

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Committee Substitute

for

Senate Bill 360

BY SENATORS STOVER, ROBERTS, AND IHLENFELD

[Originating in the Committee on Government

Organization; reported on March 26, 2021]

1 A BILL to amend and reenact §3-1-30 and §3-1-44 of the Code of West Virginia, 1931, as
2 amended, all relating to authorizing poll clerks to work and be compensated for both full
3 and half days worked during an election.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

**§3-1-30. Nomination and appointment of election officials and alternates; notice of
appointment; appointment to fill vacancies in election boards.**

1 (a) For any primary, general, or special election held throughout a county, poll clerks and
2 election commissioners may be nominated as follows:

3 (1) The county executive committee for each of the two major political parties may, by a
4 majority vote of the committee at a duly called meeting, nominate one qualified person for each
5 team of poll clerks and one qualified person for each team of election commissioners to be
6 appointed for the election;

7 (2) The appointing body shall select one qualified person as the additional election
8 commissioner for each board of election officials;

9 (3) Each county executive committee shall also nominate qualified persons as alternates
10 for at least 10 percent of the poll clerks and election commissioners to be appointed in the county
11 and is authorized to nominate as many qualified persons as alternates as there are precincts in
12 the county to be called upon to serve in the event any of the persons originally appointed fail to
13 accept appointment or fail to appear for the required training or for the preparation or execution
14 of their duties; and

15 (4) When an executive committee nominates qualified persons as poll clerks, election
16 commissioners, or alternates, the committee, or its chair or secretary on its behalf, shall file in
17 writing with the appointing body, no later than the 70th day before the election, a list of those
18 persons nominated and the positions for which they are designated.

19 (b) For any municipal primary, general, or special election, the poll clerks and election
20 commissioners may be nominated as follows:

21 (1) In municipalities which have municipal executive committees for the two major political
22 parties in the municipality, each committee may nominate election officials in the manner provided
23 for the nomination of election officials by county executive committees in subsection (a) of this
24 section; or

25 (2) In municipalities which do not have executive committees, the governing body shall
26 provide by ordinance for a method of nominating election officials or shall nominate as many
27 eligible persons as are required, giving due consideration to any recommendations made by
28 voters of the municipality or by candidates on the ballot.

29 (c) The governing body responsible for appointing election officials is:

30 (1) The county commission for any primary, general, or special election ordered by the
31 county commission and any joint county and municipal election;

32 (2) The board of education for any special election ordered by the board of education
33 conducted apart from any other election; and

34 (3) The municipal governing body for any primary, general, or special municipal election
35 ordered by the governing body.

36 (d) The qualifications for persons nominated to serve as election officials may be
37 confirmed prior to appointment by the clerk of the county commission for any election ordered by
38 the county commission or for any joint county and municipal election and by the official recorder
39 of the municipality for a municipal election.

40 (e) The appropriate governing body shall appoint the election officials for each designated
41 election board no later than the 49th day before the election as follows:

42 (1) Those eligible persons whose nominations for poll clerk and election commissioner
43 were timely filed by the executive committees and those additional persons selected to serve as
44 an election commissioner are to be appointed; and

45 (2) The governing body shall fill any positions for which no nominations were filed.

46 (f) At the same time as the appointment of election officials or at a subsequent meeting
47 the governing body shall appoint persons as alternates. However, no alternate may be eligible for
48 compensation for election training unless the alternate is subsequently appointed as an election
49 official or is instructed to attend and actually attends training as an alternate and is available to
50 serve on election day. Alternates shall be appointed and serve as follows:

51 (1) Those alternates nominated by the executive committees shall be appointed;

52 (2) The governing body may appoint additional alternates who may be called upon to fill
53 vacancies after all alternates designated by the executive committees have been assigned, have
54 declined to serve or have failed to attend training; and

55 (3) The governing body may determine the number of persons who may be instructed to
56 attend training as alternates.

57 (g) The clerk of the county commission shall appoint qualified persons to fill all vacancies
58 existing after all previously appointed alternates have been assigned, have declined to serve or
59 have failed to attend training.

60 (h) Within seven days following appointment, the clerk of the county commission shall
61 notify, by first-class mail, all election commissioners, poll clerks, and alternates of the fact of their
62 appointment and include with the notice a response notice form for the appointed person to return
63 indicating whether or not he or she agrees to serve in the specified capacity in the election.

64 (i) The position of any person notified of appointment who fails to return the response
65 notice or otherwise confirm to the clerk of the county commission his or her agreement to serve
66 within 14 days following the date of appointment is considered vacant and the clerk shall proceed
67 to fill the vacancies according to the provisions of this section.

