15 (d) Upon receiving a voted replacement ballot, the clerk shall verify that a completed and
16 signed replacement ballot request form has been received by the clerk or is included with the
17 voted replacement ballot. If a request form has been completed and signed by the voter and
18 received by the clerk, the clerk shall process the ballot. If the request form is not completed or
19 signed by the voter or received by the clerk, the clerk may not process the ballot.

20 (e) Voters who obtain a replacement ballot are subject to the same rules for casting their
21 ballot as provided in section five of this article.

§3-3C-10. Deficient ballot return identification envelopes.

1 (a) If a vote by mail ballot has:

2 (1) A ballot return identification envelope returned without a signature,

3 (2) A signature that does not match a reference signature, or

4 (3) Another condition that would not allow the counting of the ballot, the clerk shall attempt
5 to notify the voter by phone with a follow up confirmation by electronic mail or first class mail, and
6 if no response by certified mail, to inform the voter of the procedure to correct the deficiency. The
7 voter shall have until the close of the election to cure the deficiency.

8 (b) The Secretary of State may propose emergency and legislative rules in accordance
9 with the provisions of W.Va. Code §29A-3-1 et seq. regarding requirements and procedures for
10 correcting deficient ballot return identification envelopes.

11 (c) The clerk's inability to contact voters under this section shall not be grounds for
12 contesting an election pursuant to W.Va. Code §3-5-20 and W.Va. Code §3-7-1 et seq.: *Provided,*
13 that the clerk has made at least three good-faith attempts to contact the voter, one of which shall
14 have been by mail.

§3-3C-11. Ballot deposit locations and ballot deposit boxes.

1 (a) The clerk for each participating jurisdiction shall establish the number of ballot deposit
2 locations in the following manner:

3 (1) The clerk's office shall be a ballot deposit location.

4 (2) There shall be at least one ballot deposit location for every 5,000 active registered
5 voters in the participating jurisdiction.

6 (3) There shall be at least one ballot deposit location within one half mile of the main
7 campus of each institution of higher education in the participating jurisdiction.

8 (4) In no case shall a participating jurisdiction have fewer than three ballot deposit
9 locations, in addition to the clerk's office.

10 (b) Ballot deposit locations shall be determined using the following criteria:

11 (1) Need for security;

12 (2) Concentration of population;

13 (3) Convenience for voters;

14 (4) Access for the physically disabled;

15 (5) Access for persons who are homeless;

16 (6) Parking or drive-through availability;

17 (7) Geographic accessibility; and

18 (8) Equitable racial or language minority access.

19 (c) Ballot deposit boxes shall be locked, secure from being moved, weather proof, and
20 tamper proof.

21 (d) Ballot deposit boxes at staffed locations shall be locked and sealed. Authorized

22 personnel or deputized staff may empty and relock, or may exchange a ballot deposit box for
23 another locked or sealed empty ballot deposit box on a predetermined schedule or as needed.

24 (e) Ballot deposit boxes shall be accessible only by keys in possession of authorized
25 personnel.

26 (f) The clerk shall establish a predetermined schedule to empty outdoor ballot deposit
27 boxes but may have them emptied more frequently than scheduled if necessary to prevent the
28 boxes from becoming overfilled. Voted ballots shall be transferred into a locked ballot box, bag,
29 or pouch and transported by two designees of differing political affiliation to the clerk's office. The
30 ballot box, bag, or pouch must be locked, before transfer, with two separate locks. Each of the
31 two designees of different political affiliation shall have one key to one lock. The ballot box, bag,
32 or pouch shall be locked by both designees at the ballot deposit box location and unlocked at the
33 clerk's office only in the presence of both designees and the clerk.

34 (g) The ballot deposit box located at the clerk's office shall be available for use beginning
35 the first day that ballots are mailed and shall be accessible during regular business hours through
36 the day of the election; *Provided*, That the location shall be open and available until 7:30 p.m. on
37 election day.

38 (h) Ballot deposit locations other than the clerk's office shall be available for use beginning
39 the first day that ballots are mailed: *Provided*, That ballot deposit locations must be open and
40 available until 7:30 p.m. on election day.

