

# **WEST VIRGINIA LEGISLATURE**

**2019 REGULAR SESSION**

**Introduced**

## **Senate Bill 118**

BY SENATORS PALUMBO, JEFFRIES, STOLLINGS,

BALDWIN, AND LINDSAY

[Introduced January 9, 2019; Referred

to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §1-2-2a, relating to creating the Independent Redistricting Commission;  
3 designating duties of the commission; providing that members are nominated by State  
4 Election Commission; setting forth required traits and restrictions of members; providing  
5 for how commission members are appointed; setting forth a process for determining the  
6 chair of the commission; providing for the filling of vacancies of commission; requiring  
7 members to conduct an organizational meeting and select a vice chairperson; providing  
8 for the removal of a member for cause; providing for the filling of vacancies that may occur  
9 on commission; setting forth certain requirements of the commission; providing that three  
10 members constitute a quorum; providing that members are ineligible for public office or  
11 registration as paid lobbyist for three years after completing their last term on commission;  
12 requiring that commission plan and propose congressional and legislative districts;  
13 providing specific criteria that commission must observe in proposing district mappings;  
14 requiring commission to advertise a proposed draft map of districts to the public; permitting  
15 legislators to make inquiry of commission members regarding their methodology and  
16 proposed redistrict mapping; requiring that commission publish its proposals for district  
17 boundaries; requiring the commission to recommend redistricting plans to the Legislature;  
18 authorizing a vote on the plans in an extraordinary session called by the Governor;  
19 requiring the full Legislature to vote on the first proposal plan ratification without  
20 amendment; setting forth a process for subsequent proposed plans, amendment  
21 restrictions, and vote requirements; authorizing the West Virginia Supreme Court of  
22 Appeals to make the final determination between three plans proposed by the independent  
23 redistricting commission if the Legislature and Governor cannot agree; requiring that the  
24 commission certify to Secretary of State that its proposals for district boundaries is in  
25 accordance with constitutional and legal requirements; providing for reimbursement of  
26 expenses and per diem allowances for commission members; authorizing the commission

27 to contract for staffing and consultants; prohibiting certain persons from influencing or  
28 attempting to influence district mapping proposals of the commission; and providing for  
29 the expiration of commission appointments.

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

## **ARTICLE 2. APPORTIONMENT OF REPRESENTATION.**

### **§1-2-2a. Independent Redistricting Commission to study and propose fair, balanced and rational plan to redistrict.**

1 (a) There is hereby created the Independent Redistricting Commission, which shall be  
2 appointed in accordance with the procedures set forth in this section to study population trends  
3 and present proposed redistricting mappings, designed to reflect fair reapportionment and  
4 redistricting in conformity with constitutional principles, especially that which requires equality of  
5 population to the greatest extent practicable. Commission members shall be knowledgeable and  
6 possess expertise relative to constitutional and legal requirements and considerations which bear  
7 on the issue of fair reapportionment and redistricting.

8 (b) By February 28 of each year that ends in one, an Independent Redistricting  
9 Commission shall be established to provide for proposed redistricting of congressional and state  
10 legislative districts. The Independent Redistricting Commission consists of five members. No  
11 more than two members of the Independent Redistricting Commission may be members of the  
12 same political party. No more than two members may reside in the same county. Each member  
13 shall be a registered West Virginia voter who has been continuously registered with the same  
14 political party or registered as unaffiliated with a political party for three or more years immediately  
15 preceding appointment, who is committed to applying the provisions of this section in an honest,  
16 independent and impartial fashion and to upholding public confidence in the integrity of the  
17 redistricting process. Within the three years previous to appointment, members may not have  
18 been appointed to, elected to, or a candidate for any other public office and may not have served  
19 as an officer of a political party, a registered paid lobbyist, an officer of a candidate's campaign

20 committee, or an officer of a political action committee.

21 (c) The State Election Commission shall nominate candidates for appointment to the  
22 Independent Redistricting Commission.

23 (d) By January 8 of years ending in one, the State Election Commission shall establish a  
24 pool of persons who are willing to serve on and are qualified for appointment to the Independent  
25 Redistricting Commission. The pool of candidates shall consist of 25 nominees, with 10 nominees  
26 from each of the two largest political parties in West Virginia based on party registration, and five  
27 who are not registered with either of the two largest political parties in West Virginia.