68 (j) If the governing body and the clerk of the county commission are unable to nominate a
69 sufficient number of qualified persons agreeing to serve on a standard receiving board for each
70 precinct, the clerk may assign members of one precinct's standard receiving board to serve

71 simultaneously on the standard receiving board of another precinct where the polling places of
72 both precincts are located within the same physical building or facility: *Provided*, That no more
73 than three precincts within the same building or facility may share board members in this manner.

74 (k) On election day, if an appointed election official or a poll clerk working a full day fails
75 to appear at the polling place by 45 minutes past five o'clock 5:45 a.m. on election day or, for a
76 poll clerk working a half day, a later time designated by the clerk of the county commission, the
77 election officials present shall contact the office of the clerk of the county commission for
78 assistance in filling the vacancy. The clerk shall proceed as follows:

79 (1) The clerk may attempt to contact the person originally appointed, may assign an
80 alternate nominated by the same political party as the person absent if one is available or, if no
81 alternate is available, may appoint another eligible person;

82 (2) If the election officials present are unable to contact the clerk within a reasonable time,
83 they shall diligently attempt to fill the position with an eligible person of the same political party as
84 the party that nominated the person absent until a qualified person has agreed to serve; and

85 (3) If two teams of election officials, as defined in §3-1-29 of this code, are present at the
86 polling place, the person appointed to fill a vacancy in the position of the additional commissioner
87 may be of either political party.

88 (l) In a municipal election, the recorder or other official designated by charter or ordinance
89 to perform election responsibilities shall perform the duties of the clerk of the county commission
90 as provided in this section.

91 (m) Nothing in this section shall be construed to require any county executive committee
92 or county commission to offer half day shifts for poll clerks during any election.

§3-1-44. Compensation of election officials; expenses.

1 (a) Each ballot commissioner is to be paid a sum, to be fixed by the county commission,
2 for each day he or she serves as ballot commissioner, but in no case may a ballot commissioner

3 receive allowance for more than 10 days' services for any one primary, general, or special
4 election.

5 (b) Each commissioner of election and poll clerk is to be paid a sum, to be fixed by the
6 county commission, for one day's services for attending the school of instruction for election
7 officials if the commissioner provides one day's service, or the poll clerk provides at least one half
8 day's service during an election and a sum for his or her services at any one election: *Provided*,
9 That each commissioner of election and poll clerk is to be paid a sum for his or her services at
10 any of the three special elections described in §3-1-44(g) of this code.

11 (c) Each alternate commissioner of election and poll clerk may be paid a sum, to be fixed
12 by the county commission, for one day's services for attending the school of instruction for election
13 officials: *Provided*, That no alternate may be eligible for compensation for election training unless
14 the alternate is subsequently appointed as an election official or is instructed to attend and actually
15 attends training as an alternate and is available to serve on election day.

16 (d) The commissioners of election or poll clerks obtaining and delivering the election
17 supplies, as provided in §3-1-24 of this code, and returning them, as provided in §3-5-1 *et seq.*
18 and §3-6-1 *et seq.* of this code, are to be paid an additional sum, fixed by the county commission,
19 for his or her services pursuant to this subsection at any one election. In addition, he or she is to
20 be paid mileage up to the rate of reimbursement authorized by the travel management rule of the
21 Department of Administration for each mile necessarily traveled in the performance of his or her
22 services.

23 (e) The compensation of election officers, cost of printing ballots and all other expenses
24 incurred in holding and making the return of elections, other than the three special elections
25 described in §3-1-44(f) of this code, are to be audited by the county commission and paid out of
26 the county treasury.

27 (f) All persons within a class of election officials, as classified in this section, shall be paid
28 the same amount within the county.

29 (g) The compensation of election officers, cost of printing ballots, and all other reasonable
30 and necessary expenses in holding and making the return of a special election, for the purpose
31 of taking the sense of the voters on the question of calling a constitutional convention, of a special
32 election to elect members of a constitutional convention, of a special election to ratify or reject the
33 proposals, acts, and ordinances of a constitutional convention are obligations of the state incurred
34 by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions, and
35 county commissions of the various counties as agents of the state. All expenses of these special
36 elections are to be audited by the Secretary of State. The Secretary of State shall prepare and
37 transmit to the county commissions forms on which the county commissions shall certify all
38 expenses of these special elections to the Secretary of State. If satisfied that the expenses as
39 certified by the county commissions are reasonable and were necessarily incurred, the Secretary
40 of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the
41 State Treasurer and shall mail the warrants directly to the vendors of the special election services,
42 supplies, and facilities.

43 (h) Notwithstanding the authority granted to county commissions to set compensation for
44 election officials in this section, the Secretary of State may set maximum rates of compensation
45 of the election officials identified in this section at any election for which the obligations incurred
46 by the ballot commissioners, clerks of the county commissions, and county commissions of the
47 various counties are determined to be obligations of the state.