

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

Introduced

### Senate Bill 592

FISCAL  
NOTE

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CLINE

[Introduced March 13, 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;  
3 designating duties of the commission; providing that members are nominated by State  
4 Election Commission; setting forth required traits and restrictions of members; providing  
5 for how commission members are appointed; setting forth a process for determining the  
6 chair of the commission; providing for the filling of vacancies of commission; requiring  
7 members to conduct an organizational meeting and select a vice chairperson; providing  
8 for the removal of a member for cause; providing for the filling of vacancies that may occur  
9 on commission; setting forth certain requirements of the commission; providing that three  
10 members constitute a quorum; providing that members are ineligible for public office or  
11 registration as paid lobbyist for three years after completing their last term on commission;  
12 requiring that commission plan and propose congressional and legislative districts;  
13 providing specific criteria that commission must observe in proposing district mappings;  
14 requiring commission to advertise a proposed draft map of districts to the public; permitting  
15 legislators to make inquiry of commission members regarding their methodology and  
16 proposed redistrict mapping; requiring that commission publish its proposals for district  
17 boundaries; requiring the commission to recommend redistricting plans to the Legislature;  
18 authorizing a vote on the plans in an extraordinary session called by the Governor;  
19 requiring the full Legislature to vote on the first proposal plan ratification without  
20 amendment; setting forth a process for subsequent proposed plans, amendment  
21 restrictions and vote requirements; authorizing the West Virginia Supreme Court of  
22 Appeals to make the final determination between three plans proposed by the independent  
23 redistricting commission if the Legislature and Governor cannot agree; requiring that the  
24 commission certify to Secretary of State that its proposals for district boundaries is in  
25 accordance with constitutional and legal requirements; providing for reimbursement of  
26 expenses and per diem allowances for commission members; authorizing the commission

27 to contract for staffing and consultants; prohibiting certain persons from influencing or  
28 attempting to influence district mapping proposals of the commission; and providing for  
29 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.

8 (b) By the twenty-eighth day of February of each year that ends in one, an independent  
9 redistricting commission shall be established to provide for proposed redistricting of congressional  
10 and state legislative districts. The independent redistricting commission shall consist of five  
11 members. No more than two members of the independent redistricting commission shall be  
12 members of the same political party. No more than two members shall reside in the same county.  
13 Each member shall be a registered West Virginia voter who has been continuously registered  
14 with the same political party or registered as unaffiliated with a political party for three or more  
15 years immediately preceding appointment, who is committed to applying the provisions of this  
16 section in an honest, independent and impartial fashion and to upholding public confidence in the  
17 integrity of the redistricting process. Within the three years previous to appointment, members

18 shall not have been appointed to, elected to, or a candidate for any other public office and shall  
19 not have served as an officer of a political party, a registered paid lobbyist, an officer of a  
20 candidate's campaign committee, or an officer of a political action committee.

21 (c) The State Election Commission shall nominate candidates for appointment to the  
22 independent redistricting commission.

23 (d) By the eighth day of January of years ending in one, the State Election Commission  
24 shall establish a pool of persons who are willing to serve on and are qualified for appointment to  
25 the independent redistricting commission. The pool of candidates shall consist of twenty-five  
26 nominees, with ten nominees from each of the two largest political parties in West Virginia based  
27 on party registration, and five who are not registered with either of the two largest political parties  
28 in West Virginia.

29 (e) Appointments to the independent redistricting commission shall be made in the order  
30 set forth below. No later than the thirty-first day of January of years ending in one, the Speaker  
31 of the House of Delegates shall make one appointment to the independent redistricting  
32 commission from the pool of nominees, followed by one appointment from the pool made in turn  
33 by each of the following: The minority party leader of the House of Delegates, the President of  
34 the Senate and the minority party leader of the Senate. Each official shall have a seven-day  
35 period in which to make an appointment. Any official who fails to make an appointment within the  
36 specified time period will forfeit the appointment privilege. In the event that there are two or more  
37 minority parties within the House of Delegates or the Senate, the leader of the largest minority  
38 party by statewide party registration shall make the appointment.

39 (f) Any vacancy in the above four independent redistricting commission positions  
40 remaining as of the first day of March of a year ending in one shall be filled from the pool of  
41 nominees by the State Election Commission or its designee. The appointing body shall strive for  
42 political balance and fairness.

43 (g) At a meeting called by the Secretary of State by the first day of April in each year that

44 ends in one, the four independent redistricting commission members shall meet and conduct an  
45 organizational meeting, which will constitute the commencement of their official duties, and at  
46 which the commission will select by majority vote from the nomination pool a fifth member who  
47 shall not be registered with any party already represented on the independent redistricting  
48 commission and who shall serve as chair. If the four commissioners fail to appoint a fifth member  
49 within fifteen days, the State Election Commission or its designee, striving for political balance  
50 and fairness, shall appoint a fifth member from the nomination pool who shall not be registered  
51 with any party already represented on the independent redistricting commission and who shall  
52 serve as chair.

