WEST virginia legislature

2021 regular session

Introduced

Senate Bill 229

By Senator Baldwin

[Introduced February 11, 2021; referred

to the Committee on the Judiciary]

A BILL to amend and reenact §3-1-16 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §3-13-1, §3-13-2, §3-13-3, §3-13-4, and §3-13-5, all relating to implementing a system for ranked choice voting for the election of justices to the West Virginia Supreme Court of Appeals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-16. Election of state officers.

(a) At the general election to be held in 1968, and every fourth year thereafter, there shall be elected a Governor, Secretary of State, Treasurer, Auditor, Attorney General and Commissioner of Agriculture. At the general election in 1968, and every second year thereafter, there shall be elected a member of the State Senate for each senatorial district, and a member or members of the House of Delegates of the state from each county or each delegate district.

(b) At the time of the primary election to be held in the year 2016, and every 12th year thereafter, there shall be elected one Justice of the Supreme Court of Appeals, and at the time of the primary election to be held in 2020, and every twelfth year thereafter, two Justices of the Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every twelfth year thereafter, two Justices of the Supreme Court of Appeals. Effective with the primary election held in the year 2016, the election of Justices of the Supreme Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in article five of this chapter. Beginning with the 2024 election year, the election of Justices of the Supreme Court of Appeals shall be by ranked choice voting as described in §3-13-1 *et seq*. of this code.

ARTICLE 13. RANKED CHOICE VOTING.

§3-13-1. Offices elected by ranked choice voting.

Contests for each of the following offices shall be conducted by ranked choice voting: Justices of the Supreme Court of Appeals.

§3-13-2. Definitions.

For the purposes of this article:

 “Abstention” means a ballot that does not contain a highest-ranked continuing candidate and, either more than one ranking order contains the same candidate, or one or more ranking orders did not contain any candidate.

“Continuing candidate” means any candidate that has not been defeated or elected.

“Election threshold” means the number of votes sufficient for a candidate to be elected in a multi-winner contest. The election threshold is calculated by dividing the total number of votes counted for continuing candidates in the first round by the sum of one plus the number of offices to be filled, rounding up to four decimal places.

“Exhausted ballot” means a ballot that does not contain a highest-ranked continuing candidate and is not an abstention or an over-vote.

“Highest-ranked continuing candidate” means the candidate assigned to the highest-ranking order that is neither a skipped ranking nor follows two or more consecutive skipped rankings nor contains an elected or defeated candidate nor contains more than one candidate nor follows a ranking order that contains more than one candidate.

“Inactive ballots” are all ballots that do not contain a highest-ranked continuing candidate, including abstentions, over-votes, and exhausted ballots.

“Over-vote” means a ballot that does not contain a highest-ranked continuing candidate because the highest-ranking order that is neither a skipped ranking nor contains an elected or defeated candidate contains more than one candidate or follows a ranking order that contains more than one candidate.

“Ranking order” means the number available to be assigned by a voter to a candidate to express the voter’s choice for that candidate. The number “1” is the highest-ranking order, followed by “2” and then “3” and so on.

“Round” means an instance of the sequence of voting tabulation.

“Skipped ranking” means a voter has left a ranking order unassigned, but ranks a candidate at a subsequent ranking order.

“Surplus fraction” is a number equal to the quotient of the difference between an elected candidate’s vote total and the election threshold, divided by the candidate’s vote total, rounded down to four decimal places, ignoring any remainder.

“Transfer value” means the proportion of a vote that a ballot will contribute to its highest-ranked continuing candidate. Each ballot begins with a transfer value of one. If a ballot contributes to the election of a candidate, it receives a new transfer value.

§3-13-3. Ranked choice voting ballot.

(a) In any contest conducted by ranked choice voting with three or more qualified candidates, including qualified write-ins, the ballot shall allow voters to rank candidates in order of choice.

(b) If feasible, the ballot shall allow voters to rank as many choices as there are qualified candidates. If the voting equipment cannot feasibly accommodate a number of rankings on the ballot equal to the number of qualified candidates, the ballot may limit the number of choices a voter may rank to the maximum number allowed by the equipment, provided the ballot must allow the voter to rank at least six choices.

