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SB 788

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Regular Session, 2006



ENROLLED

SENATE BILL NO. 788

(By Senator Oliverio, et al)



PASSED March 10, 2006

In Effect from Passage

FILED

2006 APR -3 P 4: 16

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

Senate Bill No. 788

(BY SENATORS OLIVERIO, KESSLER, DEMPSEY, FANNING,
FOSTER, HUNTER, JENKINS, MINARD, WHITE,
BARNES, CARUTH AND WEEKS)

[Passed March 10, 2006; in effect from passage.]

AN ACT to amend and reenact §3-1-46 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-2-5 and §3-2-10 of said code; to amend and reenact §3-3-8 of said code; to amend and reenact §3-5-23 of said code; and to amend and reenact §3-8-10 of said code, all relating generally to elections; establishing training requirements for county clerks; making amendments to conform to requirements of the Help America Vote Act; clarifying requirements for voter registration drives; providing penalties for voter registration violations; clarifying use of excess campaign contribution funds; clarifying processing of absentee ballots; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §3-1-46 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-2-5 and §3-2-10 of said code be amended and reenacted; that §3-3-8 of said code be amended and reenacted; that §3-5-23 of said code be amended and

reenacted; and that §3-8-10 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-46. Training program for election officials.

1 (a) The Secretary of State in conjunction with the State
2 Election Commission shall produce one or more audio-
3 visual programs which explain and illustrate the proce-
4 dures for conducting elections, the duties of the various
5 election officials and the methods of voting on each voting
6 system in use in the state.

7 (b) One copy of the appropriate training program shall
8 be distributed to and kept and preserved by the clerk of
9 the county commission of each county. The program shall
10 be shown to all election officials before each election as
11 part of their instructional program. The clerk of the
12 county commission shall conduct an adequate number of
13 sessions to train all election officials shall schedule the
14 regular sessions not less than seven days before each
15 election and shall notify all election officials of the exact
16 date, time and place such instructional program will be
17 conducted.

18 (c) No person may serve as an election commissioner or
19 poll clerk in any election unless he or she has attended the
20 instructional program required by subsection (a) of this
21 section. If an election official fails to attend the instruc-
22 tional program, another person shall be appointed in the
23 election official's place in the same manner as persons are
24 appointed under the provisions of section thirty of this
25 article to replace election officials refusing to serve and
26 the clerk of the county commission shall conduct an
27 additional instructional program within seven days prior
28 to the election for any such person so appointed: *Provided,*
29 That in cases of emergency when no person who has
30 attended the instructional program for that election is
31 available to fill a vacancy on the election board, the clerk

32 of the county commission may appoint such person as a
33 commissioner or poll clerk notwithstanding that such
34 person has not received the instruction.

35 (d) The requirements of this section apply to all elections
36 conducted by municipalities, except that the recorder or
37 municipal clerk responsible for the election shall perform
38 the duties of the clerk of the county commission defined in
39 this section. The clerk of the county commission may
40 assist the recorder or municipal clerk in conducting the
41 instructional program.

42 (e) When the instructional program is not being used by
43 the clerk for instructional purposes, it shall be available to
44 any duly organized civic, religious, educational or charita-
45 ble group without charge, except that the clerk shall
46 require a cash deposit on such use in an amount to be
47 determined by the Secretary of State.

48 (f) The Secretary of State shall cause the instructional
49 program to be amended, edited or reproduced whenever he
50 or she is of the opinion such revision is necessary in light
51 of changes in the election laws of this state.

52 (g) No elected official may appear in such program either
53 in person or by visual image or by name.

