

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 264**

By Senators Weld, Hamilton, Woelfel, Jeffries, Deeds,

Karnes, Chapman, Hunt, Oliverio, and Plymale

[Originating in the Committee on Education; reported

on January 20, 2023]

1 A BILL to amend and reenact §3-5-7 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §18-2-1 of said code; and to amend and reenact §18-5-1a of said code, all  
3 relating to prohibiting persons who have been convicted of certain crimes against minors  
4 from holding positions on boards of education; and requiring that a candidate for county  
5 board of education include a statement on the certificate of announcement that he or she  
6 swears and affirms that he or she has not been convicted of certain crimes against minors.

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

### **CHAPTER 3. ELECTIONS.**

#### **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

##### **§3-5-7. Filing certificates of announcements of candidacies; requirements; withdrawal of candidates when section applicable.**

1 (a) Any person who is eligible and seeks to hold an office or political party position to be  
2 filled by election in any primary or general election held under the provisions of this chapter shall  
3 file a certificate of announcement declaring his or her candidacy for the nomination or election to  
4 the office.

5 (b) The certificate of announcement shall be filed as follows:

6 (1) Candidates for the House of Delegates, the State Senate, circuit judge, family court  
7 judge, and any other office or political position to be filled by the voters of more than one county  
8 shall file a certificate of announcement with the Secretary of State.

9 (2) Candidates for an office or political position to be filled by the voters of a single county  
10 or a subdivision of a county, except for candidates for the House of Delegates, State Senate,  
11 circuit judge or family court judge, shall file a certificate of announcement with the Clerk of the  
12 County Commission.

13 (3) Candidates for an office to be filled by the voters of a municipality shall file a certificate  
14 of announcement with the recorder or city clerk.

15 (c) The certificate of announcement shall be filed with the proper officer not earlier than the  
16 second Monday in January before the primary election day and not later than the last Saturday in  
17 January before the primary election day and must be received before midnight, eastern standard  
18 time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that  
19 hour. This includes the offices of Justice of the Supreme Court of Appeals, Judge of the  
20 Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which are to  
21 be filled on a nonpartisan and division basis at the primary election: *Provided*, That on the final day  
22 of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m. until  
23 11:59 p.m. The offices of the County Clerk in all counties of the state shall be open on that final day  
24 of a political filing period from 9:00 a.m. until 12:00 p.m.

25 (d) The certificate of announcement shall be on a form prescribed by the Secretary of State  
26 on which the candidate shall make a sworn statement before a notary public or other officer  
27 authorized to administer oaths, containing the following information:

28 (1) The date of the election in which the candidate seeks to appear on the ballot;

29 (2) The name of the office sought; the district, if any; and the division, if any;

30 (3) The legal name of the candidate and the exact name the candidate desires to appear  
31 on the ballot, subject to limitations prescribed in §3-5-13 of this code;

32 (4) The county of residence and a statement that the candidate is a legally qualified voter of  
33 that county; and the magisterial district of residence for candidates elected from magisterial  
34 districts or under magisterial district limitations;

35 (5) The specific address designating the location at which the candidate resides at the time  
36 of filing, including number and street or rural route and box number and city, state, and zip code;

37 (6) For partisan elections, the name of the candidate's political party and a statement that  
38 the candidate: (A) Is a member of and affiliated with that political party as evidenced by the  
39 candidate's current registration as a voter affiliated with that party; and (B) has not been registered  
40 as a voter affiliated with any other political party for a period of 60 days before the date of filing the

41 announcement;

42 (7) For candidates for delegate to national convention, the name of the presidential  
43 candidate to be listed on the ballot as the preference of the candidate on the first convention ballot;  
44 or a statement that the candidate prefers to remain "uncommitted";

45 (8) For candidates for county board of education, a statement that the candidate swears  
46 and affirms that he or she has not been convicted of an offense under §61-8A-1 et seq., §61-8B-1  
47 et seq., and §61-8C-1 et seq. of this code in which the victim was a minor;

48 ~~(8)~~ (9) A statement that the person filing the certificate of announcement is a candidate for  
49 the office in good faith; and

50 ~~(9)~~ (10) The words "subscribed and sworn to before me this \_\_\_\_\_ day of  
51 \_\_\_\_\_, 20\_\_\_\_" and a space for the signature of the officer giving the oath.

52 (e) The Secretary of State or the board of ballot commissioners, as the case may be, may  
53 refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a  
54 certified copy of the voter's registration record of the candidate showing that the candidate was  
55 registered as a voter in a party other than the one named in the certificate of announcement during  
56 the 60 days immediately preceding the filing of the certificate: *Provided*, That unless a signed  
57 formal complaint of violation of this section and the certified copy of the voter's registration record  
58 of the candidate are filed with the officer receiving that candidate's certificate of announcement no  
59 later than 10 days following the close of the filing period, the candidate may not be refused  
60 certification for this reason.

61 (f) The certificate of announcement shall be subscribed and sworn to by the candidate  
62 before ~~some~~ an officer qualified to administer oaths, who shall certify the same. Any person who  
63 knowingly provides false information on the certificate is guilty of false swearing and shall be  
64 punished in accordance with §3-9-3 of this code.

