

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

Introduced

### Senate Bill 584

FISCAL  
NOTE

BY SENATORS PALUMBO, PLYMALE, PREZIOSO, TAKUBO

AND TRUMP

[Introduced March 11, 2017; Referred  
to the Committee on the Judiciary]

1 A BILL to amend the code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §1-2-2a, relating to creating an independent redistricting commission with  
3 certain requirements; reducing the number of Senate districts and members following the  
4 2020 census; reducing the number of House of Delegates members following the 2020  
5 census; requiring Senate and Delegate districts conform to certain restrictions;  
6 designating duties of the commission; providing that members are nominated by State  
7 Election Commission; setting forth required traits and restrictions of members; providing  
8 for how commission members are appointed; setting forth a process for determining the  
9 chair of the commission; providing for the filling of vacancies of commission; requiring  
10 members to conduct an organizational meeting and select a vice-chairperson; providing  
11 for the removal of a member for cause; providing for the filling of vacancies that may occur  
12 on commission; setting forth certain requirements of the commission; providing that three  
13 members constitute a quorum; providing that members are ineligible for public office or  
14 registration as paid lobbyist for three years after completing their last term on commission;  
15 requiring that commission plan and propose congressional and legislative districts;  
16 providing specific criteria that commission must observe in proposing district mappings;  
17 requiring commission to advertise a proposed draft map of districts to the public; permitting  
18 legislators to make inquiry of commission members regarding their methodology and  
19 proposed redistrict mapping; requiring that commission publish its proposals for district  
20 boundaries; requiring the commission to recommend redistricting plans to the Legislature;  
21 authorizing a vote on the plans in an extraordinary session called by the Governor;  
22 requiring the full Legislature to vote on the first proposal plan ratification without  
23 amendment; setting forth a process for subsequent proposed plans, amendment  
24 restrictions and vote requirements; authorizing the West Virginia Supreme Court of  
25 Appeals to make the final determination between three plans proposed by the independent  
26 redistricting commission if the Legislature and Governor cannot agree; requiring that the

27 commission certify to Secretary of State that its proposals for district boundaries is in  
 28 accordance with constitutional and legal requirements; providing for reimbursement of  
 29 expenses and per diem allowances for commission members; authorizing the commission  
 30 to contract for staffing and consultants; prohibiting certain persons from influencing or  
 31 attempting to influence district mapping proposals of the commission; and providing for  
 32 the expiration of commission appointments.

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

1 That the code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §1-2-2a, to read as follows:

**ARTICLE 2. APPORTIONMENT OF REPRESENTATION.**

**§1-2-2a. Independent redistricting commission to study and propose fair, balanced and  
 rational plan to redistrict.**

1 (a) There is hereby created the Independent Redistricting Commission, which shall be  
 2 appointed in accordance with the procedures set forth in this section to study population trends  
 3 and present proposed redistricting mappings, designed to reflect fair reapportionment and  
 4 redistricting in conformity with constitutional principles, especially that which requires equality of  
 5 population to the greatest extent practicable. Commission members shall be knowledgeable and  
 6 possess expertise relative to constitutional and legal requirements and considerations which bear  
 7 on the issue of fair reapportionment and redistricting. The Commission may propose  
 8 recommendations to modify the number of districts and members of the Legislature: *Provided,*  
 9 That following the census in 2020, the Commission shall recommend a reduction to 16 senate  
 10 districts for a total of 32 senators and a reduction to 96 delegates. Beginning with the redistricting  
 11 following the census in 2020, and for each redistricting thereafter, delegate districts shall be drawn  
 12 such that there are six delegates elected from districts entirely contained within each senatorial  
 13 district, thereby ensuring that no delegate district spans more than one senatorial district.

