

Senate Bill No. 57

(By Senators Jenkins, McCabe, Barnes and Sypolt)

[Introduced January 12, 2011; referred to the Committee on the
Judiciary.]

10 A BILL to amend and reenact §3-1-16 of the Code of West Virginia,
11 1931, as amended; to amend and reenact §3-4A-11a of said code;
12 to amend said code by adding thereto a new section, designated
13 §3-5-6a; to amend and reenact §3-5-7, §3-5-13 and §3-5-13a of
14 said code; and to amend said code by adding thereto a new
15 section, designated §3-6-2a, all relating to the nonpartisan
16 election of Justices of the Supreme Court of Appeals; timing
17 and frequency of election; ballot design and printing;
18 separation from partisan ballot; nonpartisan election of
19 justices; filing announcement of candidacies; withdrawal of
20 announcement of candidacies; refund of paid filing fees; and
21 ballot content and form.

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

23 That §3-1-16 of the Code of West Virginia, 1931, as amended,
24 be amended and reenacted; that §3-4A-11a of said code be amended

1 and reenacted; that said code be amended by adding thereto a new
 2 section, designated §3-5-6a; that §3-5-7, §3-5-13 and §3-5-13a of
 3 said code be amended and reenacted; and that said code be amended
 4 by adding thereto a new section, designated §3-6-2a, all to read as
 5 follows:

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

7 **§3-1-16. Election of state officers.**

8 (a) At the general election to be held in the year 1968, and
 9 in every fourth year thereafter, there shall be elected a Governor,
 10 Secretary of State, Treasurer, Auditor, Attorney General, and
 11 Commissioner of Agriculture. At the general election in the year
 12 1968, and in every second year thereafter, there shall be elected
 13 a member of the state Senate for each senatorial district, and a
 14 member or members of the House of Delegates of the state from each
 15 county or each delegate district. At the general election to be
 16 held in the year 1968, and ~~in~~ every twelve ~~year~~ years thereafter,
 17 there shall be elected one ~~judge~~ Justice of the Supreme Court of
 18 Appeals, and at the general election to be held in the year 1972,
 19 and ~~in~~ every twelve ~~year~~ years thereafter, two ~~judges~~ Justices of
 20 the Supreme Court of Appeals, and at the general election to be
 21 held in the year 1976, and ~~in~~ every twelve ~~year~~ years thereafter,
 22 two ~~judges~~ Justices of the Supreme Court of Appeals.

23 (b) Effective with the general election held in the year 2012,
 24 the election of Justices of the Supreme Court of Appeals shall be

1 held on a nonpartisan basis.

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

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

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

11 (b) (1) For the primary election, the heading of the ballot,
12 the type faces, the names and arrangement of offices and the
13 printing of names and arrangement of candidates within each office
14 are to conform as nearly as possible to the provisions of sections
15 thirteen and thirteen-a, article five of this chapter.

16 (2) For the general election, the heading of the ballot, the
17 straight ticket positions, the instructions to straight ticket
18 voters, the type faces, the names and arrangement of offices and
19 the printing of names and the arrangement of candidates within each
20 office are to conform as nearly as possible to the provisions of
21 section two, article six of this chapter, except as otherwise
22 provided in this article.

23 (3) Nonpartisan elections for Board of Education, Justices for
24 the Supreme Court of Appeals and any question to be voted upon are

1 to be separated from the partisan ballot and separately headed in
2 display type with a title clearly identifying the purpose of the
3 election and constituting a separate ballot wherever a separate
4 ballot is required under the provisions of this chapter.

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

11 (5) The arrangement of candidates within each office is to be
12 determined in the same manner as for other electronic voting
13 systems, as prescribed in this chapter. On the general election
14 ballot for all offices, and on the primary election ballot only for
15 those offices to be filled by election, except delegate to national
16 convention, lines for entering write-in votes are to be provided
17 below the names of candidates for each office, and the number of
18 lines provided for any office shall equal the number of persons to
19 be elected, or three, whichever is fewer. The words "WRITE-IN, IF
20 ANY" are to be printed, where applicable, directly under each line
21 for write-ins. The lines are to be opposite a position to mark the
22 vote.

