

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4531

FISCAL
NOTE

BY DELEGATE HANSHAW

[Introduced February 13, 2018; Referred
to the Committee on Finance.]

1 A BILL to amend and reenact §6-3-1(a)(2) of the Code of West Virginia, 1931, as amended,
2 requiring that a deputy sheriff be paid a salary of not less than \$10.50 per hour worked.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DEPUTY OFFICERS AND CONSERVATORS OF THE PEACE.

§6-3-1. Appointment of deputies and local conservators of the peace; powers and duties; compensation; vacating appointment of deputy sheriff; removal of conservators.

1 (a) (1) The clerk of the Supreme Court of Appeals, or of any circuit, criminal, common
2 pleas, intermediate, or county court, or of any tribunal established by law in lieu thereof, may, with
3 the consent of the court, or such tribunal, duly entered of record, appoint any person or persons
4 his or her deputy or deputies.

5 (2) A sheriff, surveyor of lands, or assessor may, with the consent of the county court duly
6 entered of record, appoint any person or persons his or her deputy or deputies. Any person
7 employed as a deputy sheriff shall be paid a salary of not less than \$10.50 per hour worked.

8 (3) A sheriff, when in the opinion of the judge of the circuit court the public interest requires
9 it, may, with the assent of said court, duly entered of record, appoint any person or persons his
10 or her deputy or deputies to perform any temporary service or duty.

11 (4) Each deputy so appointed shall take the same oath of office required of his or her
12 principal, and may, during his or her continuance in office, perform and discharge any of the
13 official duties of his or her principal, and any default or misfeasance in office of the deputy shall
14 constitute a breach of the conditions of the official bond of his or her principal.

15 (5) A sheriff in any county in which there are more than four deputies shall devote his or
16 her full time to the performance of the services or duties required by law of such sheriff, and ~~he~~
17 the sheriff shall not receive any compensation or reimbursement, directly or indirectly, from any
18 person, firm, or corporation for the performance of any private or public services or duties:
19 *Provided*, That any such sheriff may retain or make any investment and receive income therefrom,
20 unless such investment is otherwise prohibited by law or will impair his or her independence of

21 judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the
22 services or duties of his or her office. A sheriff in any county in which there are four or fewer
23 deputies, or a deputy sheriff in any county irrespective of the number of deputies, need not devote
24 his or her full time to the services or duties of his or her office as sheriff or his or her employment
25 as deputy sheriff, as the case may be; but any such sheriff or deputy sheriff shall not engage in
26 any business or transaction, accept other employment or make any investment which is otherwise
27 prohibited by law or which will impair his or her independence of judgment in the exercise of, or
28 might reasonably tend to conflict with the proper discharge of, the services or duties of his or her
29 office as sheriff or his or her employment as deputy sheriff, as the case may be. A sheriff and his
30 or her deputies in any county, irrespective of the number of deputies, shall receive for the
31 performance of their public services and duties no compensation or remuneration except such as
32 may be regularly provided and paid out of public funds to the amount and in the manner provided
33 by law. No sheriff or deputy sheriff in any county, irrespective of the number of deputies, may
34 receive, directly or indirectly, any gift or donation from any person, firm or corporation.

35 (6) Except as hereinafter expressly provided by subsection (b) of this section no sheriff
36 shall appoint or continue the appointment of any deputy contrary to the provisions hereof. Any
37 sheriff or deputy sheriff who shall violate any of the provisions of this section shall be guilty of a
38 misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than
39 \$5,000, or confined in jail not to exceed one year, or both, in the discretion of the court.

40 (7) Circuit courts shall have jurisdiction in equity and mandamus, and the Supreme Court
41 of Appeals shall have jurisdiction in mandamus, upon the filing of a petition by the prosecuting
42 attorney, the Attorney General, or any three or more citizens of the county, to require any sheriff
43 and the county court to vacate the appointment of any deputy, the appointment of which is made
44 or continued in violation of the provisions hereof. Any such proceeding may be instituted and

45 prosecuted by the Attorney General either in the Circuit Court of Kanawha County or in the county
46 for which such appointment was made.

