

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 159

BY SENATORS WELD, BOLEY, CHAPMAN, DEEDS,
OLIVERIO, PHILLIPS, ROBERTS, RUCKER, SWOPE, TARR,
WOODRUM, HAMILTON, TRUMP, STUART, GRADY, AND
JEFFRIES

[Introduced January 10, 2024]

1 A BILL to amend and reenact §3-5-7 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §18-2-1 of said code; and to amend and reenact §18-5-1a of said code, all
3 relating to prohibiting persons who have been convicted of certain crimes against minors
4 from holding positions on boards of education; and requiring that a candidate for county
5 board of education include a statement on the certificate of announcement that he or she
6 swears and affirms that he or she has not been convicted of certain crimes against minors.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

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

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

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

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

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

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

15 (c) The certificate of announcement shall be filed with the proper officer not earlier than
16 the second Monday in January before the primary election day and not later than the last Saturday
17 in January before the primary election day and must be received before midnight, eastern
18 standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service
19 before that hour. This includes the offices of Justice of the Supreme Court of Appeals, Judge of
20 the Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which
21 are to be filled on a nonpartisan and division basis at the primary election: *Provided*, That on the
22 final day of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m.
23 until 11:59 p.m. The offices of the county clerk in all counties of the state shall be open on that
24 final day of a political filing period from 9:00 a.m. until 12:00 p.m.

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

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

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

30 (3) The legal name of the candidate and the exact name the candidate desires to appear
31 on the ballot, subject to limitations prescribed in §3-5-13 of this code;

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

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

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

41 as a voter affiliated with any other political party for a period of 60 days before the date of filing
42 the announcement;

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

46 (8) For candidates for county board of education, a statement that the candidate swears
47 and affirms that he or she has not been convicted of an offense under §61-8A-1 et seq., §61-8B-
48 1 et seq., and §61-8C-1 et seq. of this code in which the victim was a minor;

49 ~~(8)~~ (9) A statement that the person filing the certificate of announcement is a candidate for
50 the office in good faith; and

51 ~~(9)~~ (10) The words "subscribed and sworn to before me this _____ day of
52 _____, 20____" and a space for the signature of the officer giving the oath.

53 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may
54 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a
55 certified copy of the voter's registration record of the candidate showing that the candidate was
56 registered as a voter in a party other than the one named in the certificate of announcement during
57 the 60 days immediately preceding the filing of the certificate: *Provided*, That unless a signed
58 formal complaint of violation of this section and the certified copy of the voter's registration record
59 of the candidate are filed with the officer receiving that candidate's certificate of announcement
60 no later than 10 days following the close of the filing period, the candidate may not be refused
61 certification for this reason.

62 (f) The certificate of announcement shall be subscribed and sworn to by the candidate
63 before ~~some~~ an officer qualified to administer oaths, who shall certify the same. Any person who
64 knowingly provides false information on the certificate is guilty of false swearing and shall be
65 punished in accordance with §3-9-3 of this code.

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

74 (h) A person may not be a candidate for more than one office or office division at any
75 election: *Provided*, That a candidate for an office may also be a candidate for President of the
76 United States, for membership on political party executive committees or for delegate to a political
77 party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan
78 office in an election held concurrently with the primary election may be appointed under the
79 provisions of §3-5-19 of this code to fill a vacancy on the general ballot.

80 (i) A candidate who files a certificate of announcement for more than one office or division
81 and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the
82 close of the filing period may not be certified by the Secretary of State or placed on the ballot for
83 any office by the board of ballot commissioners.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-1. Creation; composition; appointment, qualifications, terms, and removal of members; offices.

1 There is a State Board of Education, to be known as the West Virginia Board of Education,
2 which is a corporation and as such may contract and be contracted with, plead and be impleaded,
3 sue and be sued, and have and use a common seal. The state board consists of 12 members, of

4 whom one is the state Superintendent of Schools, ex officio; one of whom is the Chancellor of the
5 Higher Education Policy Commission, ex officio; and one of whom is the Chancellor of the West
6 Virginia Council for Community and Technical College Education, ex officio, none of whom is
7 entitled to vote. The other nine members are citizens of the state, appointed by the Governor, by
8 ~~and~~ with the advice and consent of the Senate, for overlapping terms of nine years. Terms of
9 office begin on November 5 of the appropriate year and end on November 4 of the appropriate
10 year. Not more than five members are appointed from any one congressional district.