23 (c) Except for electronic voting systems that utilize screens
24 upon which votes may be recorded by means of a stylus or by means

1 of touch, the primary election ballots are to be printed in the
2 color of ink specified by the Secretary of State for the various
3 political parties, and the general election ballot is to be printed
4 in black ink. For electronic voting systems that utilize screens
5 upon which votes may be recorded by means of a stylus or by means
6 of touch, the primary ballots and the general election ballot are
7 to be printed in black ink. All ballots are to be printed, where
8 applicable, on white paper suitable for automatic tabulation and
9 are to contain a perforated stub at the top or bottom of the
10 ballot, which is to be numbered sequentially in the same manner as
11 provided in section thirteen, article five of this chapter, or are
12 to be displayed on the screens of the electronic voting system upon
13 which votes are recorded by means of a stylus or touch. The number
14 of ballots printed and the packaging of ballots for the precincts
15 are to conform to the requirements for paper ballots provided in
16 this chapter.

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

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

21 **§3-5-6a. Election of Justices of the Supreme Court of Appeals.**

22 (a) An election for the purpose of electing a justice or
23 justices of the Supreme Court of Appeals shall be held on the same
24 date as the general election, as provided by law, but upon a

1 nonpartisan ballot printed for this purpose.

2 (b) In each nonpartisan election for a justice or justices of
3 the Supreme Court of Appeals, the board of canvassers shall declare
4 and certify the election of the required number of eligible
5 candidates receiving the highest numbers of votes to fill any full
6 terms.

7 (c) It is the intent of this section that any person declared
8 to be elected under this section shall take office as a duly
9 elected justice, even though the person received a plurality of all
10 votes cast at such election.

11 (d) In case of a tie vote under this section, the provisions
12 of section twelve, article six of this chapter shall control in
13 breaking the tie.

14 **§3-5-7. Filing announcements of candidacies; requirements;**
15 **withdrawal of candidates when section applicable.**

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

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

22 (1) Candidates for the House of Delegates or the State Senate
23 and any other office or political position to be filled by the
24 voters of more than one county shall file a certificate of

1 announcement with the Secretary of State.

2 (2) Candidates for an office or political position to be
3 filled by the voters of a single county or a subdivision of a
4 county, except for candidates for the House of Delegates or State
5 Senate, shall file a certificate of announcement with the clerk of
6 the county commission.

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

10 (c) Except for the offices of Justice of the Supreme Court of
11 Appeals, which are to be filled on a nonpartisan basis beginning at
12 the general election held in the year 2012, the certificate of
13 announcement shall be filed with the proper officer not earlier
14 than the second Monday in January next preceding the primary
15 election day, and not later than the last Saturday in January next
16 preceding the primary election day, and must be received before
17 midnight, eastern standard time, of that day or, if mailed, shall
18 be postmarked by the United States Postal Service before that hour.
19 The office of Justice of the Supreme Court of Appeals, beginning in
20 the year 2012, shall be filled on a nonpartisan basis at the
21 general election. The certificate of announcement shall be filed
22 with the authorized election official not later than the second
23 Tuesday in May, and must be received before midnight, eastern
24 standard time, of that day or, if mailed, shall be postmarked by

1 the United States Postal Service before midnight, eastern standard
2 time, of that day. All certificates of announcement for the office
3 of Justice of the Supreme Court of Appeals, which were filed not
4 earlier than the second Monday in January next preceding the
5 primary election day, and not later than the last Saturday in
6 January next preceding the primary election day, and were received
7 before midnight, eastern standard time, of that day or, if mailed,
8 were postmarked by the United States Postal Service before that
9 hour, may be withdrawn on or before midnight, eastern standard
10 time, of the second Tuesday in May, in accordance with the
11 provisions of article five, section eleven of this chapter, with a
12 full refund of any filing fees paid or, if not withdrawn, shall be
13 effective for purposes of the nonpartisan election for such offices
14 to be held on general election day.