14 (b) By the twenty-eighth day of February of each year that ends in one, an independent

15 redistricting commission shall be established to provide for proposed redistricting of congressional  
16 and state legislative districts. The independent redistricting commission shall consist of five  
17 members. No more than two members of the independent redistricting commission shall be  
18 members of the same political party. No more than two members shall reside in the same county.  
19 Each member shall be a registered West Virginia voter who has been continuously registered  
20 with the same political party or registered as unaffiliated with a political party for three or more  
21 years immediately preceding appointment, who is committed to applying the provisions of this  
22 section in an honest, independent and impartial fashion and to upholding public confidence in the  
23 integrity of the redistricting process. Within the three years previous to appointment, members  
24 shall not have been appointed to, elected to, or a candidate for any other public office and shall  
25 not have served as an officer of a political party, a registered paid lobbyist, an officer of a  
26 candidate's campaign committee, or an officer of a political action committee.

27 (c) The state election commission shall nominate candidates for appointment to the  
28 independent redistricting commission.

29 (d) By the eighth day of January of years ending in one, the state election commission  
30 shall establish a pool of persons who are willing to serve on and are qualified for appointment to  
31 the independent redistricting commission. The pool of candidates shall consist of twenty-five  
32 nominees, with ten nominees from each of the two largest political parties in West Virginia based  
33 on party registration, and five who are not registered with either of the two largest political parties  
34 in West Virginia.

35 (e) Appointments to the independent redistricting commission shall be made in the order  
36 set forth below. No later than the thirty-first day of January of years ending in one, the speaker  
37 of the House of Delegates shall make one appointment to the independent redistricting  
38 commission from the pool of nominees, followed by one appointment from the pool made in turn  
39 by each of the following: The minority party leader of the House of Delegates, the President of  
40 the Senate and the minority party leader of the Senate. Each official shall have a seven-day

41 period in which to make an appointment. Any official who fails to make an appointment within the  
42 specified time period will forfeit the appointment privilege. In the event that there are two or more  
43 minority parties within the House of Delegates or the Senate, the leader of the largest minority  
44 party by statewide party registration shall make the appointment.

45 (f) Any vacancy in the above four independent redistricting commission positions  
46 remaining as of the first day of March of a year ending in one shall be filled from the pool of  
47 nominees by the state election commission or its designee. The appointing body shall strive for  
48 political balance and fairness.

49 (g) At a meeting called by the Secretary of State by the first day of April in each year that  
50 ends in one, the four independent redistricting commission members shall meet and conduct an  
51 organizational meeting, which will constitute the commencement of their official duties, and at  
52 which the commission will select by majority vote from the nomination pool a fifth member who  
53 shall not be registered with any party already represented on the independent redistricting  
54 commission and who shall serve as chair. If the four commissioners fail to appoint a fifth member  
55 within fifteen days, the state election commission or its designee, striving for political balance and  
56 fairness, shall appoint a fifth member from the nomination pool who shall not be registered with  
57 any party already represented on the independent redistricting commission and who shall serve  
58 as chair.

59 (h) The five commissioners shall then select by majority vote one of their members to  
60 serve as vice-chair.

61 (i) After having been served written notice and provided with an opportunity for a response,  
62 a member of the independent redistricting commission may be removed by the Governor, with  
63 the concurrence of two thirds of the Senate, for substantial neglect of duty, gross misconduct in  
64 office, or inability to discharge the duties of office.

65 (j) If a commissioner or chairperson does not complete the term of office for any reason,  
66 the state election commission or its designee shall nominate a pool of three candidates within the

67 first thirty days after the vacancy occurs. The nominees shall be of the same political party or  
68 status as was the member who vacated the office at the time of his or her appointment, and the  
69 appointment other than the chair shall be made by the current holder of the office designated to  
70 make the original appointment. The appointment of a new chair shall be made by the remaining  
71 commissioners. If the appointment of a replacement commissioner or chair is not made within  
72 fourteen days following the presentation of the nominees, the state election commission or its  
73 designee shall make the appointment, striving for political balance and fairness. The newly  
74 appointed commissioner shall serve out the remainder of the original term.

