

**H. B. 2159**

(By Delegate Lane)

[Introduced January 20, 2015; referred to the  
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §3-1-16 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4A-11a of said code; to amend and reenact §3-5-4 and §3-5-13a of said code; and to amend and reenact §51-1-1 of said code, all relating to the nonpartisan election of justices to the Supreme Court of Appeals beginning in 2016; providing for a nonpartisan judicial office on the voting ballot; and setting forth how the justices are to be selected in the primary and general elections.

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

That §3-1-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-4A-11a of said code be amended and reenacted; that §3-5-4 and §3-5-13a of said code be amended and reenacted; and that §51-1-1 of said code be amended and reenacted, all to read as follows:

**CHAPTER 3. ELECTIONS.**

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

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

2 At the general election to be held in the year 1968, and in every fourth year thereafter, there  
3 shall be elected a Governor, Secretary of State, Treasurer, Auditor, Attorney General and  
4 Commissioner of Agriculture. At the general election in the year 1968, and in every second year  
5 thereafter, there shall be elected a member of the state Senate for each senatorial district, and a  
6 member or members of the House of Delegates of the state from each county or each delegate  
7 district. At the general election to be held in the year 1968, and in every twelfth year thereafter, there  
8 shall be elected one ~~judge~~ justice of the Supreme Court of Appeals, and at the general election to be  
9 held in the year 1972, and in every twelfth year thereafter, two ~~judges~~ justices of the Supreme Court  
10 of Appeals, and at the general election to be held in the year 1976, and in every twelfth year  
11 thereafter, two ~~judges~~ justices of the Supreme Court of Appeals. Beginning with the primary  
12 election held in the year 2016, the election of justices of the Supreme Court of Appeals shall be on  
13 a nonpartisan basis.

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

15 **§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub**  
16 **numbers.**

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

21 (b)(1) For the primary election, the heading of the ballot, the type faces, the names and  
22 arrangement of offices and the printing of names and arrangement of candidates within each office

1 are to conform as nearly as possible to the provisions of sections thirteen and thirteen-a, article five  
2 of this chapter.

3 (2) For the general election, the heading of the ballot, the straight ticket positions, the  
4 instructions to straight ticket voters, the type faces, the names and arrangement of offices and the  
5 printing of names and the arrangement of candidates within each office are to conform as nearly as  
6 possible to the provisions of section two, article six of this chapter, except as otherwise provided in  
7 this article.

8 (3) Nonpartisan elections for Board of Education, and effective with the primary election held  
9 in the year 2016 and thereafter, the nonpartisan offices of Justice of the Supreme Court of Appeals,  
10 and any question to be voted upon are to be separated from the partisan ballot and separately headed  
11 in display type with a title clearly identifying the purpose of the election and constituting a separate  
12 ballot wherever a separate ballot is required under the provisions of this chapter.

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

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

1 printed, where applicable, directly under each line for write-ins. The lines are to be opposite a  
2 position to mark the vote.

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

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

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

### 18 **§3-5-4. Nomination of candidates in primary elections.**

19 (a) At each primary election, the candidate or candidates of each political party for all offices  
20 to be filled at the ensuing general election by the voters of the entire state, of each congressional  
21 district, of each state senatorial district, of each delegate district, of each judicial circuit of West  
22 Virginia, of each county, and of each magisterial district in the state shall be nominated by the voters

1 of the different political parties, except that no presidential elector shall be nominated at a primary  
2 election.

3 (b) In primary elections a plurality of the votes cast shall be sufficient for the nomination of  
4 candidates for office. Where only one candidate of a political party for any office in a political  
5 division, including party committeemen and delegates to national conventions, is to be chosen, or  
6 where a judicial circuit has two or more circuit judges and one circuit judge is to be chosen for each  
7 numbered division within the circuit, the candidate receiving the highest number of votes therefor  
8 in the primary election shall be declared the party nominee for such office. Where two or more such  
9 candidates are to be chosen in the primary election, the candidates constituting the proper number  
10 to be so chosen who shall receive the highest number of votes cast in the political division in which  
11 they are candidates shall be declared the party nominees and choices for such offices, except that:

12 (1) Candidates for the office of commissioner of the county commission shall be nominated  
13 and elected in accordance with the provisions of section ten, article nine of the Constitution of the  
14 State of West Virginia and the requirements of section one-b, article one, chapter seven;

15 (2) Members of county boards of education shall be elected at primary elections in  
16 accordance with the provisions of sections five and six of this article;

17 (3) Candidates for the House of Delegates shall be nominated and elected in accordance with  
18 the residence restrictions provided in section two, article two, chapter one of this code; ~~and~~

19 (4) In judicial circuits having numbered divisions, each numbered division shall be tallied  
20 separately and the candidate in each division receiving a plurality of the votes cast shall be declared  
21 the party nominee for the office in that numbered division; and

22 (5) Justices of the Supreme Court of Appeals shall be nominated and elected on a nonpartisan

1 basis in the following manner: The election of Justices of the Supreme Court of Appeals shall  
 2 proceed at the primary election in which those receiving the highest number of votes up to a number  
 3 equaling two candidates for each vacancy shall contest one another for the office or offices in the  
 4 general election.

5 (c) In case of tie votes between candidates for party nominations or elections in primary  
 6 elections, the choice of the political party shall be determined by the executive committee of the  
 7 party for the political division in which such persons are candidates.

8 **§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.**

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

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

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

19 NONPARTISAN JUDICIAL OFFICES: Justice of the Supreme Court of Appeals

20 COUNTY TICKET: Circuit judge in single-county districts, family court judge in single-  
 21 county districts, clerk of the circuit court, county commissioner, clerk of the county commission,  
 22 prosecuting attorney, sheriff, assessor, magistrate, surveyor, congressional district executive

1 committee, senatorial district executive committee in multicounty districts, delegate district  
2 executive committee in multicounty districts

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

5 DISTRICT TICKET: County executive committee

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

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

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

19 (3) Candidates for delegate to national convention who have filed a commitment to a  
20 candidate for president shall be listed alphabetically within the group of candidates committed to the  
21 same candidate for president and uncommitted candidates shall be listed alphabetically in an  
22 uncommitted category. The position of each group of committed candidates and uncommitted

1 candidates shall be determined by lot by drawing the names of the presidential candidates and for  
2 an uncommitted category.

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

4 **CHAPTER 51. COURTS AND THEIR OFFICERS.**

5 **ARTICLE 1. SUPREME COURT OF APPEALS.**

6 **§51-1-1. Justices.**

7 The Supreme Court of Appeals shall consist of five justices, elected and qualified according  
8 to the Constitution and the laws of this state, any three of whom shall constitute a quorum.  
9 Beginning with the primary election in 2016, justices shall be elected on a nonpartisan basis.

NOTE: The purpose of this bill is to elect justices to the Supreme Court of Appeals beginning on a nonpartisan basis beginning in 2016. The bill provides for a nonpartisan judicial office on the voting ballot. The bill sets forth how the justices are to be selected in the primary and general elections.

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