54 (h) Every county clerk shall attend a training, to be
55 conducted by the Secretary of State every two years, for
56 the purpose of reviewing the election official training and
57 receiving updates on election law matters.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

1 (a)(1) All state forms for application for voter registra-
2 tion shall be prescribed by the Secretary of State and shall
3 conform with the requirements of 42 U. S. C. §1973gg, *et*
4 *seq.*, the National Voter Registration Act of 1993 and the

5 requirements of the provisions of this article. Separate
6 application forms may be prescribed for voter registration
7 conducted by the clerk of the county commission, registra-
8 tion by mail, registration in conjunction with an applica-
9 tion for motor vehicle driver's license and registration at
10 designated agencies. These forms may consist of one or
11 more parts, may be combined with other forms for use in
12 registration by designated agencies or in conjunction with
13 driver licensing and may be revised and reissued as
14 required by the Secretary of State to provide for the
15 efficient administration of voter registration.

16 (2) Notwithstanding any provisions of subdivision (1) of
17 this subsection to the contrary, the federal postcard
18 application for voter registration issued pursuant to 42 U.
19 S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens
20 Absentee Voting Act of 1986, and the mail voter registra-
21 tion application form prescribed by the Federal Election
22 Commission pursuant to 42 U. S. C. §1973gg, *et seq.*, the
23 National Voter Registration Act of 1993, shall be accepted
24 as a valid form of application for registration pursuant to
25 the provisions of this article.

26 (b) Each application form for registration shall include:

27 (1) A statement specifying the eligibility requirements
28 for registration and an attestation that the applicant meets
29 each eligibility requirement;

30 (2) Any specific notice or notices required for a specific
31 type or use of application by 42 U. S. C. §1973gg, *et seq.*,
32 the National Voter Registration Act of 1993;

33 (3) A notice that a voter may be permitted to vote the
34 partisan primary election ballot of a political party only if
35 the voter has designated that political party on the appli-
36 cation for registration unless the political party has
37 determined otherwise;

38 (4) The applicant's driver's license number or if the
39 applicant does not have a driver's license, then the last
40 four digits of the applicant's social security number; and

41 (5) Any other instructions or information essential to
42 complete the application process.

43 (c) Each application form shall require that the follow-
44 ing be provided by the applicant, under oath, and any
45 application which does not contain each of the following
46 shall be considered incomplete:

47 (1) The applicant's legal name, including the first name,
48 middle or maiden name, if any, and last name;

49 (2) The month, day and year of the applicant's birth;

50 (3) The applicant's residence address, including the
51 number and street or route and city and county of resi-
52 dence except:

53 (A) In the case of a person eligible to register under the
54 provisions of 42 U. S. C. §1973ff, *et seq.*, the Uniformed
55 and Overseas Citizens Absentee Voting Act, the address at
56 which he or she last resided before leaving the United
57 States or entering the uniformed services, or if a depend-
58 ent child of such a person, the address at which his or her
59 parent last resided; and

60 (B) In the case of a homeless person having no fixed
61 residence address who nevertheless resides and remains
62 regularly within the county, the address of a shelter,
63 assistance center or family member with whom he or she
64 has regular contact or other specific location approved by
65 the clerk of the county commission for the purposes of
66 establishing a voting residence; and

67 (4) The applicant's signature, under penalty of perjury,
68 as provided in section thirty-six of this article to the
69 attestation of eligibility to register to vote and to the truth
70 of the information given.

71 (d) The applicant shall be requested to provide the
72 following information, but no application shall be rejected
73 for lack of this information:

74 (1) An indication whether the application is for a new
75 registration, change of address, change of name or change
76 of party affiliation;

77 (2) The applicant's choice of political party affiliation, if
78 any, or an indication of no affiliation: *Provided*, That any
79 applicant who does not enter any choice of political party
80 affiliation shall be listed as having no party affiliation on
81 the voting record;

82 (3) The applicant's residence mailing address if different
83 than the residence street address;

84 (4) The last four digits of the applicant's social security
85 number;

86 (5) The applicant's telephone number;

87 (6) The address at which the applicant was last regis-
88 tered to vote, if any, for the purpose of canceling or
89 transferring the previous registration; and

90 (7) The applicant's gender.

91 (e) The Secretary of State shall prescribe the printing
92 specifications of each type of voter registration application
93 and the voter registration application portion of any form
94 which is part of a combined agency form.