§3-3C-12. Ballot reception, signature verification, and sorting.

1 (a) The clerk or clerk's designee shall keep a record of ballots delivered by the United
2 States Postal Service or other delivery service, ballots received at each of the ballot deposit
3 locations, ballots returned unsigned, and ballots returned as undeliverable.

4 (b) If a ballot return identification envelope is returned unsigned, the clerk shall make a
5 reasonable attempt to notify the voter that the ballot cannot be processed unless the envelope is
6 signed prior to 7:30 p.m. on election day. A signature may not be faxed or sent via other electronic

7 means. The clerk may:

8 (1) Issue a replacement ballot; or

9 (2) Have the voter sign the ballot return identification envelope at the elections office.

10 (c) If the voter returns a ballot return identification envelope from a previous election, the
11 clerk shall make a reasonable attempt to notify the voter that the ballot cannot be processed
12 unless the ballot is placed in the proper envelope prior to 7:30 p.m. on election day. The clerk
13 may issue a replacement ballot.

14 (d) When a ballot has been returned by the voter, the clerk or other authorized personnel
15 shall check the ballot return identification envelope for a valid signature and compare the voter's
16 signature on the ballot return identification envelope with the signature kept on file for the voter's
17 registration.

18 (e) If the clerk or other authorized personnel determines that the signatures on the ballot
19 return identification envelope and the voter registration card match, the ballot may be accepted
20 and processed.

21 (f) If the clerk or other authorized personnel initially determines that the signatures on the
22 ballot return identification envelope and the voter's registration card do not match, a more detailed
23 review, according to subsection (g) of this section, shall be made.

24 (g) A signature on the ballot return identification envelope possessing one or more
25 distinctive dissimilarities from the signature in the voter registration record shall be reviewed by
26 at least two different elections officials before it is accepted as a matching signature or rejected
27 as a non-matching signature. The officials shall review all initially rejected signatures in terms of
28 broad and specific characteristics. Broad characteristics used to evaluate the entire signature as
29 a unit instead of its individual parts include:

30 (1) Type of writing (hand printed, cursive, or mix);

31 (2) Speed of the writing;

32 (3) Appearance of the initial and terminal strokes – blunt or finely tapered;

- 33 (4) Presence or absence of changes in pen pressure;
- 34 (5) Line quality;
- 35 (6) Presence or absence of tremor;
- 36 (7) Presence or absence of a tracing guideline;
- 37 (8) Skill level of the writer;
- 38 (9) Style of the writing;
- 39 (10) Overall size of the writing;
- 40 (11) Overall spacing of the writing;
- 41 (12) Overall proportions;
- 42 (13) Slant/Slope of the writing;
- 43 (14) Style and construction of connecting strokes;
- 44 (15) Position of the signature on the signature line or baseline.
- 45 Specific letters or combinations of letters to be examined within a signature include:
- 46 (1) Size;
- 47 (2) Letters that are given preference in size or conversely, suppressed;
- 48 (3) Internal spacing between individual letters or letter combinations;
- 49 (4) Proportions;
- 50 (5) Components of individual letters;
- 51 (6) Consistency of letter combinations;
- 52 (7) Presence or absence of pen lifts;
- 53 (8) Letters or letter combinations that have a divergent slant/slope; and
- 54 (9) Pinpoint characteristics that are distinctive within the writer's signature.
- 55 (h) If the second review determines that the signatures on the ballot return identification
- 56 envelope and the voter's registration do not match, the clerk shall issue a challenge to the ballot
- 57 and send a notice in writing to the voter that the ballot has been challenged and the reason for
- 58 the challenge. If the second review determines that the signatures on the ballot return

59 identification envelope and the voter's registration do match, the ballot may be accepted and
60 processed.

61 (i) When a ballot has been returned by the voter and is accepted, the clerk shall include it
62 in the Statewide Voter Registration Database for the election.

63 (1) The clerk may use automated reports and computer programs for the Statewide Voter
64 Registration Database and logs that track replacement and challenged ballots.