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

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

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

24 (3) The legal name of the candidate and the exact name the

1 candidate desires to appear on the ballot, subject to limitations
2 prescribed in section thirteen, article five of this chapter;

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

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

10 (6) For partisan elections, the name of the candidate's
11 political party and a statement that the candidate: (A) Is a
12 member of and affiliated with that political party as evidenced by
13 the candidate's current registration as a voter affiliated with
14 that party; and (B) has not been registered as a voter affiliated
15 with any other political party for a period of sixty days before
16 the date of filing the announcement;

17 (7) For candidates for delegate to national convention, the
18 name of the presidential candidate to be listed on the ballot as
19 the preference of the candidate on the first convention ballot; or
20 a statement that the candidate prefers to remain "uncommitted";

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

23 (9) The words "subscribed and sworn to before me this _____
24 day of _____, 20____" and a space for the signature of the

1 officer giving the oath.

2 (e) The Secretary of State or the board of ballot
3 commissioners, as the case may be, may refuse to certify the
4 candidacy or may remove the certification of the candidacy upon
5 receipt of a certified copy of the voter's registration record of
6 the candidate showing that the candidate was registered as a voter
7 in a party other than the one named in the certificate of
8 announcement during the sixty days immediately preceding the filing
9 of the certificate: *Provided*, That unless a signed formal
10 complaint of violation of this section and the certified copy of
11 the voter's registration record of the candidate are filed with the
12 officer receiving that candidate's certificate of announcement no
13 later than ten days following the close of the filing period, the
14 candidate may not be refused certification for this reason.

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

21 (g) Any candidate for delegate to a national convention may
22 change his or her statement of presidential preference by notifying
23 the Secretary of State by letter received by the Secretary of State
24 no later than the third Tuesday following the close of candidate

1 filing. When the rules of the political party allow each
2 presidential candidate to approve or reject candidates for delegate
3 to convention who may appear on the ballot as committed to that
4 presidential candidate, the presidential candidate or the
5 candidate's committee on his or her behalf may file a list of
6 approved or rejected candidates for delegate and the Secretary of
7 State shall list as "uncommitted" any candidate for delegate who is
8 disapproved by the presidential candidate.

9 (h) A person may not be a candidate for more than one office
10 or office division at any election: *Provided*, That a candidate for
11 an office may also be a candidate for President of the United
12 States, for membership on political party executive committees or
13 for delegate to a political party national convention.

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

20 (j) The provisions of this section enacted during the regular
21 session of the Legislature in the year 1991 shall apply to the
22 primary election held in the year 1992 and every primary election
23 held thereafter. The provisions of this section enacted during the
24 regular session of the Legislature in the year 2009 shall apply to

1 the primary election held in the year 2010 and every primary
2 election held thereafter.

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

4 The face of every primary election ballot shall conform as
5 nearly as practicable to that used at the general election.

6 (1) The heading of every ballot is to be printed in display
7 type. The heading is to contain a ballot title, the name of the
8 county, the state, the words "Primary Election" and the month, day
9 and year of the election. The ballot title of the political party
10 ballots is to contain the words "Official Ballot of the (Name)
11 Party" and the official symbol of the political party may be
12 included in the heading. The ballot title of any separate paper
13 ballot or portion of any electronic or voting machine ballot for
14 the board of education is to contain the words "Nonpartisan Ballot
15 of Election of Members of the _____ County Board of
16 Education". The districts for which less than two candidates may
17 be elected and the number of available seats are to be specified
18 and the names of the candidates are to be printed without reference
19 to political party affiliation and without designation as to a
20 particular term of office. The ballot title of any separate paper
21 ballot or portion of any electronic or voting machine ballot for
22 the Supreme Court of Appeals shall contain the words "Nonpartisan
23 Ballot of Election of Justice(s) of the Supreme Court of Appeals of
24 West Virginia." The names of the candidates for the Supreme Court

1 of Appeals shall be printed without references to political party
2 affiliation or registration. Any other ballot or portion of a
3 ballot on a question is to have a heading which clearly states the
4 purpose of the election according to the statutory requirements for
5 that question.