95 (f) Application forms prescribed in this section may refer
96 to various public officials by title or official position, but
97 in no case may the actual name of any officeholder be
98 printed on the voter registration application or on any
99 portion of a combined application form.

100 (g) No later than the first day of July of each odd-
101 numbered year, the Secretary of State shall submit the
102 specifications of the voter registration application by mail
103 for statewide bidding for a contract period beginning the
104 first day of September of each odd-numbered year and
105 continuing for two calendar years. The successful bidder
106 shall produce and supply the required mail voter registra-

107 tion forms at the contract price to all purchasers of the
108 form for the period of the contract.

§3-2-10. Application for registration by mail.

1 (a) Any qualified person may apply to register, change,
2 transfer or correct his or her voter registration by mail.
3 Application shall be made on a prescribed form as pro-
4 vided by section five of this article.

5 (b) To the extent possible, with funds allocated annually
6 for such purpose, the Secretary of State shall make state
7 mail registration forms available for distribution through
8 governmental and private entities and organized voter
9 registration programs. The Secretary of State shall make
10 a record of all requests by entities or organizations for two
11 hundred or more forms with a description of the dates and
12 locations in which the proposed registration drive is to be
13 conducted. The Secretary of State shall also require the
14 entity or organization requesting the forms to provide
15 contact information on a form prescribed by the Secretary
16 of State. The Secretary of State may limit the distribution
17 to a reasonable amount per group.

18 (c) The clerk of the county commission shall provide up
19 to four mail registration forms to any resident of the
20 county upon request. To the extent possible with funds
21 allocated annually for the purpose, the clerk of the county
22 commission shall make state mail registration forms
23 available for distribution through organized voter regis-
24 tration programs within the county. The clerk of the
25 county commission shall make a record of all requests by
26 entities or organizations for ten or more forms with a
27 description of the dates and locations in which the pro-
28 posed registration drive is to be conducted. The clerk may
29 limit the distribution to a reasonable amount per group.

30 (d) The applicant shall provide all required information
31 and, only after completing the information, sign the
32 prescribed applicant's oath under penalty of perjury as

33 provided in section thirty-six of this article. No person
34 may alter or add any entry or make any mark which would
35 alter any material information on the voter registration
36 application after the applicant has signed the oath:
37 *Provided*, That the clerk of the county commission may
38 correct any entry upon the request of the applicant
39 provided the request is properly documented and the
40 correction is dated and initialed by the clerk.

41 (e) Completed applications shall be mailed or delivered
42 to the clerk of the county commission of the county in
43 which the voter resides. If a clerk receives a completed
44 mail application form from a voter whose residence
45 address is located in another county, the clerk shall
46 forward that application within three days to the clerk of
47 the county commission of the county of the applicant's
48 residence.

49 (f) Upon receipt of the application for registration by the
50 appropriate clerk of the county commission, the clerk
51 shall:

52 (1) Attempt to establish whether the residence address
53 given is within the boundaries of an incorporated municipi-
54 pality and, if so, make the proper entry required for
55 municipal residents to be properly identified for municipal
56 voter registration purposes; and

57 (2) Immediately begin the verification process required
58 by the provisions of section sixteen of this article.

59 (g) Any person who registers by mail pursuant to this
60 section and who has not previously voted in an election in
61 the state shall be required to present the following forms
62 of identification to the Secretary of State or clerk of the
63 county commission:

64 (1) In the case of an individual who votes in person, a
65 current and valid photo identification; or a copy of a
66 current utility bill, bank statement, government check,

67 paycheck or other government document that shows the
68 name and address of the voter;

69 (2) In the case of an individual who votes by mail, a copy
70 of a current and valid photo identification or a copy of a
71 current utility bill, bank statement, government check,
72 paycheck or other government document that shows the
73 name and address of the voter, submitted with the ballot.

74 (h) An individual who desires to vote in person or by
75 mail, but who does not meet the requirements of subsec-
76 tion (g) of this section, may cast a provisional ballot.