65 (2) The clerk shall identify replacement ballots to ensure only the correct ballot is being
66 counted.

67 (3) The clerk shall note challenged ballots on the Statewide Voter Registration Database
68 and process them separately according to provisions of section 11 of this article.

69 (j) The clerk shall process ballots that have been accepted in the following manner:

70 (1) The clerk or clerk's designee shall mark the voter's official record indicating the voter
71 has voted in the election; and

72 (2) The ballot shall be sorted according to precinct and shall be placed in the ballot box
73 designated for the precinct to be kept locked until opened according to provisions of sections 12
74 and 13 of this article.

75 (k) The Secretary of State shall establish a free access system, which may include a toll-
76 free telephone number or an Internet website, that may be accessed by any voter to discover
77 whether his or her ballot was received and accepted.

§3-3C-13. Provisional ballots.

1 (a) Ballots issued pursuant to the rules of the Vote by Mail Program may be challenged
2 and determined to be provisional ballots for any reason outlined in W.Va. Code §3-3-10.

3 (b) If a ballot received by the clerk has been challenged, the clerk shall update the record
4 in the Statewide Voter Registration Database and keep the ballot secure and sealed until canvass,
5 but not placed in the ballot box.

6 (c) The clerk shall make every reasonable effort to obtain all information and

7 documentation necessary to resolve challenges to a ballot prior to the start of canvass.

§3-3C-14. Tallying vote by mail ballots using automated tabulating equipment.

1 (a) Ballots may be counted by automated tabulating equipment pursuant to W.Va. Code
2 §3-4A-1 et seq. or by a Counting Board. In any event, the ballots shall be tallied and returned by
3 precinct.

4 (b) The clerk may designate personnel as necessary to open envelopes, prepare ballots
5 for counting, and count ballots. The personnel may not all be members of the same political party.
6 A candidate on the ballot at an election, other than an incumbent candidate for clerk, or a person
7 who is the spouse, child, son-in-law, daughter-in-law, parent, mother-in-law, father-in-law, sibling,
8 brother-in-law, sister-in-law, aunt, uncle, niece, nephew, stepparent, or stepchild of any candidate
9 on the ballot may not be employed and may not serve as a volunteer in the capacity described in
10 this section.

11 (c) If automated tabulating equipment is used, the clerk shall conduct the public
12 certification test, pursuant to the approved implementation plan and W.Va. Code §3-4A-26,
13 immediately prior to scanning any ballots. The test may be observed by designated observers.
14 The clerk shall certify the results of the test.

15 (d) Notwithstanding any other provisions of this chapter, ballot processing for tabulation
16 may begin no sooner than the tenth day before the election.

17 (e) In the presence of designated observers, the clerk and the clerk's designees:

18 (1) May begin opening the ballot return identification envelopes received by the clerk; and

19 (2) In accordance with procedures established by the Secretary of State and pursuant to
20 the approved implementation plan, begin scanning ballots into an automated tabulating
21 equipment; *Provided*, That any tabulation of the number of votes cast for a candidate or question
22 appearing on the ballot, including a counting center printout or other disclosure, shall be kept
23 secure and confidential and shall not be disclosed to the public until after 7:30 p.m. on the date
24 of the election.

§3-3C-15. Tallying vote by mail ballots using a Counting Board.

1 If a Counting Board has been appointed, the tally of ballots may begin no earlier than the
2 date of the election. A Counting Board may tally ballots only at the office of the clerk.

3 (1) After the clerk determines that all ballots cast by 7:30 p.m. on election day have been
4 accepted or rejected, according to provisions of section 10 of this article, the Counting Board shall
5 tally all the votes in the presence of the entire Counting Board.

6 (2) The Counting Board shall count and record the ballots pursuant to provisions of W.Va.
7 Code §3-6-6, §3-6-8, and §3-6-8, unless otherwise provided for in this article.

§3-3C-16. Public notice of Vote by Mail.