65 (g) Any candidate for delegate to a national convention may change his or her statement of  
66 presidential preference by notifying the Secretary of State by letter, received by the Secretary of

67 State no later than the third Tuesday following the close of candidate filing. When the rules of the  
68 political party allow each presidential candidate to approve or reject candidates for delegate to  
69 convention who may appear on the ballot as committed to that presidential candidate, the  
70 presidential candidate or the candidate's committee on his or her behalf may file a list of approved  
71 or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any  
72 candidate for delegate who is disapproved by the presidential candidate.

73 (h) A person may not be a candidate for more than one office or office division at any  
74 election: *Provided*, That a candidate for an office may also be a candidate for President of the  
75 United States, for membership on political party executive committees or for delegate to a political  
76 party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan  
77 office in an election held concurrently with the primary election may be appointed under the  
78 provisions of §3-5-19 of this code to fill a vacancy on the general ballot.

79 (i) A candidate who files a certificate of announcement for more than one office or division  
80 and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the close  
81 of the filing period may not be certified by the Secretary of State or placed on the ballot for any  
82 office by the board of ballot commissioners.

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 2. STATE BOARD OF EDUCATION.**

#### **§18-2-1. Creation; composition; appointment, qualifications, terms and removal of members; offices.**

1 There is a State Board of Education, to be known as the West Virginia Board of Education,  
2 which is a corporation and as such may contract and be contracted with, plead and be impleaded,  
3 sue and be sued, and have and use a common seal. The state board consists of 12 members, of  
4 whom one is the state Superintendent of Schools, ex officio; one of whom is the Chancellor of the  
5 Higher Education Policy Commission, ex officio; and one of whom is the Chancellor of the West

6 Virginia Council for Community and Technical College Education, ex officio, none of whom is  
7 entitled to vote. The other nine members are citizens of the state, appointed by the Governor, by  
8 and with the advice and consent of the Senate, for overlapping terms of nine years. Terms of office  
9 begin on November 5 of the appropriate year and end on November 4 of the appropriate year. Not  
10 more than five members are appointed from any one congressional district.

11 No more than five of the appointive members may belong to the same political party and no  
12 person is eligible for appointment to membership on the state board who is a member of any  
13 political party executive committee, or holds any other public office or public employment under  
14 the federal government or under the government of this state or any of its political subdivisions, or  
15 who is an appointee or employee of the board. Members are eligible for reappointment. Any  
16 vacancy on the board shall be filled by the Governor by appointment for the unexpired term.

17 Notwithstanding the provisions of §6-6-4 of this code, a member of the state board may not  
18 be removed from office by the Governor except for official misconduct, incompetence, neglect of  
19 duty, or gross immorality and then only in the manner prescribed by law for the removal by the  
20 Governor of state elective officers.

21 Before exercising any authority or performing any duties as a member of the state board,  
22 each member shall qualify as such by taking and subscribing to the oath of office prescribed by  
23 section five, article IV of the Constitution of West Virginia, the certificate whereof shall be filed with  
24 the Secretary of State. A suitable office in the state Department of Education at the State Capitol  
25 shall be provided for use by the state board.

26 Notwithstanding the provisions of §6-5-5 of this code, no person who has been convicted  
27 of an offense under the provisions of §61-8A-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., and  
28 §61-8D-1 et seq. of this code in which the victim is a minor may hold office as a member of the  
29 state board.

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-1a. Eligibility of members; training requirements.**

1 (a) A person who is a member of a county board:

2 (1) Shall be a citizen and resident in the county in which he or she serves on the county  
3 board. Also, a person who is a candidate for membership on a county board or who is a member-  
4 elect of a county board shall be a citizen and resident in the county in which he or she seeks to  
5 serve on the county board;

6 (2) May not be employed by the county board on which he or she serves, including  
7 employment as a teacher or service person;

8 (3) May not engage in the following political activities:

9 (A) Become a candidate for or hold any other public office, other than to succeed him or  
10 herself as a member of a county board subject to the following:

11 (i) A candidate for a county board, who is not currently serving on a county board, may hold  
12 another public office while a candidate if he or she resigns from the other public office prior to  
13 taking the oath of office as a county board member.

14 (ii) The term "public office" as used in this section does not include service on any other  
15 board, elected or appointed, profit or nonprofit, under the following conditions:

16 (I) The person does not receive compensation; and

17 (II) The primary scope of the board is not related to public schools.

18 (B) Become a candidate for, or serve as, an elected member of any political party executive  
19 committee;

20 (C) Become a candidate for, or serve as, a delegate, alternate or proxy to a national  
21 political party convention;

22 (D) Solicit or receive political contributions to support the election of, or to retire the  
23 campaign debt of, any candidate for partisan office;

24 (4) May engage in any or all of the following political activities:

25 (A) Make campaign contributions to partisan or bipartisan candidates;

26 (B) Attend political fund raisers for partisan or bipartisan candidates;

- 27 (C) Serve as an unpaid volunteer on a partisan campaign;  
28 (D) Politically endorse any candidate in a partisan or bipartisan election; or  
29 (E) Attend a county, state or national political party convention.