77 (i) Subsection (g) of this section does not apply in the
78 case of a person:

79 (1) Who registers to vote by mail under 42 U. S. C.
80 §1973gg-4, *et seq.*, and submits as part of his or her
81 registration either a copy of a current and valid photo
82 identification or a copy of a current utility bill, bank
83 statement, government check, paycheck or government
84 document that shows the name and address of the voter;

85 (2) (A) Who registers to vote by mail under 42 U. S. C.
86 §1973gg-4, *et seq.*, and submits with his or her registration
87 either a driver's license number or at least the last four
88 digits of the individual's social security number; and (B)
89 with respect to whom the Secretary of State or clerk of the
90 county commission matches the information submitted
91 under paragraph (A) of this subdivision with an existing
92 state identification record bearing the same number, name
93 and date of birth as provided in the registration; or

94 (3) Who is: (A) Entitled to vote by absentee ballot under
95 42 U. S. C. §1973ff-1, *et seq.*, the Uniformed and Over-
96 seas Citizens Absentee Voting Act; (B) provided the right
97 to vote otherwise than in person under 42 U. S. C.
98 §1973ee-1(b)(2)(B)(ii); or 25 (iii), section 3(b)(2)(B)(ii) of the
99 Voting Accessibility for the Elderly and Handicapped Act;
100 (C) entitled to vote otherwise than in person under any
101 other federal law: *Provided*, That any person who has

102 applied for an absentee ballot pursuant to the provisions
103 of subdivision (1), subsection (b), section one, article three
104 of this chapter; paragraph (B), subdivision (2) of said
105 subsection; subdivision (3) of said subsection; or subsection
106 (c) of said section may not have his or her ballot in that
107 election challenged for failure to appear in person or for
108 failure to present identification.

109 (j) Any person who submits a state mail voter registra-
110 tion application to the clerk of the county commission in
111 the county in which he or she is currently registered for the
112 purpose of entering a change of address within the county,
113 making a change of party affiliation or recording a change
114 of legal name shall not be required to make his or her first
115 vote in person or to present identification or proof of age.

116 (k) On and after the first day of July, two thousand six,
117 any person who agrees to mail or to deliver a signed voter
118 registration application to the Secretary of State or the
119 clerk of the county commission and who intentionally
120 interferes with the applicant's effort to register either by
121 destroying the application or by failing to mail or to
122 deliver the application in a timely manner is guilty of a
123 misdemeanor and, upon conviction thereof, shall be fined
124 not more than one thousand dollars, or confined in a jail
125 for not more than one year, or both. For purposes of this
126 subsection, the mailing or delivery of an application is
127 timely if it is mailed or delivered within fifteen days after
128 the applicant signs the application or in accordance with
129 the provisions of article two, chapter three of this code for
130 processing before the closing of the registration records for
131 the pending election, whichever comes first.

132 (l) On or after the first day of July, two thousand six, any
133 person who intentionally solicits multiple registrations
134 from any one person or who intentionally falsifies a
135 registration application is guilty of a misdemeanor and,
136 upon conviction thereof, shall be fined not more than one
137 thousand dollars, or confined in jail for not more than one
138 year, or both.

ARTICLE 3. VOTING BY ABSENTEES.**§3-3-8. Disposition and counting of absent voters' ballots.**

1 (a) In counties using paper ballots, all absentee ballots
2 shall be processed as follows:

3 (1) The ballot boxes containing the absentee ballots shall
4 be opened in the presence of the clerk of the county
5 commission and two representatives of opposite political
6 parties;

7 (2) The ballots shall be separated by precincts as stated
8 on the sealed envelopes containing the ballots; and

9 (3) Absentee ballots shall be delivered to the polls to be
10 opened and counted in accordance with section thirty-
11 three, article one of this chapter, section fifteen, article
12 five of this chapter; and section six, article six of this
13 chapter. Disclosure of any results before the voting has
14 been closed and the precinct returns posted on the door of
15 the polling place shall be a per se violation of the oath
16 taken by the counting board. In all other counties, count-
17 ing is to begin immediately after closing of the polls.