1 (a) Prior to the first election using vote by mail in the participating jurisdiction, the clerk
2 shall mail a special notice of the Vote by Mail Program by letter or postcard to each registered
3 voter in the jurisdiction no more than four weeks nor less than three weeks prior to the start of the
4 voting period. The notice shall include relevant dates and instructions on what to do if the ballot
5 is not received. The clerk may also publicize participation in the Vote by Mail Program using
6 notices in newspapers, public service announcements on the radio or television, or other means;
7 however, these methods cannot substitute for mailing the special notice.

8 (b) For all elections using vote by mail in the jurisdiction, before the ballot packages are
9 made available to voters, the clerk shall publish a notice of the date or dates on which the ballot
10 packages are to be mailed as a Class III legal advertisement in accordance with the provisions of
11 W.Va. Code §59-3-1 et seq.

§3-3C-17. Preservation of certain materials; retention of records.

1 (a) Except as provided in subsection (c) of this section, each tally sheet, return sheet, and
2 ballot return identification envelope shall be preserved for 22 months after the election to which it
3 relates.

4 (b) Except as provided in subsection (c) of this section, the clerk shall destroy the ballots
5 and written challenge statements not sooner than the 90th day after the final day permitted for a

6 contest of the election, unless otherwise ordered by the court.

7 (c) In accordance with 42 U.S.C. 1974, any ballot, voter registration records, and any other
8 materials relating to any election at which a candidate is nominated or elected to federal office
9 shall be retained for not less than 22 months following the date of the election.

§3-3C-18. Secretary of State rulemaking.

1 (a) The Secretary of State is hereby directed to propose emergency and legislative rules
2 in accordance with the provisions of W.Va. Code §29A-3-1 et seq. necessary to implement the
3 Vote by Mail Program. The purpose of such rulemaking shall be to provide for the effective,
4 efficient, orderly, and timely initiation and administration of the Vote by Mail Program in
5 accordance with the provisions of this article.

6 (b) It is the duty of all officials designated to supervise and conduct the Vote by Mail
7 Program, other jurisdiction officials, and all election commissioners and clerks to abide by the
8 Secretary of State's rules, orders, and instructions and to use the forms, lists, and records
9 prescribed by the Secretary of State.

§3-3C-19. Training of election officials.

1 (a) The clerk, or the clerk's designee, of each participating jurisdiction shall attend
2 mandatory training provided by the Secretary of State, in a manner and form prescribed by the
3 Secretary of State.

4 (b) Any jurisdiction that fails to participate in mandatory training will forfeit participation in
5 the Vote by Mail Program and eligibility for funds appropriated by the Legislature for the Vote by
6 Mail Program.

§3-3C-20. Election expenses for Vote by Mail Program.

1 Election expenses for a participating jurisdiction shall be divided as follows:

2 (1) All expenses related to elections by mail involving both state and participating
3 jurisdiction offices, or involving both federal and participating jurisdiction offices, unrelated to voter
4 registration, shall be divided in half between the state and the participating jurisdiction. To the

5 extent that a particular expense is shared statewide, each participating jurisdiction shall pay a
6 proration of expenses as a proportion of the registered voters at the time of the general election.

7 (2) All expenses related to elections by mail for participating jurisdiction offices, which do
8 not involve state or federal offices, shall be borne by the participating jurisdiction.

9 (3) All expenses related to state or federal elections by mail, which do not involve county
10 or municipal offices, shall be borne by the state and paid out of appropriations as may be made
11 by the Legislature.

§3-3C-21. Prohibitions relating to voting.

1 (a) The voter alone shall mark the voter's ballot: *Provided*, That the voter may have
2 assistance in voting according to the provisions of section seven of this article.

3 (b) The following shall be deemed guilty of an election fraud and are subject to penalties
4 under §3-9-1 *et seq.* of this code:

5 (1) Any person who, at any election, votes or attempts to vote in the name of any other
6 person, living or dead, or in some fictitious name, or who, having once voted, votes or attempts
7 to vote again, or knowingly gives or attempts to give more than one ballot for the same office at
8 one time of voting;

9 (2) Any person who assists a voter in the completion of a ballot in violation of subsection
10 (a) of this section.

