

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 229

BY SENATOR BALDWIN

[Introduced February 11, 2021; referred
to the Committee on the Judiciary]

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

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

6 (b) At the time of the primary election to be held in the year 2016, and every 12th year
 7 thereafter, there shall be elected one Justice of the Supreme Court of Appeals, and at the time of
 8 the primary election to be held in 2020, and every twelfth year thereafter, two Justices of the
 9 Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every
 10 twelfth year thereafter, two Justices of the Supreme Court of Appeals. Effective with the primary
 11 election held in the year 2016, the election of Justices of the Supreme Court of Appeals shall be
 12 on a nonpartisan basis and by division as set forth more fully in article five of this chapter.
 13 Beginning with the 2024 election year, the election of Justices of the Supreme Court of Appeals
 14 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.

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

§3-13-2. Definitions.

1 For the purposes of this article:

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

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

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

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

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

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

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

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

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

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

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

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

§3-13-3. Ranked choice voting ballot.

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

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

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

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

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

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

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

8 this subsection.

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

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

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

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

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

32 (d) In any contest conducted by ranked choice voting, the chief election official may modify
33 the tabulation to include batch elimination. If the tabulation does include batch elimination, then

34 any time the continuing candidate with the fewest votes would be defeated, each continuing
35 candidate in the elimination batch shall be simultaneously defeated instead. A continuing
36 candidate is in the elimination batch if the number of elected and continuing candidates with more
37 votes than that candidate is greater than the number of offices to be elected, and it is
38 mathematically impossible for that candidate to be elected for any of the following reasons:

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

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

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

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

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

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

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

§3-13-5. Rule-making authority.

1 The Secretary of State may propose legislative rules pursuant to §29A-3-1 et seq. of this
2 code, to implement this article including changes to the ranked choice voting ballot and tabulation

- 3 process necessary to preserve the secrecy of the ballot and ensure the integrity and smooth
- 4 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.