75 (k) Three commissioners, including the chair or vice-chair, constitute a quorum. Three or  
76 more affirmative votes are required for any official action. Where a quorum is present, the  
77 independent redistricting commission shall conduct business in meetings open to the public, with  
78 forty-eight or more hours of public notice provided.

79 (l) A commissioner, during the commissioner's term of office and for three years thereafter,  
80 shall be ineligible for public office or for registration as a paid lobbyist.

81 (m) The independent redistricting commission shall plan and propose congressional and  
82 legislative districts. The commencement of the proposed mapping process for both the  
83 congressional and legislative districts shall be the creation of districts of equal population in a  
84 grid-like pattern across the state. Adjustments to the grid shall then be made as necessary to  
85 accommodate the goals as set forth below:

86 (1) Districts shall comply with the United States Constitution and the United States Voting  
87 Rights Act;

88 (2) Congressional districts shall have equal population to the extent practicable, and state  
89 legislative districts shall have equal population to the extent practicable;

90 (3) Districts shall be geographically compact and contiguous to the extent practicable;

91 (4) To the extent practicable, district lines shall use visible geographic features, city, town  
92 and county boundaries, and undivided census tracts; and

93 (5) To the extent practicable, competitive districts should be favored where to do so would  
94 create no significant detriment to the other goals.

95 (n) Party registration and voting history data shall be excluded from the initial phase of the  
96 mapping process but may be used to test maps for compliance with the above goals. The places  
97 of residence of incumbents or candidates shall not be identified or considered.

98 (o) The independent redistricting commission shall advertise a proposed draft map of  
99 congressional districts and a proposed draft map of legislative districts to the public for comment,  
100 which comment shall be taken for at least thirty days. During the public comment period, the  
101 commission shall hold three public hearings in geographically distinct areas of the state to present  
102 the plan and hear public comments. Any member of either body of the Legislature may, within  
103 the public comment period, make inquiry of the independent redistricting commission concerning  
104 its methodology or proposed redistrict mapping, which inquiry shall be fully addressed by the  
105 independent redistricting commission. After conclusion of the public comment period:

106 (1) The independent redistricting commission shall then make and publish its first proposal  
107 for district boundaries and recommend the plan to the Legislature, which shall vote, during an  
108 extraordinary session called by the Governor, upon it after an explanation of the proposal on the  
109 floors of the House of Delegates and Senate. No amendments to the first proposal shall be in  
110 order in either the House or the Senate. The Senate and House of Delegates shall take a  
111 separate vote on the plans for the Congressional allocation, the House of Delegates allocation,  
112 and the Senate allocation. If any plans pass, they shall be presented to the Governor for his or  
113 her signature in the same manner as all pieces of legislation adopted by the Legislature.

114 (2) If any of the first proposal plans fail to obtain approval of the Senate, the House of  
115 Delegates and the Governor, then the independent redistricting commission shall meet and confer  
116 in order to propose a second proposal to the Legislature. The second proposal shall follow the  
117 same proposed draft plan and public comment requirements contained in this subsection. The  
118 independent redistricting commission shall then make and publish its second proposal for district

119 boundaries that were not approved by the Legislature in the first proposal. The Legislature shall  
120 vote, during an extraordinary session called by the Governor, upon the second proposal after an  
121 explanation of the proposal on the floors of the House of Delegates and Senate. No amendments  
122 to the second proposal shall be in order in either the House or the Senate. The Senate and House  
123 of Delegates shall take a separate vote on any plans not approved in the first proposal. If any  
124 plans pass, they shall be presented to the Governor for his or her signature in the same manner  
125 as all pieces of legislation adopted by the Legislature.