28 (e) Appointments to the Independent Redistricting Commission shall be made in the order  
29 set forth below. No later than January 31 of years ending in one, the Speaker of the House of  
30 Delegates shall make one appointment to the Independent Redistricting Commission from the  
31 pool of nominees, followed by one appointment from the pool made in turn by each of the  
32 following: The minority party leader of the House of Delegates, the President of the Senate and  
33 the minority party leader of the Senate. Each official shall have a seven-day period in which to  
34 make an appointment. Any official who fails to make an appointment within the specified time  
35 period will forfeit the appointment privilege. In the event that there are two or more minority parties  
36 within the House of Delegates or the Senate, the leader of the largest minority party by statewide  
37 party registration shall make the appointment.

38 (f) Any vacancy in the above four Independent Redistricting Commission positions  
39 remaining as of March 1 of a year ending in one shall be filled from the pool of nominees by the  
40 State Election Commission or its designee. The appointing body shall strive for political balance  
41 and fairness.

42 (g) At a meeting called by the Secretary of State by April 1 in each year that ends in one,  
43 the four Independent Redistricting Commission members shall meet and conduct an  
44 organizational meeting, which will constitute the commencement of their official duties, and at  
45 which the commission will select by majority vote from the nomination pool a fifth member who is

46 not registered with any party already represented on the Independent Redistricting Commission  
47 and who shall serve as chair. If the four commissioners fail to appoint a fifth member within 15  
48 days, the State Election Commission or its designee, striving for political balance and fairness,  
49 shall appoint a fifth member from the nomination pool who is not registered with any party already  
50 represented on the Independent Redistricting Commission and who shall serve as chair.

51 (h) The five commissioners shall then select by majority vote one of their members to  
52 serve as vice-chair.

53 (i) After having been served written notice and provided with an opportunity for a response,  
54 a member of the Independent Redistricting Commission may be removed by the Governor, with  
55 the concurrence of two thirds of the Senate, for substantial neglect of duty, gross misconduct in  
56 office, or inability to discharge the duties of office.

57 (j) If a commissioner or chairperson does not complete the term of office for any reason,  
58 the State Election Commission or its designee shall nominate a pool of three candidates within  
59 the first 30 days after the vacancy occurs. The nominees shall be of the same political party or  
60 status as was the member who vacated the office at the time of his or her appointment, and the  
61 appointment other than the chair shall be made by the current holder of the office designated to  
62 make the original appointment. The appointment of a new chair shall be made by the remaining  
63 commissioners. If the appointment of a replacement commissioner or chair is not made within 14  
64 days following the presentation of the nominees, the State Election Commission or its designee  
65 shall make the appointment, striving for political balance and fairness. The newly appointed  
66 commissioner shall serve out the remainder of the original term.

67 (k) Three commissioners, including the chair or vice-chair, constitute a quorum. Three or  
68 more affirmative votes are required for any official action. Where a quorum is present, the  
69 Independent Redistricting Commission shall conduct business in meetings open to the public,  
70 with 48 or more hours of public notice provided.

71 (l) A commissioner, during the commissioner's term of office and for three years thereafter,

72 is ineligible for public office or for registration as a paid lobbyist.

73 (m) The Independent Redistricting Commission shall plan and propose congressional and  
74 legislative districts. The commencement of the proposed mapping process for both the  
75 congressional and legislative districts shall be the creation of districts of equal population in a  
76 grid-like pattern across the state. Adjustments to the grid shall then be made as necessary to  
77 accommodate the goals as set forth below:

78 (1) Districts shall comply with the United States Constitution and the United States Voting  
79 Rights Act;

80 (2) Congressional districts shall have equal population to the extent practicable, and state  
81 legislative districts shall have equal population to the extent practicable;

82 (3) Districts shall be geographically compact and contiguous to the extent practicable;

83 (4) To the extent practicable, district lines shall use visible geographic features, city, town  
84 and county boundaries, and undivided census tracts; and

85 (5) To the extent practicable, competitive districts should be favored where to do so would  
86 create no significant detriment to the other goals.

87 (n) Party registration and voting history data shall be excluded from the initial phase of the  
88 mapping process but may be used to test maps for compliance with the above goals. The places  
89 of residence of incumbents or candidates shall not be identified or considered.