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

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

59 (j) If a commissioner or chairperson does not complete the term of office for any reason,  
60 the State Election Commission or its designee shall nominate a pool of three candidates within  
61 the first thirty days after the vacancy occurs. The nominees shall be of the same political party or  
62 status as was the member who vacated the office at the time of his or her appointment, and the  
63 appointment other than the chair shall be made by the current holder of the office designated to  
64 make the original appointment. The appointment of a new chair shall be made by the remaining  
65 commissioners. If the appointment of a replacement commissioner or chair is not made within  
66 fourteen days following the presentation of the nominees, the State Election Commission or its  
67 designee shall make the appointment, striving for political balance and fairness. The newly  
68 appointed commissioner shall serve out the remainder of the original term.

69 (k) Three commissioners, including the chair or vice-chair, constitute a quorum. Three or

70 more affirmative votes are required for any official action. Where a quorum is present, the  
71 independent redistricting commission shall conduct business in meetings open to the public, with  
72 forty-eight or more hours of public notice provided.

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

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

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

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

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

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

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

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

92 (o) The independent redistricting commission shall advertise a proposed draft map of  
93 congressional districts and a proposed draft map of legislative districts to the public for comment,  
94 which comment shall be taken for at least thirty days. During the public comment period, the  
95 commission shall hold three public hearings in geographically distinct areas of the state to present

96 the plan and hear public comments. Any member of either body of the Legislature may, within  
97 the public comment period, make inquiry of the independent redistricting commission concerning  
98 its methodology or proposed redistrict mapping, which inquiry shall be fully addressed by the  
99 independent redistricting commission. After conclusion of the public comment period:

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

108 (2) If any of the first proposal plans fail to obtain approval of the Senate, the House of  
109 Delegates and the Governor, then the independent redistricting commission shall meet and confer  
110 in order to propose a second proposal to the Legislature. The second proposal shall follow the  
111 same proposed draft plan and public comment requirements contained in this subsection. The  
112 independent redistricting commission shall then make and publish its second proposal for district  
113 boundaries that were not approved by the Legislature in the first proposal. The Legislature shall  
114 vote, during an extraordinary session called by the Governor, upon the second proposal after an  
115 explanation of the proposal on the floors of the House of Delegates and Senate. No amendments  
116 to the second proposal shall be in order in either the House or the Senate. The Senate and House  
117 of Delegates shall take a separate vote on any plans not approved in the first proposal. If any  
118 plans pass, they shall be presented to the Governor for his or her signature in the same manner  
119 as all pieces of legislation adopted by the Legislature.

120 (3) If any of the second proposal plans fail to obtain approval of the Senate, the House of  
121 Delegates and the Governor, then the independent redistricting commission shall meet and confer

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

132 (4) If any of the third proposal plans fail to obtain approval of the Senate, the House of  
133 Delegates and the Governor, then the first, second and third proposal plans that were not adopted  
134 shall be presented to the Supreme Court of Appeals. The Supreme Court of Appeals shall  
135 choose, by majority vote, between the three proposals from the independent redistricting  
136 commission without any possibility of amending any of the three plans or incorporating any  
137 amendments that were proposed in the Senate or House of Delegates on the third proposal. The  
138 selection of the Supreme Court of Appeals shall be final, subject to judicial review, and the  
139 Legislature may not make any amendment to the final adopted plan until the independent  
140 redistricting commission proposes new plans during the next year that ends in one.

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

145 (q) Each member of the independent redistricting commission shall be reimbursed for all  
146 reasonable and necessary expenses incurred in the performance of his or her duties as a member  
147 of the commission and shall receive a per diem allowance equivalent to the per diem received by



148 members of the Legislature for each full work day actually engaged in the performance of his or  
149 her duties as required by this section. Members shall keep expense vouchers and time sheets  
150 demonstrating dates and times in which they are engaged fulfilling required obligations as well as  
151 a description of the specific activity in which they are engaged. Seven hours of related work and  
152 activity shall constitute payment for one day. Payment based on less than seven hours shall be  
153 prorated in an appropriate proportionate manner. The Legislature shall make the necessary  
154 appropriations by a majority vote to fund the activities of the independent redistricting commission.

155 (r) The independent redistricting commission, with fiscal oversight from the Department of  
156 Administration, shall have procurement and contracting authority and may hire staff and  
157 consultants in order to accomplish the purposes of this section.

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

162 (t) Each commissioner's duties established by this section expire upon the completion of  
163 redistricting. The independent redistricting commission may not meet or incur expenses after the  
164 proposed redistricting plan is completed, except if litigation or government approval of the plan is  
165 pending, or to revise districts if required by court decisions or if the number of congressional or  
166 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 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.