30 (b) A member or member-elect of a county board, or a person desiring to become a  
31 member of a county board, may make a written request to the West Virginia Ethics Commission for  
32 an advisory opinion to determine if another elected or appointed position held or sought by the  
33 person is an office or public office which would bar service on a county board pursuant to  
34 subsection (a) of this section.

35 (1) Within 30 days of receipt of the request, the Ethics Commission shall issue a written  
36 advisory opinion in response to the request and ~~also~~ shall publish the opinion in a manner which,  
37 to the fullest extent possible, does not reveal the identity of the person making the request.

38 (2) A county board member who relies in good faith upon an advisory opinion issued by the  
39 West Virginia Ethics Commission to the effect that holding a particular office or public office is not a  
40 bar from membership on a county board and against whom proceedings are subsequently brought  
41 for removal from the county board on the basis of holding that office or offices, is entitled to  
42 reimbursement by the county board for reasonable attorney's fees and court costs incurred by the  
43 member in defending against these proceedings, regardless of the outcome of the proceedings.

44 (3) A vote cast by the member at a meeting of the county board may not be invalidated due  
45 to a subsequent finding that holding the particular office or public office is a bar to membership on  
46 the county board.

47 (4) Good faith reliance on a written advisory opinion of the West Virginia Ethics  
48 Commission that a particular office or public office is not a bar to membership on a county board is  
49 an absolute defense to any civil suit or criminal prosecution arising from any proper action taken  
50 within the scope of membership on the county board, becoming a member-elect of the county  
51 board or seeking election to the county board.

52 (c) To be eligible for election or appointment as a member of a county board, a person shall



53 possess at least a high school diploma or a general educational development (GED) diploma. This  
54 provision does not apply to members or members-elect who have taken office prior to May 5,  
55 1992, and who serve continuously from that date forward.

56 (d) A person elected to a county board after July 1, 1990, may not assume the duties of  
57 county board member unless he or she has first attended and completed a course of orientation  
58 relating to boardsmanship and governance effectiveness which shall be given between the date of  
59 election and the beginning of the member's term of office under the following conditions:

60 (1) A portion or portions of subsequent training such as that offered in orientation may be  
61 provided to members after they have commenced their term of office;

62 (2) Attendance at the session of orientation given between the date of election and the  
63 beginning of the member's term of office permits the member-elect to assume the duties of county  
64 board member, as specified in this section;

65 (3) Members appointed to the county board shall attend and complete the next orientation  
66 course offered following their appointment; and

67 (4) The provisions of this subsection relating to orientation do not apply to members who  
68 have taken office prior to July 1, 1988, and who serve continuously from that date forward.

69 (e) Annually, each member of a county board shall receive seven clock hours of training in  
70 areas relating to boardsmanship, governance effectiveness, and school performance issues  
71 including, but not limited to, pertinent state and federal statutes such as the "Process for Improving  
72 Education" set forth in ~~section five, article two-e of this chapter~~ §18-2E-5 of this code and the "No  
73 Child Left Behind Act" and their respective administrative rules.

74 (1) The orientation and training shall be approved by the state board and conducted by the  
75 West Virginia School Board Association or other organization or organizations approved by the  
76 state board:

77 (A) The state board may exclude time spent in training on school performance issues from  
78 the requisite seven hours herein required; and

79 (B) If the state board elects to exclude time spent in training on school performance issues  
80 from the requisite seven hours, the state board shall limit the training to a feasible and practicable  
81 amount of time.

82 (2) Failure to attend and complete the approved course of orientation and training relating  
83 to boardsmanship and governance effectiveness without good cause, as determined by the state  
84 board by duly promulgated legislative rules, constitutes neglect of duty under ~~section seven,~~  
85 ~~article six, chapter six~~ §6-6-7 of this code.

86 (f) In the final year of any four-year term of office, a member shall satisfy the annual training  
87 requirement before January 1. Failure to comply with the training requirements of this section  
88 without good cause, as defined by the state board by duly promulgated legislative rules,  
89 constitutes neglect of duty under §6-6-7 of this code.

90 (g) The state board shall appoint a committee named the "County Board Member Training  
91 Standards Review Committee" whose members shall meet at least annually. Subject to state  
92 board approval, the committee shall determine which particular trainings and training  
93 organizations shall be approved, and whether county board members have satisfied the annual  
94 training requirement. Members of the committee serve without compensation but may be  
95 reimbursed by their agencies or employers for all reasonable and necessary expenses actually  
96 incurred in the performance of their duties under this subsection.

97 (h) Notwithstanding the provisions of §6-5-5 of this code, no person who has been  
98 convicted of an offense under the §61-8A-1 et seq., §61-8B-1 et seq., §61-8C-1 et seq., and §61-  
99 8D-1 et seq. of this code in which the victim is a minor may hold office as a member of a county  
100 board.