11 (3) Any person who manufactures or knowingly uses a fraudulent ballot return
12 identification envelope or secrecy envelope;

13 (4) Any person who sells, makes an offer with the actual intent to sell, purchase, or make
14 an offer with the actual intent to purchase, for money or other valuable consideration, any official
15 ballot, replacement ballot, ballot return identification envelope, or secrecy envelope;

16 (5) Any person who, by use of force, coercion, or other means, attempts to unduly
17 influence a voter to vote in any particular manner;

18 (6) Any person who, by use of force, coercion, or other means, attempts to impede,

19 prevent, or interfere with a voter’s choice when marking the ballot;

20 (7) Any person who, by use of force, coercion, or other means, attempts to unduly
21 influence a voter to refrain from voting;

22 (8) Any person who does or attempts to alter, deface, destroy, or fail to deliver a ballot that
23 has been marked by a legitimate voter; or

24 (9) Any person who signs a ballot return identification envelope with a signature that is not
25 their own.

§3-3C-22. Vote by Mail implementation plan; submission of election information to
Secretary of State; submission of annual report to the Joint Committee on
Government and Finance.

1 (a) Each participating jurisdiction’s clerk shall file their jurisdiction’s order or ordinance to
2 participate in Vote by Mail and a Vote by Mail implementation plan with the Secretary of State not
3 later than:

4 (1) Six months before the participating jurisdiction’s initial Vote by Mail election; and

5 (2) One business day after any revision is made to the implementation plan, or not less
6 than three years from the previous submission.

7 (b) A Vote by Mail implementation plan shall include, but is not limited to:

8 (1) A written security agreement entered into with any vendor handling ballots;

9 (2) Security procedures for transporting ballots;

10 (3) Security procedures at official ballot deposit locations and for ballot deposit boxes;

11 (4) Security procedures for processing ballots;

12 (5) Security procedures governing election observers;

13 (6) Security procedures for ballots located in the participation jurisdiction’s elections work
14 areas, buildings, and storage areas;

15 (7) Security procedures for automated tabulating equipment, including computer access
16 to automated tabulating equipment;

- 17 (8) The number and location of all video surveillance cameras within the elections office;
- 18 (9) Security procedures for scanning ballots into automated tabulating equipment before
- 19 the date of the election, if applicable;
- 20 (10) Procedures for the public certification test to be conducted immediately prior to
- 21 scanning any ballots;
- 22 (11) Post-election ballot security; and
- 23 (12) The timeline for implementation of Vote by Mail in the participating jurisdiction that
- 24 meets all relevant requirements in state code and rules related to the conduct of elections.
- 25 (c) An implementation plan developed and filed under subsection (b) of this section is
- 26 confidential and exempt from public disclosure under the state Freedom of Information Act, §29b-
- 27 1-4(a)(5) of this code.
- 28 (d) The Secretary of State shall review and approve or disapprove implementation plans
- 29 within 90 days of receipt to enable timely notification of jurisdictions' eligibility to participate in the
- 30 Vote by Mail Program.
- 31 (e) For each election, at the time the clerk certifies the results of the election, the clerk
- 32 shall submit to the Secretary of State a record of:
- 33 (1) The number of ballot return identification envelopes received.
- 34 (2) The number of ballot return identification envelopes accepted.
- 35 (3) The number of ballot return identification envelopes not accepted.
- 36 (4) The number of ballot return identification envelopes rejected.
- 37 (5) The number of tallied ballots.
- 38 (6) The number of ballots mailed.
- 39 (7) The number of replacement ballots requested.
- 40 (8) The number of replacement ballots received.
- 41 (9) The number of replacement ballots accepted.
- 42 (10) The number of replacement ballots not accepted.

- 43 (11) The number of replacement ballots rejected.
- 44 (f) The Secretary of State shall prepare an annual comprehensive report on the
- 45 implementation of the Vote by Mail Program, which includes the records submitted by the clerks,
- 46 and shall submit the report on or before December 15 of each year, beginning December 15,
- 47 2022, to the Joint Committee on Government and Finance.

NOTE: The purpose of this bill is to establish a vote by mail program for the state.

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