6 (2) (A) For paper ballots, the heading of the ballot is to be
7 separated from the rest of the ballot by heavy lines and the
8 offices shall be arranged in columns with the following headings,
9 from left to right across the ballot: "National Ticket", "State
10 Ticket", "County Ticket" and, in a presidential election year,
11 "National Convention" or, in a nonpresidential election year,
12 "District Ticket". The columns are to be separated by heavy lines.
13 Within the columns, the offices are to be arranged in the order
14 prescribed in section thirteen-a of this article.

15 (B) For voting machines, electronic voting devices and any
16 ballot tabulated by electronic means, the offices are to appear in
17 the same sequence as prescribed in section thirteen-a of this
18 article and under the same headings as prescribed in subsection (a)
19 of this section. The number of pages, columns or rows, where
20 applicable, may be modified to meet the limitations of ballot size
21 and composition requirements subject to approval by the Secretary
22 of State.

23 (C) The title of each office is to be separated from preceding
24 offices or candidates by a line and is to be printed in bold type

1 no smaller than eight point. Below the office is to be printed the
2 number of the district, if any, the number of the division, if any,
3 and the words "Vote for _____" with the number to be nominated
4 or elected or "Vote For Not More Than _____" in multicandidate
5 elections. For offices in which there are limitations relating to
6 the number of candidates which may be nominated, elected or
7 appointed to or hold office at one time from a political
8 subdivision within the district or county in which they are
9 elected, there is to be a clear explanation of the limitation, as
10 prescribed by the Secretary of State, printed in bold type
11 immediately preceding the names of the candidates for those offices
12 on the ballot in every voting system. For counties in which the
13 number of county commissioners exceeds three and the total number
14 of members of the county commission is equal to the number of
15 magisterial districts within the county, the office of county
16 commission is to be listed separately for each district to be
17 filled with the name of the magisterial district and the words
18 "Vote for One" printed below the name of the office: *Provided,*
19 That the office title and applicable instructions may span the
20 width of the ballot so as it is centered among the respective
21 columns.

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

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

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

15 (B) The city of residence of every candidate, the state of
16 residence of every candidate residing outside the state, the county
17 of residence of every candidate for an office on the ballot in more
18 than one county and the magisterial district of residence of every
19 candidate for an office subject to magisterial district limitations
20 are to be printed in lower case letters beneath the names of the
21 candidates.

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

24 (D) If the number of candidates for an office exceeds the

1 space available on a column or ballot page and requires that
2 candidates for a single office be separated, to the extent
3 possible, the number of candidates for the office on separate
4 columns or pages are to be nearly equal and clear instructions
5 given the voter that the candidates for the office are continued on
6 the following column or page.

7 (4) When an insufficient number of candidates has filed for a
8 party to make the number of nominations allowed for the office or
9 for the voters to elect sufficient members to the board of
10 education or to executive committees, the vacant positions on the
11 ballot shall be filled with the words "No Candidate Filed":
12 *Provided*, That in paper ballot systems which allow for write-ins to
13 be made directly on the ballot, a blank line shall be placed in any
14 vacant position in the office of board of education or for election
15 to any party executive committee. A line shall separate each
16 candidate from every other candidate for the same office.
17 Notwithstanding any other provision of this code, if there are
18 multiple vacant positions on a ballot for one office, the multiple
19 vacant positions which would otherwise be filled with the words "No
20 Candidate Filed" may be replaced with a brief detailed description,
21 approved by the Secretary of State, indicating that there are no
22 candidates listed for the vacant positions.

23 (5) In presidential election years, the words "For election in
24 accordance with the plan adopted by the party and filed with the

1 Secretary of State" is to be printed following the names of all
2 candidates for delegate to national convention.

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

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

19 (8) On the back of every official ballot or ballot card the
20 words "Official Ballot" with the name of the county and the date of
21 the election are to be printed. Beneath the date of the election
22 there are to be two blank lines followed by the words "Poll
23 Clerks".