18 (b) In counties using optical scan systems, the absentee
19 ballots shall be processed as follows:

20 (1) On election day, the ballot boxes containing the
21 absentee ballots shall be delivered to the central counting
22 center and opened in the presence of the clerk of the
23 county commission and two representatives of opposite
24 political parties; and

25 (2) The absentee ballots shall be counted in accordance
26 with section twenty-seven, article four-a of this chapter.

27 (c) In counties using direct recording elections systems,
28 the absentee ballots shall be counted as follows:

29 (1) On election day, the ballot boxes containing the paper
30 absentee ballots shall be delivered to the central counting

31 center and opened in the presence of the clerk of the
32 county commission and two representatives of opposite
33 political parties; and

34 (2) Each absentee ballot shall be recorded on a direct
35 recording voting terminal designated by the clerk of the
36 county commission as the terminal for absentee tabula-
37 tions, after being read aloud by a separate team of two
38 representatives of opposite political parties; and

39 (3) The ballot shall be verified by both teams as being
40 accurately printed on the paper receipt before the ballot is
41 tabulated; and

42 (4) The appropriate election officials shall follow the
43 procedures set out in subsections (a), (b), (d) and (e),
44 section twenty-seven, article four-a of this chapter and
45 subdivisions (3), (4), (5) and (6), subsection (c) of said
46 section.

47 (d) The provisional ballots shall be deposited in a
48 provisional ballot envelope and delivered to the board of
49 canvassers.

50 (e) Any election official who determines a person has
51 voted an absent voter's ballot and has also voted at the
52 polls on election day must report the fact to the prosecut-
53 ing attorney of the county in which the votes were cast.

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 for public office otherwise than by
3 conventions or primary elections. In the case, the candi-
4 date or candidates, jointly or severally, shall file a declara-
5 tion with the Secretary of State if the office is to be filled
6 by the voters of more than one county, or with the clerk of
7 the county commission of the county if the office is to be
8 filled by the voters of one county or political subdivision

9 thereof; the declaration to be filed at least thirty days prior
 10 to the time of filing the certificate provided by section
 11 twenty-four of this article: *Provided*, That the deadline for
 12 filing the certificate for persons seeking ballot access as a
 13 candidate for the office of President or Vice President shall
 14 be filed not later than the first day of August preceding the
 15 general election. At the time of filing of the declaration
 16 each candidate shall pay the filing fee required by law,
 17 and if the declaration is not so filed or the filing fee so
 18 paid, the certificate shall not be received by the Secretary
 19 of State, or clerk of the county commission, as the case
 20 may be.

21 (b) The person or persons soliciting or canvassing
 22 signatures of duly qualified voters on the certificate or
 23 certificates, may solicit or canvass duly registered voters
 24 residing within the county, district or other political
 25 division represented by the office sought, but must first
 26 obtain from the clerk of the county commission credentials
 27 which must be exhibited to each voter canvassed or
 28 solicited, which credentials may be in the following form
 29 or effect:

30 State of West Virginia, County of, ss:

31 This certifies that the holder of this credential is hereby
 32 authorized to solicit and canvass duly registered voters
 33 residing in (here place the county, district
 34 or other political division represented by the office
 35 sought) to sign a certificate purporting to nominate
 36 (here place name of candidate heading
 37 list on certificate) for the office of and
 38 others, at the general election to be held on,
 39 20.....

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

42
 43 Clerk, County Commission of County.

