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2001 MAY -2 A 11: 15

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2001

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2876

(By Delegates Mahan, Smirl, C. White, Coleman and Craig)

Passed April 14, 2001

In Effect Ninety Days | from Passage

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

H. B. 2876

(BY DELEGATES MAHAN, SMIRL, C. WHITE, COLEMAN AND CRAIG)

[Passed April 14, 2001; in effect ninety days from passage.]

—

AN ACT to amend and reenact sections twenty-eight, twenty-nine, thirty and forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to election officials; allowing a person registered within the county where a municipality lies to serve as an election official in a municipal election; eliminating the eligibility restriction against persons who have served as deputy sheriffs within six months prior to an election; eliminating the requirement that a person be registered as affiliated with the political party which nominates that person as an election official; reducing the number of election officials in a standard receiving board for municipal elections; and increasing the authorized maximum amount of compensation for election officials.

Be it enacted by the Legislature of West Virginia:

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That sections twenty-eight, twenty-nine, thirty and forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-28. Election officials; eligibility, suspension of eligibility.

1 (a) To be eligible to be appointed or serve as an election
2 official in any state, county or municipal election held in West
3 Virginia, a person:

4 (1) Must be a registered voter of the county for elections
5 held throughout the county, and a registered voter of the
6 municipality for elections held within the municipality:
7 *Provided*, That if the required number of persons eligible to
8 serve as election officials for a municipal election are not
9 available or are not willing to serve as election officials for a
10 municipal election, a registered voter of the county in which the
11 municipality is located may serve as an election official for
12 elections held within the municipality.

13 (2) Must be able to read and write the English language;

14 (3) May not be a candidate on the ballot in the election;

15 (4) May not be the parent, child, sibling or spouse of a
16 candidate on the ballot in the precinct where the official serves;

17 (5) May not be a person prohibited from serving as an
18 election official pursuant to any other federal or state statute;
19 and

20 (6) May not have been previously convicted of a violation
21 of any election law.

22 (b) The county commission may, upon majority vote,
23 suspend the eligibility to serve as election official in any
24 election for four years, for the following reasons:

25 (1) Failure to appear at the polling place at the designated
26 time without proper notice and just cause;

27 (2) Failure to perform the duties of an election official as
28 required by law;

29 (3) Improper interference with a voter casting a ballot, or
30 violating the secrecy of the voter's ballot;

31 (4) Being under the influence of alcohol or drugs while
32 serving as an election official; or

33 (5) Having anything wagered or bet on an election.

34 (c) The county commission may, upon majority vote,
35 suspend the eligibility to serve as an election official in any
36 election for two years, upon petition of twenty-five registered
37 voters of the precinct where the official last served and upon
38 presentation of evidence of any of the grounds set forth in
39 subsection (b) of this section: *Provided*, That the petition
40 requesting the suspension of the election official is filed with
41 the county commission at least ninety days prior to an election
42 date. The names of those persons signing the petition must be
43 kept confidential.

**§3-1-29. Boards of election officials; definitions, composition of
boards, determination of number and type.**

1 (a) For the purpose of this article:

2 (1) The term "standard receiving board" means those
3 election officials charged with conducting the process of voting
4 within a precinct and consists of five persons, including one
5 team of poll clerks, one team of election commissioners for the
6 ballot box and one additional election commissioner: *Provided*,
7 That if a municipal election is held at a time when there is no
8 county or state election, then the standard receiving board is to

9 consist of four persons, including one team of poll clerks and
10 one team of election commissioners for the ballot box.

11 (2) The term “expanded receiving board” means a standard
12 receiving board as defined in subdivision (1) of this subsection
13 and one additional team of poll clerks;

14 (3) The term “counting board” means those election
15 officials charged with counting the ballots at the precinct in
16 counties using paper ballots and includes one team of poll
17 clerks, one team of election commissioners and one additional
18 commissioner; and

19 (4) The term “team of poll clerks” or “team of election
20 commissioners” means two persons appointed by opposite
21 political parties to perform the specific functions of the office:
22 *Provided*, That no team of poll clerks or team of election
23 commissioners may consist of two persons with the same
24 registered political party affiliation or two persons registered
25 with no political party affiliation.

