

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2675**

BY DELEGATES O'NEAL, HANSHAW, SHOTT, COWLES,  
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HILL AND FAST

[Introduced February 22, 2017; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §3-5-13 and §3-5-13a of the Code of West Virginia, 1931, as  
 2 amended, all relating to primary elections and nominating procedures; and designating  
 3 the placement of nonpartisan judicial offices on the primary election ballot.

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

1 That §3-5-13 and §3-5-13a of the Code of West Virginia, 1931, as amended, be amended  
 2 and reenacted, all to read as follows:

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

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

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

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

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

9 (A) The ballot title of any ~~separate paper ballot or~~ portion of any electronic or voting  
 10 machine ballot for all any judicial officers shall commence with the words "~~Nonpartisan Ballot of~~  
 11 ~~Election of Judicial Officers~~" specified in this section and each such office shall be listed in the  
 12 ~~following order~~ specified in section thirteen-a of this article:

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

18 (ii) The ballot title of any separate paper ballot or portion of any electronic or voting

19 machine ballot for all circuit court judges in the respective circuits shall contain the words  
20 "Nonpartisan Ballot of Election of Circuit Court Judge(s)". The names of the candidates for the  
21 respective circuit court judge office shall be printed by division without references to political party  
22 affiliation or registration.

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

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

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

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

40 (3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the  
41 ballot by heavy lines and the offices shall be arranged in columns with the following headings,  
42 from left to right across the ballot: "National Ticket", "State Ticket", "County Ticket" and, in a  
43 presidential election year, "National Convention" or, in a nonpresidential election year, "District  
44 Ticket". The columns are to be separated by heavy lines. Within the columns, the offices are to

45 be arranged in the order prescribed in section thirteen-a of this article.

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

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

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

70 (4) (A) The name of every candidate certified by the Secretary of State or the board of

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

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

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

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

89 (5) When an insufficient number of candidates has filed for a party to make the number of  
90 nominations allowed for the office or for the voters to elect sufficient members to the Board of  
91 Education or to executive committees, the vacant positions on the ballot shall be filled with the  
92 words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to  
93 be made directly on the ballot, a blank line shall be placed in any vacant position in the office of  
94 Board of Education or for election to any party executive committee. A line shall separate each  
95 candidate from every other candidate for the same office. Notwithstanding any other provision of  
96 this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant

97 positions which would otherwise be filled with the words "No Candidate Filed" may be replaced  
98 with a brief detailed description, approved by the Secretary of State, indicating that there are no  
99 candidates listed for the vacant positions.

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

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

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

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

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

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

1 (a) The order of offices for state and county elections on all ballots within the state shall

2 be as prescribed herein. When the office does not appear on the ballot in an election, then it shall  
3 be omitted from the sequence. When an unexpired term for an office appears on the ballot along  
4 with a full term, the unexpired term shall appear immediately below the full term.

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

7 STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of  
8 Agriculture, Attorney General, Nonpartisan Ballot of Election of Justice(s) of the Supreme Court  
9 of Appeals of West Virginia, State Senator, member of the House of Delegates, any other  
10 multicounty office, state executive committee.

11 COUNTY TICKET: Nonpartisan Ballot of Election of Circuit Court Judge(s), Nonpartisan  
12 Ballot of Election of Family Court Judge(s), Clerk of the circuit court, county commissioner, clerk  
13 of the county commission, prosecuting attorney, sheriff, assessor, Nonpartisan Ballot of Election  
14 of Magistrate(s), surveyor, congressional district executive committee, senatorial district  
15 executive committee in multicounty districts, delegate district executive committee in multicounty  
16 districts.

17 NATIONAL CONVENTION: Delegate to the national convention -- at-large, delegate to  
18 the national convention -- congressional district

19 DISTRICT TICKET: County executive committee.

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

23 (1) On the fourth Tuesday following the close of the candidate filing, beginning at nine  
24 o'clock a. m., a drawing by lot shall be conducted in the office of the clerk of the county commission  
25 in each county. Notice of the drawing shall be given on the form for the certificate of  
26 announcement and no further notice shall be required. The clerk of the county commission shall  
27 superintend and conduct the drawing and the method of conducting the drawing shall be

28 prescribed by the Secretary of State.

29 (2) Except as provided herein, the position of each candidate within each office division  
30 shall be determined by the position drawn for that candidate individually: *Provided*, That if fewer  
31 candidates file for an office division than the total number to be nominated or elected, the vacant  
32 positions shall appear following the names of all candidates for the office.

33 (3) Candidates for delegate to national convention who have filed a commitment to a  
34 candidate for president shall be listed alphabetically within the group of candidates committed to  
35 the same candidate for president and uncommitted candidates shall be listed alphabetically in an  
36 uncommitted category. The position of each group of committed candidates and uncommitted  
37 candidates shall be determined by lot by drawing the names of the presidential candidates and  
38 for an uncommitted category.

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

NOTE: The purpose of this bill is to designate the placement of nonpartisan judicial offices  
on the primary election ballot.

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