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

47 (c) The certificate shall be personally signed by duly
48 registered voters, in their own proper handwriting or by
49 their marks duly witnessed, who must be residents within
50 the county, district or other political division represented
51 by the office sought wherein the canvass or solicitation is
52 made by the person or persons duly authorized. The
53 signatures need not all be on one certificate. The number
54 of signatures shall be equal to not less than two percent of
55 the entire vote cast at the last preceding general election
56 for the office in the state, district, county or other political
57 division for which the nomination is to be made, but in no
58 event shall the number be less than twenty-five. The
59 number of signatures shall be equal to not less than two
60 percent of the entire vote cast at the last preceding general
61 election for any statewide, congressional or presidential
62 candidate, but in no event shall the number be less than
63 twenty-five. Where two or more nominations may be
64 made for the same office, the total of the votes cast at the
65 last preceding general election for the candidates receiving
66 the highest number of votes on each ticket for the office
67 shall constitute the entire vote. No signature on a certifi-
68 cate shall be counted unless it be that of a duly registered
69 voter of the county, district or other political division
70 represented by the office sought wherein the certificate
71 was presented.

72 (d) The certificates shall state the name and residence of
73 each of the candidates; that he or she is legally qualified to
74 hold the office; that the subscribers are legally qualified
75 and duly registered as voters and desire to vote for the
76 candidates; and may designate, by not more than five
77 words, a brief name of the party which the candidates
78 represent and may adopt a device or emblem to be printed
79 on the official ballot. All candidates nominated by the
80 signing of the certificates shall have their names placed on

81 the official ballot as candidates, as if otherwise nominated
82 under the provisions of this chapter.

83 The Secretary of State shall prescribe the form and
84 content of the nomination certificates to be used for
85 soliciting signatures.

86 Offices to be filled by the voters of more than one county
87 shall use separate petition forms for the signatures of
88 qualified voters for each county.

89 (e) The Secretary of State, or the clerk of the county
90 commission, as the case may be, may investigate the
91 validity of the certificates and the signatures thereon. If,
92 upon investigation, there is doubt as to the legitimacy and
93 the validity of certificate, the Secretary of State may ask
94 the Attorney General of the state, or the clerk of the
95 county commission may ask the prosecuting attorney of
96 the county, to institute a quo warranto proceeding against
97 the nominee by certificate to determine his or her right to
98 the nomination to public office and upon request being
99 made, the Attorney General or prosecuting attorney shall
100 institute the quo warranto proceeding. The clerk of the
101 county commission shall, at the request of the Secretary of
102 State or the clerk of the circuit court, compare the infor-
103 mation from any certificate to the county voter registra-
104 tion records in order to assist in determining the validity
105 of any certificates.

106 (f) In addition to penalties prescribed elsewhere for
107 violation of this chapter, any person violating the provi-
108 sions of this section is guilty of a misdemeanor and, upon
109 conviction, shall be fined not more than one thousand
110 dollars, or confined in jail for not more than one year, or
111 both, in the discretion of the court: *Provided*, That no
112 criminal penalty may be imposed upon anyone who signs
113 a nomination certificate and votes in the primary election
114 held after the date the certificate was signed.

§3-8-10. Use of certain contributions.

1 (a) Notwithstanding any provision of this code to the
2 contrary, amounts received by a candidate as contribu-
3 tions that are in excess of any amount necessary to defray
4 his or her expenditures may be:

5 (1) used by the candidate to defray any usual and
6 customary expenses incurred in connection with his or her
7 duties as a holder of public office; and

8 (2) contributed by the candidate, after the general
9 election, to:

10 (A) any charitable organization or subsequent campaign
11 by the same candidate, without limitation;

12 (B) any national committee in accordance with federal
13 requirements;

14 (C) any state party executive committee or state party
15 legislative caucus committee, in an amount not to exceed
16 fifteen thousand dollars in a calendar year; or

17 (D) any local committee of any political party or any
18 other candidate for public office, in accordance with the
19 existing limitations on contributions.

20 (b) The State Election Commission shall promulgate
21 emergency and legislative rules, in accordance with the
22 provisions of chapter twenty-nine-a of this code, to
23 establish guidelines for the administration of this section.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Sandy White
.....
Chairman Senate Committee

Robert
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Darrell Holmes
.....
Clerk of the Senate

Gregg M. Boy
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

Robert
.....
Speaker House of Delegates

The within *is approved* this the *31st*
Day of *March*, 2006.

Paul H. Hunt
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 31 2006

Time 10:35 am