(c) The ballot may not interfere with a voter’s ability to rank a write-in candidate.

§3-13-4. Ranked choice voting tabulation.

(a) In any contest for exactly one office conducted by ranked choice voting, tabulation proceeds in rounds. Each round proceeds sequentially as follows:

(1) Each ballot shall count as one vote for the highest-ranked continuing candidate on that ballot. If two or fewer continuing candidates remain, the candidate with the fewest votes is defeated, the candidate with the greatest number of votes is elected and tabulation is complete.

(2) If more than two continuing candidates remain, the continuing candidate with the fewest votes is defeated, and a new round begins following the procedure in subdivision (1) of this subsection.

(b) In any contest for more than one office conducted by ranked choice voting, tabulation proceeds in rounds. If, in the initial tabulation, the number of continuing candidates is less than or equal to the number of offices to be elected, then all continuing candidates are elected, and tabulation is complete. Otherwise, each round proceeds sequentially, until tabulation is complete, as follows:

(1) Each ballot shall count, at its current transfer value, for the highest-ranked continuing candidate on that ballot. If the sum of the number of elected candidates and the number of continuing candidates is equal to the sum of one and the number of offices to be elected, then the candidate with the fewest votes is defeated, all other continuing candidates are elected, and tabulation is complete.

(2) If at least one continuing candidate has more votes than the election threshold for the contest, then each such candidate is elected. Each ballot counting for an elected candidate is assigned a new transfer value by multiplying the ballot’s current transfer value by the surplus fraction for the elected candidate, rounded down to four decimal places and ignoring any remainder. Each candidate elected under this subsection is deemed to have a number of votes equal to the election threshold for the contest in all future rounds. A new round begins with the procedure laid out in subdivision (1) of this subsection.

(3) If no candidate is elected under subdivision (2) of this subsection, then the continuing candidate with the fewest votes is defeated, and a new round begins following the process laid out in subdivision (1) of this subsection.

(c) In any round of tabulation in a contest conducted by ranked choice voting, a ballot that does not contain a highest-ranked continuing candidate shall not count for any candidate. Instead, it shall be counted as an over-vote, abstention, or exhausted ballot.

(d) In any contest conducted by ranked choice voting, the chief election official may modify the tabulation to include batch elimination. If the tabulation does include batch elimination, then any time the continuing candidate with the fewest votes would be defeated, each continuing candidate in the elimination batch shall be simultaneously defeated instead. A continuing candidate is in the elimination batch if the number of elected and continuing candidates with more votes than that candidate is greater than the number of offices to be elected, and it is mathematically impossible for that candidate to be elected for any of the following reasons:

(1) The candidate has fewer votes than any other continuing candidate.

(2) The candidate could never win because the candidate’s current vote total plus all votes that could possibly be transferred to the candidate in future rounds would not be enough to equal or surpass the continuing candidate with the next higher current vote total.

(3) The candidate has a lower current vote total than a continuing candidate who is described by subsection (2) of this section.

(4) The candidate could never win because the number of ballots with any highest-ranked continuing candidate, on which that candidate is ranked at any ranking order, is smaller than the following:

(A) For contests for exactly one office: the current vote total of the continuing candidate with the greatest number of votes.

(B) For contests for more than one office: The current vote total of any of the top “X” continuing candidates with the highest current vote totals, where “X” is the number of offices to be elected.

(e) If two or more candidates are tied with the fewest votes, and tabulation cannot continue until the candidate with the fewest votes is defeated, then the candidate to be defeated shall be determined by lot. Election officials may resolve prospective ties between candidates prior to tabulation after all votes are cast.

§3-13-5. Rule-making authority.

The Secretary of State may propose legislative rules pursuant to §29A-3-1 *et seq*. of this code, to implement this article including changes to the ranked choice voting ballot and tabulation process necessary to preserve the secrecy of the ballot and ensure the integrity and smooth functioning of the election.

NOTE: The purpose of this bill is to provide for ranked choice voting in the election of Justices for the Supreme Court of Appeals.

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