26 (b) The composition of boards of election officials shall be
27 as follows:

28 (1) In any primary, general or special election other than a
29 presidential primary or presidential general election, each
30 election precinct is to have one standard receiving board;

31 (2) In presidential primary and presidential general elec-
32 tions, each election precinct is to have one receiving board, as
33 follows:

34 (A) For precincts of less than five hundred registered
35 voters, one standard receiving board;

36 (B) For precincts of five hundred to seven hundred regis-
37 tered voters, one standard receiving board or, at the discretion
38 of the county commission, one expanded receiving board; and

39 (C) For precincts of more than seven hundred registered
40 voters, one expanded receiving board;

41 (3) In any election conducted using paper ballots, counting
42 boards may be allowed, disallowed or required as follows:

43 (A) For any state, county or municipal special election, no
44 counting board may be allowed;

45 (B) In a statewide primary or general election, one counting
46 board is required for any precinct of more than four hundred
47 registered voters, and one counting board may be allowed, at
48 the discretion of the county commission for any precinct of at
49 least two hundred but no more than four hundred registered
50 voters; and

51 (C) In a municipal primary or general election, one count-
52 ing board may be allowed, at the discretion of the municipal
53 governing body for any precinct of more than two hundred
54 registered voters.

55 (c) For each primary and general election in the county, the
56 county commission shall designate the number and type of
57 election boards for the various precincts according to the
58 provisions of this section. At least eighty-four days before each
59 primary and general election, the county commission shall
60 notify the county executive committees of the two major
61 political parties in writing of the number of nominations which
62 may be made for poll clerks and election commissioners.

63 (d) For each municipal election, the governing body of the
64 municipality shall perform the duties of the county commission
65 as provided in this section.

**§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
2 throughout a county, poll clerks and election commissioners
3 may be nominated as follows:

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

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

12 (3) Each county executive committee may also nominate as
13 many qualified persons as alternates as there are precincts in the
14 county, to be called upon to serve in the event any of the
15 persons originally appointed fail to accept appointment or fail
16 to appear for the required training or for the preparation or
17 execution of their duties;

18 (4) When an executive committee nominates qualified
19 persons as poll clerks, election commissioners or alternates, the
20 committee, or its chairman or secretary on their behalf, shall
21 file in writing with the appointing body, no later than the fifty-
22 sixth day before the election, a list of those persons nominated
23 and the positions for which they are designated.

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

27 (1) In municipalities which have municipal executive
28 committees for the two major political parties in the municipal-
29 ity, each committee may nominate election officials in the
30 manner provided for the nomination of election officials by
31 county executive committees in subsection (a) of this section;

32 (2) In municipalities which do not have executive commit-
33 tees, the governing body shall provide by ordinance for a
34 method of nominating election officials; or shall nominate as
35 many eligible persons as are required, giving due consideration
36 to any recommendations made by voters of the municipality or
37 by candidates on the ballot.

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

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

43 (2) The board of education for any special election ordered
44 by the board of education conducted apart from any other
45 election;

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

48 (d) The appropriate governing body shall appoint the
49 election officials for each designated election board no later
50 than the forty-ninth day before the election as follows:

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

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

57 (e) At the same time as the appointment of election
58 officials, or at a subsequent meeting, the governing body shall
59 appoint persons as alternates: *Provided*, That no alternate may
60 be eligible for compensation for election training unless the

61 alternate is subsequently appointed as an election official, or is
62 instructed to attend and actually attends training as an alternate
63 and, if called to do so, also serves at the polls on election day.
64 Alternates shall be appointed and serve as follows:

65 (1) Those alternates nominated by the executive commit-
66 tees, shall be appointed;

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

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

73 (f) The clerk of the county commission shall appoint
74 qualified persons to fill all vacancies existing after all previ-
75 ously appointed alternates have been assigned, have declined to
76 serve or have failed to attend training.

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

84 (h) The position of any person notified of appointment who
85 fails to return the response notice or otherwise confirm to the
86 clerk of the county commission his or her agreement to serve
87 within fourteen days following the date of appointment is
88 considered vacant and the clerk shall proceed to fill the vacan-
89 cies according to the provisions of this section.

90 (i) If an appointed election official fails to appear at the
91 polling place by forty-five minutes past five o'clock a.m. on
92 election day, the election officials present shall contact the

93 office of the clerk of the county commission for assistance in
94 filling the vacancy and the clerk shall proceed as follows:

95 (1) The clerk may attempt to contact the person originally
96 appointed, may assign an alternate nominated by the same
97 political party as the person absent if one is available or, if no
98 alternate is available, may appoint another eligible person of the
99 same political party as the party that nominated the person
100 originally appointed;

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

106 (3) If two teams of election officials, as defined in section
107 twenty-nine of this article, are present at the polling place, the
108 person appointed to fill a vacancy in the position of the addi-
109 tional commissioner may be of either political party.

110 (j) In a municipal election, the recorder or other official
111 designated by charter or ordinance to perform election responsi-
112 bilities shall perform the duties of the clerk of the county
113 commission as provided in this section.

