

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

Introduced

### House Bill 2320

FISCAL  
NOTE

BY DELEGATES HOWELL, UPSON, MAYNARD, MCGEEHAN,

MILLER, SYPOLT AND HIGGINBOTHAM

[Introduced February 10, 2017; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §3-1-9 and §3-1-35 of the Code of West Virginia, 1931, as amended;  
 2 and to further amend said code by adding thereto a new section, designated §3-5-14a, all  
 3 relating to procedures permitting voters who have not registered an affiliation with a  
 4 particular political party to vote in the primary election for that party under certain  
 5 circumstances; requiring a determination by political parties and notice to the Secretary of  
 6 State; specifying which ballots may be provided to voters in primary elections; requiring  
 7 the posting of notices; specifying the form and preparation of lists of eligible parties;  
 8 providing for assistance to impaired voters; and prohibiting improper influence by poll  
 9 workers.

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

1 That §3-1-9 and §3-1-35 of the Code of West Virginia, 1931, as amended, be amended  
 2 and reenacted; and that said code be further amended by adding thereto a new section,  
 3 designated §3-5-14a, all to read as follows:

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

**§3-1-9. Political party committees; how composed; organization; determination for open  
 primary voting.**

1 (a) Every fourth year at the primary election, the voters of each political party in each state  
 2 senatorial district shall elect four members consisting of two male members and two female  
 3 members of the state executive committee of the party. In state senatorial districts containing two  
 4 or more counties, not more than two elected committee members shall be residents of the same  
 5 county: *Provided*, That at each election the votes shall be tallied from highest to lowest without  
 6 regard to gender or county of residence. The two candidates with the highest votes shall be  
 7 elected first and the other candidates shall be qualified based on vote tallies, gender and county  
 8 of residence. Upon completion of the canvass, the clerk of the county commission from each  
 9 county shall send the results of the election of members of each state executive committee and  
 10 certificates of announcement, if any, to the Secretary of State. Upon certification of the election

11 results, the Secretary of State shall make known to each state executive committee, the members  
12 elected to such committee and the vacancies, if any. The committee, when convened and  
13 organized as herein provided, shall appoint three additional members of the committee from the  
14 state at large which shall constitute the entire voting membership of the state executive  
15 committee: *Provided, however,* That if it chooses to do so, the committee may by motion or  
16 resolution and in accordance with party rules, may expand the voting membership of the  
17 committee. When senatorial districts are realigned following a decennial census, members of the  
18 state executive committee previously elected or appointed shall continue in office until the  
19 expiration of their terms. Appointments made to fill vacancies on the committee until the next  
20 election of executive committee members shall be selected from the previously established  
21 districts. At the first election of executive committee members following the realignment of  
22 senatorial districts, members shall be elected from the newly established districts.

23 (b) At the primary election, the voters of each political party in each county shall elect one  
24 male and one female member of the party's executive committee of the congressional district, of  
25 the state senatorial district and of the delegate district in which the county is situated, if the county  
26 is situated in a multicounty state senatorial or delegate district. Upon completion of the canvass,  
27 the clerk of the county commission from each county shall send the results of the election of  
28 members of each congressional district, state senatorial district and delegate district executive  
29 committee of each party to the Secretary of State. Upon certification of the election results, the  
30 Secretary of State shall make known to each state executive committee the members elected to  
31 each congressional district, state senatorial district and delegate district executive committee and  
32 the vacancies, if any. Upon receipt, the state executive committee shall make known any  
33 vacancies to the applicable county executive committee for the purpose of filling said vacancies  
34 as provided in subsection (f) of this section. When districts are realigned following a decennial  
35 census, members of an executive committee previously elected in a county to represent that  
36 county in a congressional or multicounty senatorial or delegate district executive committee shall

37 continue to represent that county in the appropriate newly constituted multicounty district until the  
38 expiration of their terms: *Provided*, That the county executive committee of the political party shall  
39 determine which previously elected members will represent the county if the number of  
40 multicounty state senatorial or delegate districts in the county is decreased; and shall appoint  
41 members to complete the remainder of the term if the number of districts is increased.