126 (3) If any of the second proposal plans fail to obtain approval of the Senate, the House of  
127 Delegates and the Governor, then the independent redistricting commission shall meet and confer  
128 in order to propose a third proposal to the Legislature. The third proposal shall follow the same  
129 proposed draft plan and public comment requirements contained in this subsection. The  
130 independent redistricting commission shall then make and publish its third proposal for district  
131 boundaries that were not approved by the Legislature in the first proposal. The Legislature shall  
132 vote, during an extraordinary session called by the Governor, upon the third proposal after an  
133 explanation of the proposal on the floors of the House of Delegates and Senate. The members  
134 of the House of Delegates and Senate may vote to amend the third proposal. The Senate and  
135 House of Delegates shall take a separate vote on any plans not approved in the first or second  
136 proposal. If any plans pass, they shall be presented to the Governor for his or her signature in the  
137 same manner as all pieces of legislation adopted by the Legislature.

138 (4) If any of the third proposal plans fail to obtain approval of the Senate, the House of  
139 Delegates and the Governor, then the first, second and third proposal plans that were not adopted  
140 shall be presented to the Supreme Court of Appeals. The Supreme Court of Appeals shall  
141 choose, by majority vote, between the three proposals from the independent redistricting  
142 commission without any possibility of amending any of the three plans or incorporating any  
143 amendments that were proposed in the Senate or House of Delegates on the third proposal. The  
144 selection of the Supreme Court of Appeals shall be final, subject to judicial review, and the

145 Legislature may not make any amendment to the final adopted plan until the independent  
146 redistricting commission proposes new plans during the next year that ends in one.

147 (p) The provisions regarding this section are self-executing. The independent redistricting  
148 commission shall certify to the Secretary of State that its proposals for district boundaries of  
149 congressional and legislative districts are in accordance with those constitutional and legal  
150 requirements and considerations as provided for in this section.

151 (q) Each member of the independent redistricting commission shall be reimbursed for all  
152 reasonable and necessary expenses incurred in the performance of his or her duties as a member  
153 of the commission and shall receive a per diem allowance equivalent to the per diem received by  
154 members of the Legislature for each full work day actually engaged in the performance of his or  
155 her duties as required by this section. Members shall keep expense vouchers and time sheets  
156 demonstrating dates and times in which they are engaged fulfilling required obligations as well as  
157 a description of the specific activity in which they are engaged. Seven hours of related work and  
158 activity shall constitute payment for one day. Payment based on less than seven hours shall be  
159 prorated in an appropriate proportionate manner. The Legislature shall make the necessary  
160 appropriations by a majority vote to fund the activities of the independent redistricting commission.

161 (r) The independent redistricting commission, with fiscal oversight from the department of  
162 administration, shall have procurement and contracting authority and may hire staff and  
163 consultants in order to accomplish the purposes of this section.

164 (s) No elected or appointed office holder, lobbyist, official of a political party, or other  
165 person affiliated with an elected or appointed office holder, lobbyist or official of a political party,  
166 may influence or attempt to influence the district-mapping proposals of the independent  
167 redistricting commission.

168 (t) Each commissioner's duties established by this section expire upon the completion of  
169 redistricting. The independent redistricting commission may not meet or incur expenses after the  
170 proposed redistricting plan is completed, except if litigation or government approval of the plan is

171 pending, or to revise districts if required by court decisions or if the number of congressional or  
172 legislative districts is changed.

NOTE: The purpose of this bill is to provide for an independent redistricting commission to propose redistricting plans during census years. The commission consists of five members who are initially nominated by the state election commission. The actual appointments are made by the leaders of both houses of the Legislature and by the first four commission members selected. The commission's main task is to propose plans to the Legislature which is based on constitutional and legal requirements and considerations and which is removed from stark political aspirations or concerns. The bill provides that commission members receive remuneration and reimbursement of expenses associated with their work. The bill also requires that the commission publish their proposal to the public at large, fully address any legislator's questions before issuing a final draft proposal and submitting the plan to the full body of the Legislature for its action. The bill allows for multiple plans, if the Legislature or governor reject a plan. The bill gives the Supreme Court of Appeals the final decision if the Legislature and governor cannot agree on three potential plans.

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