11 No more than five of the appointive members may belong to the same political party and
12 no person is eligible for appointment to membership on the state board who is a member of any
13 political party executive committee or holds any other public office or public employment under
14 the federal government or under the government of this state or any of its political subdivisions,
15 or who is an appointee or employee of the board. Members are eligible for reappointment. Any
16 vacancy on the board shall be filled by the Governor by appointment for the unexpired term.

17 Notwithstanding the provisions of §6-6-4 of this code, a member of the state board may
18 not be removed from office by the Governor except for official misconduct, incompetence, neglect
19 of duty, or gross immorality and then only in the manner prescribed by law for the removal by the
20 Governor of state elective officers.

21 Before exercising any authority or performing any duties as a member of the state board,
22 each member shall qualify as such by taking and subscribing to the oath of office prescribed by
23 section five, article IV of the Constitution of West Virginia, the certificate whereof shall be filed
24 with the Secretary of State. A suitable office in the state Department of Education at the State
25 Capitol shall be provided for use by the state board.

26 Notwithstanding the provisions of §6-5-5 of this code, no person who has been convicted
27 of an offense under the provisions of §61-8A-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., and
28 §61-8D-1 et seq. of this code in which the victim is a minor may hold office as a member of the
29 state board.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members; training requirements.

1 (a) A person who is a member of a county board:

2 (1) Shall be a citizen and resident in the county in which he or she serves on the county
3 board. Also, a person who is a candidate for membership on a county board or who is a member-
4 elect of a county board shall be a citizen and resident in the county in which he or she seeks to
5 serve on the county board;

6 (2) May not be employed by the county board on which he or she serves, including
7 employment as a teacher or service person;

8 (3) May not engage in the following political activities:

9 (A) Become a candidate for or hold any other public office, other than to succeed him or
10 herself as a member of a county board subject to the following:

11 (i) A candidate for a county board, who is not currently serving on a county board, may
12 hold another public office while a candidate if he or she resigns from the other public office prior
13 to taking the oath of office as a county board member.

14 (ii) The term "public office" as used in this section does not include service on any other
15 board, elected or appointed, profit or nonprofit, under the following conditions:

16 (I) The person does not receive compensation; and

17 (II) The primary scope of the board is not related to public schools.

18 (B) Become a candidate for, or serve as, an elected member of any political party
19 executive committee;

20 (C) Become a candidate for, or serve as, a delegate, alternate or proxy to a national
21 political party convention;

22 (D) Solicit or receive political contributions to support the election of, or to retire the
23 campaign debt of, any candidate for partisan office;

24 (4) May engage in any or all of the following political activities:

- 25 (A) Make campaign contributions to partisan or bipartisan candidates;
- 26 (B) Attend political fund raisers for partisan or bipartisan candidates;
- 27 (C) Serve as an unpaid volunteer on a partisan campaign;
- 28 (D) Politically endorse any candidate in a partisan or bipartisan election; or
- 29 (E) Attend a county, state, or national political party convention.

30 (b) A member or member-elect of a county board, or a person desiring to become a
31 member of a county board, may make a written request to the West Virginia Ethics Commission
32 for an advisory opinion to determine if another elected or appointed position held or sought by the
33 person is an office or public office which would bar service on a county board pursuant to
34 subsection (a) of this section.

35 (1) Within 30 days of receipt of the request, the Ethics Commission shall issue a written
36 advisory opinion in response to the request and ~~also~~ shall publish the opinion in a manner which,
37 to the fullest extent possible, does not reveal the identity of the person making the request.