47 (b) (1) Any resident or group of residents of any unincorporated community, as hereinafter
48 defined, may petition the sheriff for the appointment of a local conservator of the peace and such
49 sheriff, when in his or her opinion the public interests require it, may with the assent of said county
50 court and the judge of the circuit court duly entered of record, either in term or vacation of any
51 such court, appoint any person or persons a local conservator or conservators of the peace to
52 perform the duties of a conservator of the peace outside of any incorporated city, town, or village.
53 No person shall be appointed such local conservator of the peace who has not been a bona fide
54 resident and taxpayer of the county for at least one year prior to his or her appointment. Such
55 local conservator of the peace during his or her continuance in office, may perform and discharge
56 any of the official duties of the sheriff, subject nevertheless to the provisions of this section. No
57 local conservator so appointed shall be subject to the direction or control of any person other than
58 his or her principal and he or she shall not perform any services or duties, either private or public,
59 except the duties required by law of conservators of the peace pursuant to the provisions hereof,
60 for any person, firm, or corporation. No such local conservator shall be entitled to collect or receive
61 any fees provided by law to be paid to the sheriff or to a deputy sheriff, but all fees provided by
62 law for the sheriff, when such duties and services are rendered by such local conservator, shall
63 be paid to the sheriff as regular collections of the sheriff's office. The local conservator shall be
64 paid for the public services performed by him or her a salary of not less than \$75 per month out
65 of the county treasury from a fund to be paid into such treasury by a resident or the residents of
66 the community for which he or she is appointed, for the sole purpose of compensating such local
67 conservator or conservators and no such local conservator shall receive any other compensation,
68 directly or indirectly, from any person, firm, or corporation, for any private or public service, except

69 the salary payable to him or her for his or her public services and duties and from such fund,
70 except that he or she shall be entitled to witness and mileage fees when a witness in a court of
71 record. Each local conservator so appointed shall take the same oath of office required of his or
72 her principal and any default or misfeasance in the office of such local conservator shall constitute
73 a breach of the conditions of the official bond of his or her principal.

74 (2) When the sheriff shall have been petitioned for the appointment of a local conservator
75 and has determined that the appointment is proper, he or she shall select the person whom he or
76 she proposes to have appointed such conservator and shall notify the county court of the
77 community for which such conservator is to be appointed and the name of the person proposed
78 for such appointment. The county court shall thereupon cause notice that the sheriff has
79 recommended the appointment of the person named as conservator for the community named to
80 be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et*
81 *seq.* of this code, and the publication area for such publication shall be the county. The notice
82 shall designate a day not less than five days after the date of the last publication when the county
83 court will act upon the petition and recommendation. Neither the county court nor the judge of the
84 circuit court shall assent and approve the appointment of such local conservator until such
85 publication has been made. The costs of the publication shall be paid by the person or persons
86 petitioning for the appointment of the conservator.

87 No local conservator shall be appointed except it be made to appear to the satisfaction of
88 the county court and the judge of the circuit court that because of the lack of sufficient funds,
89 geographical location of the unincorporated community for which such conservator is to be
90 appointed, or other good reason, the sheriff and his or her regular deputies and the constables of
91 the county are not sufficient to afford proper local policing of such community and that the person
92 or persons moving for the appointment of such local conservator have made satisfactory

93 arrangements to compensate him or her for his or her services as such local conservator of the
94 peace.

95 (3) Such local conservator of the peace shall have all the powers and duties of a regularly
96 appointed deputy sheriff except that he or she shall not execute any civil process except such
97 process as may be necessary to bring parties before the court in any action at law or suit in equity
98 and subpoenas for witnesses within the unincorporated community for which he or she is
99 appointed and within a distance of one mile outside the boundaries thereof, except as hereinafter
100 expressly provided, but he or she shall not participate in any strike, unemployment boycott, or
101 other industrial or labor dispute, nor serve any court process of any character relating thereto. He
102 or she shall act as such local conservator only in the unincorporated community for which he or
103 she is appointed, and within a distance of one mile from the boundaries thereof as fixed by the
104 county court: *Provided*, That the authority of one local conservator shall not extend into any other
105 unincorporated community for which another local conservator is appointed and acting, except as
106 otherwise expressly provided by subdivision (6) of this subsection, except that in fresh pursuit he
107 or she may effect arrests anywhere in the county. He or she may also exercise the powers of a
108 regularly appointed deputy anywhere in the county when required to guard or assist in guarding
109 a payroll, or any other property of value in transit to or from the unincorporated community for
110 which he or she is appointed. Any person arrested by such local conservator shall, with all
111 convenient speed, be turned over to the sheriff, or one of his or her regular deputies, or to a
112 regular constable of the county to be dealt with according to law, and his or her authority for that
113 purpose shall be coextensive with the county.

