

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2866**

By Delegates Holstein, Foster, Steele, Keaton, and

Forsht

[Introduced January 20, 2023; 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 article,  
 2 designated §3-1C-1, §3-1C-2, §3-1C-3, and §3-1C-4, all relating to providing the  
 3 procedure for election observers during elections in the state; eligibility and qualifications  
 4 of observers; and requiring the Secretary of State to promulgate rules.

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

**ARTICLE 1C. ELECTION OBSERVERS.**

**§3-1C-1. Purpose.**

1 The purpose of this article is to provide the procedure for election observers during any  
 2 election and at any voting or ballot-reviewing and ballot-counting location within this state.

**§3-1C-2. Eligibility.**

1 Political parties, candidates, and third-party organizations may have two observers at  
 2 every stage of the election process in an effort to maintain the transparency that is necessary for  
 3 fair and safe voting in West Virginia. Any individual who is a registered voter in West Virginia may  
 4 serve as an observer in any election location in the state.

**§3-1C-3. Election observers qualification.**

1 (a) Qualifications of Observers.

2 (1) A letter of appointment by the political party, third-party organization, or candidate may  
 3 serve as the written credential necessary to conduct observation at a voting or ballot-reviewing  
 4 and ballot-counting location.

5 (2) The observer shall present the letter of appointment to the appropriate election official  
 6 upon entering the voting or ballot-reviewing and ballot-counting location and be prepared to show  
 7 identification if requested.

8 (b) Observer Access and Identification:

9 (1) Badges: The appropriate election official shall furnish to each election observer a  
 10 badge containing the words "Official Observer," the name of the observer, and the primary or  
 11 election in which the observer may serve. The observer shall wear his or her badge at all times

12 while he or she is serving as an observer at any voting or ballot-reviewing and ballot-counting  
13 location.

14 (2) Observation at a Voting Location: Subject to rules promulgated by the Secretary of  
15 State, observers may have complete access to all activities at each location, except for actual  
16 observation of the votes being cast by individuals so as to maintain confidentiality of individual  
17 votes. At a minimum, observers may be provided access to the following:

18 (A) Opening of election offices and voting locations;

19 (B) Closing of election offices and voting location;

20 (C) Transport of ballots from the voting location to a receiving site (using a separate  
21 vehicle); and

22 (D) Any other significant voting or processing activities at the voting location that does not  
23 interfere with or impede the election procedures or staff or compromise the secret nature of a  
24 voter's ballot.

25 (3) Observation at a Ballot-Reviewing or Ballot-Counting Location: Subject to rules  
26 promulgated by the Secretary of State observers may be permitted to observe each point where  
27 ballots are handled or transferred from one election official to another including, but not limited to,  
28 areas where the following activities take place:

29 (A) Receiving the ballots at an election office;

30 (B) Verifying voter registration information and signatures and inspecting and reviewing the  
31 ballots;

32 (C) Duplicating defective or other ballots;

33 (D) Adjudicating ballots including provisional ballots;

34 (E) Receiving electronic media or processing voting results;

35 (F) Tabulation of ballots; and

36 (G) Any other significant tabulation or processing activities at an election office that does  
37 not interfere with or impede the election procedures or staff except that the observation of these

38 activities may not be considered interference with or the impeding of election procedures.

39 (4) Recording Devices: Subject to rules promulgated by the Secretary of State observers  
40 may also be allowed to take handwritten notes and have recording devices of any kind at each  
41 polling and ballot-reviewing or ballot-counting location to record all actions occurring there, except  
42 for completion of ballots by individual voters.

43 (5) Cameras: Election officials may welcome observation, and cameras shall be stationed  
44 in all polling and ballot-reviewing and ballot-counting locations so that the public can watch  
45 elections and the canvassing and tabulation of ballots as these events are transpiring.

46 (6) Full Access: Election officials may not station observers so that they cannot fully  
47 observe in the same manner as election officials the voting process including such procedures as  
48 the opening of absentee ballots and the verification process. The failure of an election official to  
49 comply with this requirement may subject the official to sanctions, up to and including suspension  
50 and termination.

51 (7) Open to the Public: The testing of voting equipment shall be open to public observation.  
52 Post-election audits and recounts shall also be open to public observation.

**§3-1C-4. Secretary of State to promulgate rules.**

1 The Secretary of State shall promulgate legislative rules in accordance with §29A-1-1 *et*  
2 *seq.* of this code as may be necessary to standardize and make effective the provisions of this  
3 article.

NOTE: The purpose of this bill is to establish a procedure for election observers during any election and at any voting or ballot-reviewing and ballot-counting location within this state.

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