38 (2) A county board member who relies in good faith upon an advisory opinion issued by
39 the West Virginia Ethics Commission to the effect that holding a particular office or public office
40 is not a bar from membership on a county board and against whom proceedings are subsequently
41 brought for removal from the county board on the basis of holding that office or offices, is entitled
42 to reimbursement by the county board for reasonable attorney's fees and court costs incurred by
43 the member in defending against these proceedings, regardless of the outcome of the
44 proceedings.

45 (3) A vote cast by the member at a meeting of the county board may not be invalidated
46 due to a subsequent finding that holding the particular office or public office is a bar to membership
47 on the county board.

48 (4) Good faith reliance on a written advisory opinion of the West Virginia Ethics
49 Commission that a particular office or public office is not a bar to membership on a county board
50 is an absolute defense to any civil suit or criminal prosecution arising from any proper action taken

51 within the scope of membership on the county board, becoming a member-elect of the county
52 board or seeking election to the county board.

53 (c) To be eligible for election or appointment as a member of a county board, a person
54 shall possess at least a high school diploma or a general educational development (GED)
55 diploma. This provision does not apply to members or members-elect who have taken office prior
56 to May 5, 1992, and who serve continuously from that date forward.

57 (d) A person elected to a county board after July 1, 1990, may not assume the duties of
58 county board member unless he or she has first attended and completed a course of orientation
59 relating to boardsmanship and governance effectiveness which shall be given between the date
60 of election and the beginning of the member's term of office under the following conditions:

61 (1) A portion or portions of subsequent training such as that offered in orientation may be
62 provided to members after they have commenced their term of office;

63 (2) Attendance at the session of orientation given between the date of election and the
64 beginning of the member's term of office permits the member-elect to assume the duties of county
65 board member, as specified in this section;

66 (3) Members appointed to the county board shall attend and complete the next orientation
67 course offered following their appointment; and

68 (4) The provisions of this subsection relating to orientation do not apply to members who
69 have taken office prior to July 1, 1988, and who serve continuously from that date forward.

70 (e) Annually, each member of a county board shall receive seven clock hours of training
71 in areas relating to boardsmanship, governance effectiveness, and school performance issues
72 including, but not limited to, pertinent state and federal statutes such as the "Process for Improving
73 Education" set forth in ~~section five, article two-e of this chapter~~ §18-2E-5 of this code and the "No
74 Child Left Behind Act" and their respective administrative rules.

75 (1) The orientation and training shall be approved by the state board and conducted by
76 the West Virginia School Board Association or other organization or organizations approved by
77 the state board:

78 (A) The state board may exclude time spent in training on school performance issues from
79 the requisite seven hours herein required; and

80 (B) If the state board elects to exclude time spent in training on school performance issues
81 from the requisite seven hours, the state board shall limit the training to a feasible and practicable
82 amount of time.

83 (2) Failure to attend and complete the approved course of orientation and training relating
84 to boardsmanship and governance effectiveness without good cause, as determined by the state
85 board by duly promulgated legislative rules, constitutes neglect of duty under ~~section seven,~~
86 ~~article six, chapter six~~ §6-6-7 of this code.

87 (f) In the final year of any four-year term of office, a member shall satisfy the annual training
88 requirement before January 1. Failure to comply with the training requirements of this section
89 without good cause, as defined by the state board by duly promulgated legislative rules,
90 constitutes neglect of duty under §6-6-7 of this code.

91 (g) The state board shall appoint a committee named the "County Board Member Training
92 Standards Review Committee" whose members shall meet at least annually. Subject to state
93 board approval, the committee shall determine which particular trainings and training
94 organizations shall be approved, and whether county board members have satisfied the annual
95 training requirement. Members of the committee serve without compensation but may be
96 reimbursed by their agencies or employers for all reasonable and necessary expenses actually
97 incurred in the performance of their duties under this subsection.

98 (h) Notwithstanding the provisions of §6-5-5 of this code, no person who has been
99 convicted of an offense under the §61-8A-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., and §61-

100 8D-1 et seq. of this code in which the victim is a minor may hold office as a member of a county
101 board.

NOTE: The purpose of this bill is to require that the party affiliation for county school board members be displayed beside their name on the ballot for election.

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