

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 440

By Senator Helton

[Introduced February 13, 2025; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §3-5-6a, §3-5-6b, §3-5-6c, §3-5-6d, §3-5-6e, §3-5-13, and §3-5-13a
2 of the Code of West Virginia, 1931, as amended, relating to elections; clarifying the article
3 title; requiring judicial candidates to partisan file; requiring judicial candidates run in both
4 the primary and general election; providing an effective date; clarifying the form and
5 contents of ballots for judicial candidates; and clarifying the order of offices and candidates
6 on the ballot.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-6a. Election of justices of the Supreme Court of Appeals.

1 (a) An election for the purpose of electing a justice or justices of the Supreme Court of
2 Appeals shall be held on the ~~same date as the primary~~ of the general election, as provided by law,
3 upon a ~~nonpartisan~~ partisan ballot by division printed for this purpose. For election purposes, in
4 each election at which shall be elected more than one justice of the Supreme Court of Appeals, the
5 election shall be by numbered division corresponding to the number of justices being elected.
6 Each justice shall be elected at large from the entire state.

7 (b) In each ~~nonpartisan~~ partisan election by division for a justice of the Supreme Court of
8 Appeals, the candidates for election in each numbered division shall be tallied separately, and the
9 board of canvassers shall declare and certify the election of the eligible candidate receiving the
10 highest numbers of votes cast within a numbered division to fill any full terms.

11 (c) In case of a tie vote under this section, ~~section twelve, article six~~ §3-6-12 of this chapter
12 code controls in breaking the tie vote.

13 (d) Effective with the primary and general election of 2028, all elections for a justice or
14 justices of the Supreme Court of Appeals will be elected on a partisan basis and by division.

§3-5-6b. Election of circuit judges.

1 (a) An election for the purpose of electing a circuit court judge or judges shall be held on the
2 ~~same date as the primary~~ of the general election in their respective circuits, as provided by law,

upon a ~~nonpartisan~~ partisan ballot by division printed for this purpose.

(b) In each ~~nonpartisan~~ partisan election by division for a circuit court judge, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, ~~section twelve, article six~~ §3-6-12 of this chapter code controls in breaking the tie vote.

(d) Effective with the primary and general election of 2028, all elections for circuit court judges in the respective circuits will be elected on a partisan basis and by division.

§3-5-6c. Election of family court judges.

(a) An election for the purpose of electing a family court judge or judges shall be held on the same date as ~~the primary of the general~~ election in their respective circuits, as provided by law, upon a ~~nonpartisan~~ partisan ballot by division printed for this purpose.

(b) In each ~~nonpartisan~~ partisan election by division for a family court judge, the candidates for election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, ~~section twelve, article six~~ §3-6-12 of this chapter code controls in breaking the tie vote.

(d) Effective with the primary and general election of 2028, all elections for family court judges in the respective circuits will be elected on a partisan basis and by division.

§3-5-6d. Election of magistrates.

(a) An election for the purpose of electing a magistrate or magistrates by division shall be held on the ~~same date as the primary of the general~~ election in their respective circuits, as provided by law, upon a ~~nonpartisan~~ partisan ballot by division printed for this purpose.

(b) In each ~~nonpartisan~~ partisan election by division for a magistrate, the candidates for

election in each numbered division shall be tallied separately, and the board of canvassers shall declare and certify the election of the eligible candidate receiving the highest numbers of votes cast within a numbered division to fill any full terms.

(c) In case of a tie vote under this section, ~~section twelve, article six~~ §3-6-12 of this chapter code controls in breaking the tie vote.

(d) Effective with the primary and general election of 2028, all elections for magistrates in the respective circuits will be elected on a partisan basis and by division.

§3-5-6e. Election of judges of the Intermediate Court of Appeals.

(a) An election for the purpose of electing a Judge or Judges of the Intermediate Court of Appeals shall be held on the ~~same date as the primary of the general~~ election, as provided by law, upon a ~~nonpartisan~~ partisan ballot by division printed for this purpose.

(b) In case of a tie vote under this section, §3-6-12 of this code controls in breaking the tie vote.

(c) Effective with the primary and general election of 2028, all elections for Intermediate Court of Appeals Judge or Judges will be elected on a partisan basis and by division.

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

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

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

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

(A) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judicial officers shall commence with the words "~~Nonpartisan~~ Partisan Ballot

of Election of Judicial Officers" and each such office shall be listed in the following order:

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

(ii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judges of the Intermediate Court of Appeals shall contain the words "~~Nonpartisan~~ Partisan Ballot of Election of Judge(s) of the Intermediate Court of Appeals". The names of the candidates for the Intermediate Court of Appeals shall be printed by division ~~without~~ with references to political party affiliation or registration.

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

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

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

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

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

(3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: "National Ticket", "State Ticket", "Nonpartisan Judicial Ballot", "County Ticket", "Nonpartisan Ballot" in a nonpresidential election year, "District Ticket" or, in a presidential election year, "National Convention". The columns are to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in §3-5-13a of this code.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in §3-5-13a of this code and under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words "Vote for _____" with the number to be nominated or elected or "Vote For Not More Than _____" in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear

63 explanation of the limitation, as prescribed by the Secretary of State, printed in bold type
64 immediately preceding the names of the candidates for those offices on the ballot in every voting
65 system. For counties in which the number of county commissioners exceeds three and the total
66 number of members of the county commission is equal to the number of magisterial districts within
67 the county, the office of county commission is to be listed separately for each district to be filled
68 with the name of the magisterial district and the words "Vote for One" printed below the name of
69 the office: *Provided*, That the office title and applicable instructions may span the width of the ballot
70 so as it is centered among the respective columns.

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

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

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

87 (C) The arrangement of names within each office must be determined as prescribed in §3-
88 5-13a of this code.

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

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

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

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

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

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

(10) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word "sample" is to be prominently printed across the front of the ballot in a manner that ensures the names of candidates are not obscured and the word "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.

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

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

STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, State Senator, member of the House of Delegates, any other multicounty office, state executive committee.

NONPARTISAN PARTISAN JUDICIAL BALLOT: Justice of the Supreme Court of Appeals, judge of the circuit court, family judge, magistrate.

COUNTY TICKET: Clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, surveyor, congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district

executive committee in multicounty districts.

NONPARTISAN BALLOT: Nonpartisan elections for board of education, conservation district supervisor, any question to be voted upon.

DISTRICT TICKET: County executive committee.

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

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

(1) On the fourth Tuesday following the close of the candidate filing, beginning at 9:00 a.m., a drawing by lot shall be conducted in the office of the clerk of the county commission in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the county commission shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the Secretary of State.

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

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

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

NOTE: The purpose of this bill is to require judicial candidates to partisan file; require judicial candidates run in both the primary and general election; provide an effective date; clarify the form and content of ballots for judicial candidates; and clarify the order of offices and candidates on the 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.