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

1 (a) Each ballot commissioner is to be paid a sum, to be
2 fixed by the county commission, not exceeding one hundred
3 and twenty-five dollars for each day he or she serves as ballot
4 commissioner, but, in no case may a ballot commissioner
5 receive allowance for more than ten days' services for any one
6 primary, general or special election.

7 (b) Each commissioner of election and poll clerk is to be
8 paid a sum, to be fixed by the county commission, not exceed-

9 ing one hundred and twenty-five dollars for one day's services
10 for attending the school of instruction for election officials if
11 the commissioner or poll clerk provides at least one day's
12 service during an election and a sum not exceeding one hundred
13 seventy-five dollars for his or her services at any one election:
14 *Provided*, That each commissioner of election and poll clerk is
15 to be paid a sum not exceeding one hundred seventy-five
16 dollars for his or her services at any of the three special
17 elections described in subsection (e) of this section.

18 (c) The commissioners of election obtaining and delivering
19 the election supplies, as provided in section twenty-four of this
20 article, and returning them as provided in articles five and six
21 of this chapter, is to be paid an additional sum, fixed by the
22 county commission, not exceeding one hundred twenty-five
23 dollars for his or her services pursuant to this subsection at any
24 one election and, in addition, is to be paid mileage up to the rate
25 of reimbursement authorized per mile as set by the travel
26 management office of the department of administration per mile
27 necessarily traveled in the performance of his or her services.
28 The rate paid for mileage pursuant to this section may change
29 from time to time in accordance with changes in the reimburse-
30 ment rates established by the travel management office, or its
31 successor agency.

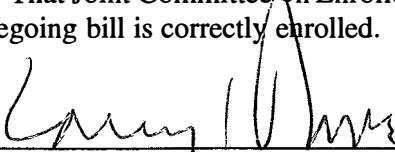
32 (d) The compensation of election officers, cost of printing
33 ballots and all other expenses incurred in holding and making
34 the return of elections, other than the three special elections
35 described in subsection (e) of this section, is to be audited by
36 the county commission and paid out of the county treasury.

37 (e) The compensation of election officers, cost of printing
38 ballots and all other reasonable and necessary expenses in
39 holding and making the return of a special election for the
40 purpose of taking the sense of the voters on the question of
41 calling a constitutional convention, of a special election to elect

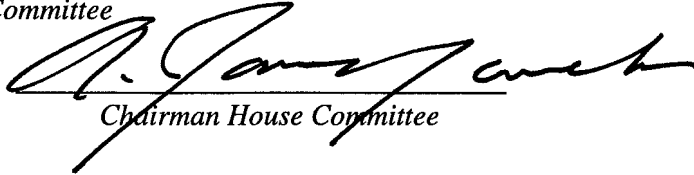
42 members of a constitutional convention, and of a special
43 election to ratify or reject the proposals, acts and ordinances of
44 a constitutional convention are obligations of the state incurred
45 by the ballot commissioners, clerks of the circuit courts, clerks
46 of the county commissions and county commissions of the
47 various counties as agents of the state, and all expenses of these
48 special elections are to be audited by the secretary of state. The
49 secretary of state shall prepare and transmit to the county
50 commissions forms on which the county commissions shall
51 certify all expenses of these special elections to the secretary of
52 state. If satisfied that the expenses as certified by the county
53 commissions are reasonable and were necessarily incurred, the
54 secretary of state shall requisition the necessary warrants from
55 the auditor of the state to be drawn on the state treasurer, and
56 shall mail the warrants directly to the vendors of the special
57 election services, supplies and facilities.

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That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



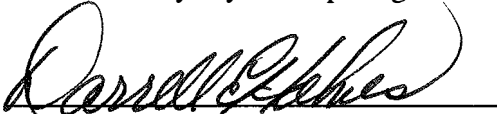
Chairman Senate Committee



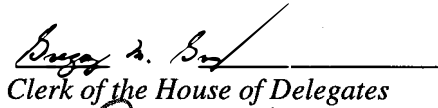
Chairman House Committee

Originating in the House.

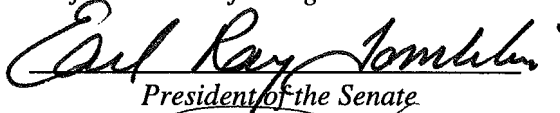
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

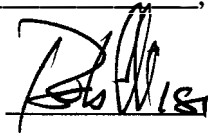


President of the Senate



Speaker of the House of Delegates

The within is approved this the 30th
day of April, 2001.



Governor

PRESENTED TO THE

GOVERNOR

Date

4/27/01

Time

11:45 AM