24 (9) The face of sample paper ballots and sample ballot labels

1 are to be like other official ballots or ballot labels except that
2 the word "sample" is to be prominently printed across the front of
3 the ballot in a manner that ensures the names of candidates are not
4 obscured and the word "sample" may be printed in red ink. No
5 printing may be placed on the back of the sample.

6 **§3-5-13a. Order of offices and candidates on the ballot; uniform**
7 **drawing date.**

8 (a) The order of offices for state and county elections on all
9 ballots within the state shall be as prescribed herein. When the
10 office does not appear on the ballot in an election, then it shall
11 be omitted from the sequence. When an unexpired term for an office
12 appears on the ballot along with a full term, the unexpired term
13 shall appear immediately below the full term.

14 NATIONAL TICKET: President (and Vice President in the general
15 election), United States Senator, member of the United States House
16 of Representatives

17 STATE TICKET: Governor, Secretary of State, Auditor,
18 Treasurer, Commissioner of Agriculture, Attorney General, ~~Justice~~
19 ~~of the Supreme Court of Appeals~~, State Senator, member of the House
20 of Delegates, circuit judge in multicounty districts, family court
21 judge in multicounty districts, any other multicounty office, state
22 executive committee

23 COUNTY TICKET: Circuit judge in single-county districts,
24 family court judge in single-county districts, clerk of the circuit

1 court, county commissioner, clerk of the county commission,
2 prosecuting attorney, sheriff, assessor, magistrate, surveyor,
3 congressional district executive committee, senatorial district
4 executive committee in multicounty districts, delegate district
5 executive committee in multicounty districts

6 NATIONAL CONVENTION: Delegate to the national convention --
7 at-large, delegate to the national convention -- congressional
8 district

9 DISTRICT TICKET: County executive committee.

10 (b) Except for office divisions in which no more than one
11 person has filed a certificate of announcement, the arrangement of
12 names for all offices shall be determined by lot according to the
13 following provisions:

14 (1) On the fourth Tuesday following the close of the candidate
15 filing, beginning at nine o'clock a. m., a drawing by lot shall be
16 conducted in the office of the clerk of the county commission in
17 each county. Notice of the drawing shall be given on the form for
18 the certificate of announcement and no further notice shall be
19 required. The clerk of the county commission shall superintend and
20 conduct the drawing and the method of conducting the drawing shall
21 be prescribed by the Secretary of State.

22 (2) Except as provided herein, the position of each candidate
23 within each office division shall be determined by the position
24 drawn for that candidate individually: *Provided*, That if fewer

1 candidates file for an office division than the total number to be
2 nominated or elected, the vacant positions shall appear following
3 the names of all candidates for the office.

4 (3) Candidates for delegate to national convention who have
5 filed a commitment to a candidate for president shall be listed
6 alphabetically within the group of candidates committed to the same
7 candidate for president and uncommitted candidates shall be listed
8 alphabetically in an uncommitted category. The position of each
9 group of committed candidates and uncommitted candidates shall be
10 determined by lot by drawing the names of the presidential
11 candidates and for an uncommitted category.

12 (4) A candidate or the candidate's representative may attend
13 the drawings.

14 **ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.**

15 **§3-6-2a. General election ballots for election of Justices of the**
16 **Supreme Court of Appeals.**

17 The general election ballot shall contain a separate section
18 listing the names of candidates for Justice of the Supreme Court,
19 clearly separate and apart from the listing of the names on the
20 ballot for political party candidates for partisan offices, and
21 shall include a heading of: "Nonpartisan Ballot of Election of
22 Justice(s) of the Supreme Court of Appeals of West Virginia" with
23 the names of all candidates for that nonpartisan election listed

1 thereunder with no other offices listed in that section or that
2 ballot as appropriate.

NOTE: The purpose of this bill is to allow Supreme Court Justices to be elected on a nonpartisan ballot.

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

§3-5-6a and §3-6-2a are new; therefore, strike-throughs and underscoring have been omitted.