114 (4) Any local conservator appointed to perform the duties of conservator of the peace shall
115 be a public officer and the payment, or contribution to the payment of compensation of such local
116 conservator shall not constitute the person, firm or corporation making such payment or

117 contribution the employer of such local conservator and no person, firm or corporation paying, or
118 contributing to the payment of compensation to such local conservator shall be answerable in law
119 or in equity for any damages to person or property resulting from any official act of such local
120 conservator.

121 (5) No person appointed such local conservator shall thereby be entitled to carry weapons,
122 but such local conservator may carry weapons when he or she shall be duly licensed and shall
123 have given bond as provided by §61-7-2 of this Code.

124 (6) Not more than one local conservator of the peace shall be appointed, to perform the
125 duties of conservator of the peace, for each 2,500 inhabitants of the county as ascertained by the
126 last regular decennial census after deducting the number of inhabitants of the county residing in
127 the incorporated cities, towns and villages in such county. Not more than one local conservator
128 shall be appointed for any unincorporated community unless the population thereof exceed 1,500
129 people and in such case not more than two conservators shall be appointed for such community.

130 (7) The phrase "unincorporated community" within the meaning of this section shall mean
131 any center of population wherein 50 or more persons reside within an area of not more than one
132 square mile.

133 (8) The county court and the judge of the circuit court in approving the appointment of a
134 local conservator shall enter of record an order making such appointment and shall show therein
135 the necessity for the appointment, the person or persons on whose motion the appointment is
136 made, the arrangement for the payment of compensation to such local conservator, the
137 unincorporated community or communities, for which the appointment is made, including the
138 general boundary of each unincorporated community for which he or she is appointed.

139 (9) No local conservator shall act as an election official or remain in, about or near any
140 voting place or place of political convention, further than is necessary for him or her to promptly

141 cast his or her vote and retire from the voting place.

142 (10) Any local conservator violating any of the provisions of subdivisions (3) and (9) of this
143 subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less
144 than \$50 nor more than \$300, or be confined in the county jail not more than six months, or both,
145 in the discretion of the court; and it shall be the duty of the sheriff and the county court to forthwith
146 revoke his or her appointment irrespective of any criminal prosecution. A proceeding in
147 mandamus or injunction shall lie in the circuit court and a proceeding in mandamus shall lie in the
148 Supreme Court of Appeals at the instance of the prosecuting attorney, the Attorney General, or
149 of any three or more citizens of the community for which such conservator is appointed, to require
150 the performance of such duty by the sheriff and the county court.

151 (11) Such local conservator shall serve during the joint will and pleasure of the sheriff and
152 the county court and his or her appointment may be revoked by order entered of record by the
153 county court either with or without the assignment of cause therefor.

154 A local conservator may be removed by the judge of the circuit court, either in term or
155 vacation, for drunkenness, gross immorality, incompetence, neglect of duty, or other good cause,
156 upon the petition of three or more residents of the community for which he or she has been
157 appointed. The petition shall set forth the cause or causes for which such removal is asked and
158 shall show that demand for removal has been made of the sheriff and the county court and that
159 the sheriff and the county court have failed to remove the local conservator. At least three copies
160 of the petition shall be filed, and upon the filing of the petition the judge shall fix a time and place
161 for a hearing thereon, which time shall not be less than 10 days after the filing of the petition, and
162 shall cause a copy thereof to be served upon the sheriff and such local conservator at least 10
163 days before the hearing thereon.

NOTE: The purpose of this bill is to require that deputy sheriffs be paid no less than \$10.50 per hour.

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