42 (c) At the same time the voters of the county in each magisterial district or executive  
43 committee district, as the case may be, shall elect one male and one female member of the party's  
44 county executive committee except that in counties having three executive committee districts,  
45 there shall be elected two male and two female members of the party's executive committee from  
46 each magisterial or executive committee district. Upon completion of the canvass, the clerk of the  
47 county commission from each county shall send the results of the election of members of the  
48 county executive committee of each party along with the certificates of announcement to the  
49 Secretary of State. Upon certification of the election results, the Secretary of State shall make  
50 known to each state executive committee the members elected to the county committee and the  
51 vacancies, if any. Upon receipt, the state executive committee shall make known any vacancies  
52 to the applicable county executive committee for the purpose of filling said vacancies as provided  
53 in subsection (f) of this section.

54 (d) For the purpose of complying with the provisions of this section, the county commission  
55 shall create the executive committee districts. The districts shall not be fewer than the number of  
56 magisterial districts in the county, nor shall they exceed in number the following: Forty for counties  
57 having a population of one hundred thousand persons or more; thirty for counties having a  
58 population of fifty thousand to one hundred thousand; twenty for counties having a population of  
59 twenty thousand to fifty thousand; and the districts in counties having a population of less than  
60 twenty thousand persons shall be coextensive with the magisterial districts.

61 (e) The executive committee districts shall be as nearly equal in population as practicable  
62 and shall each be composed of compact, contiguous territory. The county commissions shall

63 change the territorial boundaries of the districts as required by the increase or decrease in the  
64 population of the districts as determined by a decennial census. The changes must be made  
65 within two years following the census.

66 (f) All members of executive committees, selected for each political division as herein  
67 provided, shall reside within the county or district from which chosen. The term of office of all  
68 members of executive committees elected at the primary election in the year 2010 will begin on  
69 July 1, following the primary election and continue for four years thereafter, except as provided in  
70 subsection (g) of this section. Vacancies in the state executive committee shall be filled by the  
71 members of the committee for the unexpired term. Vacancies in the party's executive committee  
72 of a congressional district, state senatorial district, delegate district or county shall be filled by the  
73 party's executive committee of the county in which the vacancy exists for the unexpired term.

74 (g) As soon as possible after the certification of the election of the new executive  
75 committees, as herein provided, the newly elected executive committee shall convene an  
76 organizational meeting within their respective political divisions, on the call of the chair of the  
77 corresponding outgoing executive committee or by any member of the new executive committee  
78 in the event there is no corresponding outgoing executive committee. During the first meeting the  
79 new executive committee shall select a chair, a treasurer and a secretary and other officers as  
80 they may desire. Each of the officers shall, for their respective committees, perform the duties  
81 that usually appertain to his or her office. The organizational meeting may be conducted prior to  
82 July 1, but must occur after the certification of the election of the new executive committees. If the  
83 organizational meeting is conducted prior to July 1, the new committee shall serve out the  
84 remainder of the outgoing committee's term and is authorized to conduct official business. A  
85 current listing of all executive committees' members shall be filed with the Secretary of State by  
86 the end of July of each year. Vacancies in any executive committee shall be filled by the  
87 appropriate executive committee as provided in subsection (f) of this section no later than sixty  
88 days after the vacancy occurs. The chair of each executive committee shall submit an updated

89 committee list to the Secretary of State within ten days of a change occurring. Executive  
90 committee membership lists shall include at least the member's name, full address, employer,  
91 telephone number and term information. An appointment to fill a vacancy does not take effect if  
92 the executive committee does not submit the updated list to the Secretary of State within the  
93 allotted time period. If the executive committee fails to submit the updated list within the allotted  
94 time period, it must make another appointment pursuant to the provisions of this section and  
95 resubmit the updated list in a timely manner. If a vacancy on an executive committee is not filled  
96 within the sixty-day period prescribed by this section, the chair of the appropriate executive  
97 committee, as provided in subsection (f) of this section, shall name someone to fill the vacancy.  
98 If the chair of a county executive committee fails to fill a vacancy in a congressional district, state  
99 senatorial district or delegate district executive committee, and the failure to fill such vacancy  
100 prohibits said committee from conducting official business, the chair of the party's state executive  
101 committee shall fill such vacancy.

102 (h) Any meeting of any political party executive committee shall be held only after public  
103 notice and notice to each member is given according to party rules and shall be open to all  
104 members affiliated with the party. Meetings shall be conducted according to party rules, all official  
105 actions shall be made by voice vote and minutes shall be maintained and shall be open to  
106 inspection by members affiliated with the party.

107 (i) In January of every even-numbered year, each political party state executive committee  
108 shall determine whether it will permit unaffiliated voters and voters who have designated another  
109 party affiliation to vote that party's primary election ballot if requested. If a party's state executive  
110 committee decides to allow voters who have not registered an affiliation with that party to vote  
111 that party's ballot in the primary election, the state executive committee shall notify the Secretary  
112 of State of its determination by the last day of January of that year. If the state executive committee  
113 does not notify the Secretary of State by this date, only voters who have registered, or otherwise  
114 duly designated an affiliation with that party, may vote the ballot of that party in primary elections

115 until the next even-numbered year.

**§3-1-35. Ballots to be furnished voters.**

1 In general and special elections the ballots for all voters of an election precinct shall be  
 2 the same. In primary elections the ballot of the voter's political party at that election in that precinct  
 3 shall be furnished to the voter together with separate ballots, if any, on any nonpartisan candidates  
 4 and any public questions submitted to the voters generally at such primary election. In the event  
 5 the voter is lawfully registered as "independent" or as an adherent of a political party not appearing  
 6 has not registered a party affiliation or has registered an affiliation with a political party that does  
 7 not have candidates on any primary election ballot to be voted in his the voter's precinct, ~~he the~~  
 8 voter shall not, in a primary election, be given or entitled to vote any party ballot but shall be  
 9 furnished may request a ballot from any party that permits voting at primary elections by voters  
 10 who are not affiliated with that party and the voter shall be provided a ballot for the political party  
 11 requested together with any separate ballots to be voted thereat on nonpartisan candidates and  
 12 public questions. In no event, however, shall a voter receive or vote a ballot for more than one  
 13 political party at a primary election.

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

**§3-5-14a. Required notice at voting places; list of eligible parties; provision for the visually impaired.**

1 (a) At every voting place where a primary election is conducted, the commissioners of  
 2 elections shall post cards of instruction at places inside and outside of the voting place, as  
 3 provided in section twenty, article one of this chapter, bearing a notice that if a voter has not  
 4 registered an affiliation with any political party or has registered an affiliation with a party that does  
 5 not have candidates on a primary election ballot to be voted in that precinct, then the voter may  
 6 request a partisan ballot from a party that permits nonmembers of its party to vote in a primary  
 7 election.

8 (b) For each voting place in a county, the board of ballot commissioners of that county

9 shall prepare a written list, based upon information provided by the Secretary of State, of political  
10 parties that permit nonmember voters to vote for the party's candidates in a primary election. The  
11 list shall only provide the names of the parties allowing open primary voting and those names  
12 shall be placed in order of the total number of votes cast for that party's candidates in the state of  
13 West Virginia in the most recently preceding presidential, general election.

14 (c) If a voter, upon entering the voting place, states that he or she is not affiliated with any  
15 party or that he or she is affiliated with a party that does not have candidates on a primary election  
16 ballot to be voted in that precinct and that voter requests to vote a partisan ballot, then the voter  
17 shall be provided with the list described in subsection (b) of this section and the voter may request  
18 a ballot for one of the parties appearing on the list.

19 (d) If a voter at a polling place requests assistance in reading or indicates that he or she  
20 is visually impaired, a ballot commissioner in the presence of the other ballot commissioners at  
21 the voting place, may read the notice required in subsection (a) of this section aloud for the voter  
22 and if the voter requests the list of eligible parties, then a ballot commissioner in the presence of  
23 the other ballot commissioners at the voting place, may read the list aloud for the voter.

24 (e) During a primary election, a ballot commissioner or clerk may not, in any manner,  
25 request, suggest to, seek to persuade or induce a voter to select a particular party ballot from any  
26 party authorizing an open primary ballot.

NOTE: The purpose of this bill is to require notification to voters at polling places in primary elections that they may request and use a ballot for one of the major political parties if the voter is not affiliated with any party or if the voter is registered with a party that does not have candidates on a ballot for that polling area. This codifies the process that has been in place allowing nonmembers of a political party to request that party's partisan ballot at a primary 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.