90 (o) The Independent Redistricting Commission shall advertise a proposed draft map of  
91 congressional districts and a proposed draft map of legislative districts to the public for comment,  
92 which comment shall be taken for at least 30 days. During the public comment period, the  
93 commission shall hold three public hearings in geographically distinct areas of the state to present  
94 the plan and hear public comments. Any member of either body of the Legislature may, within  
95 the public comment period, make inquiry of the Independent Redistricting Commission concerning  
96 its methodology or proposed redistrict mapping, which inquiry shall be fully addressed by the  
97 Independent Redistricting Commission. After conclusion of the public comment period:

98           (1) The Independent Redistricting Commission shall then make and publish its first  
99 proposal for district boundaries and recommend the plan to the Legislature, which shall vote,  
100 during an extraordinary session called by the Governor, upon it after an explanation of the  
101 proposal on the floors of the House of Delegates and Senate. Amendments to the first proposal  
102 are not in order in either the House or the Senate. The Senate and House of Delegates shall take  
103 a separate vote on the plans for the congressional allocation, the House of Delegates allocation,  
104 and the Senate allocation. If any plans pass, they shall be presented to the Governor for his or  
105 her signature in the same manner as all pieces of legislation adopted by the Legislature.

106           (2) If any of the first proposal plans fail to obtain approval of the Senate, the House of  
107 Delegates and the Governor, then the Independent Redistricting Commission shall meet and  
108 confer in order to propose a second proposal to the Legislature. The second proposal shall follow  
109 the same proposed draft plan and public comment requirements contained in this subsection.  
110 The Independent Redistricting Commission shall then make and publish its second proposal for  
111 district boundaries that were not approved by the Legislature in the first proposal. The Legislature  
112 shall vote, during an extraordinary session called by the Governor, upon the second proposal  
113 after an explanation of the proposal on the floors of the House of Delegates and Senate.  
114 Amendments to the second proposal are not in order in either the House or the Senate. The  
115 Senate and House of Delegates shall take a separate vote on any plans not approved in the first  
116 proposal. If any plans pass, they shall be presented to the Governor for his or her signature in the  
117 same manner as all pieces of legislation adopted by the Legislature.

118           (3) If any of the second proposal plans fail to obtain approval of the Senate, the House of  
119 Delegates and the Governor, then the Independent Redistricting Commission shall meet and  
120 confer in order to propose a third proposal to the Legislature. The third proposal shall follow the  
121 same proposed draft plan and public comment requirements contained in this subsection. The  
122 Independent Redistricting Commission shall then make and publish its third proposal for district  
123 boundaries that were not approved by the Legislature in the first proposal. The Legislature shall

124 vote, during an extraordinary session called by the Governor, upon the third proposal after an  
125 explanation of the proposal on the floors of the House of Delegates and Senate. The members  
126 of the House of Delegates and Senate may vote to amend the third proposal. The Senate and  
127 House of Delegates shall take a separate vote on any plans not approved in the first or second  
128 proposal. If any plans pass, they shall be presented to the Governor for his or her signature in the  
129 same manner as all pieces of legislation adopted by the Legislature.

130 (4) If any of the third proposal plans fail to obtain approval of the Senate, the House of  
131 Delegates and the Governor, then the first, second and third proposal plans that were not adopted  
132 shall be presented to the Supreme Court of Appeals. The Supreme Court of Appeals shall  
133 choose, by majority vote, between the three proposals from the Independent Redistricting  
134 Commission without any possibility of amending any of the three plans or incorporating any  
135 amendments that were proposed in the Senate or House of Delegates on the third proposal. The  
136 selection of the Supreme Court of Appeals shall be final, subject to judicial review, and the  
137 Legislature may not make any amendment to the final adopted plan until the Independent  
138 Redistricting Commission proposes new plans during the next year that ends in one.

139 (p) The provisions regarding this section are self-executing. The Independent  
140 Redistricting Commission shall certify to the Secretary of State that its proposals for district  
141 boundaries of congressional and legislative districts are in accordance with those constitutional  
142 and legal requirements and considerations as provided in this section.

143 (q) Each member of the Independent Redistricting Commission shall be reimbursed for all  
144 reasonable and necessary expenses incurred in the performance of his or her duties as a member  
145 of the commission and shall receive a per diem allowance equivalent to the per diem received by  
146 members of the Legislature for each full work day actually engaged in the performance of his or  
147 her duties as required by this section. Members shall keep expense vouchers and time sheets  
148 demonstrating dates and times in which they are engaged fulfilling required obligations as well as  
149 a description of the specific activity in which they are engaged. Seven hours of related work and



150 activity shall constitute payment for one day. Payment based on less than seven hours shall be  
151 prorated in an appropriate proportionate manner. The Legislature shall make the necessary  
152 appropriations by a majority vote to fund the activities of the Independent Redistricting  
153 Commission.

154 (r) The Independent Redistricting Commission, with fiscal oversight from the Department  
155 of Administration, shall have procurement and contracting authority and may hire staff and  
156 consultants in order to accomplish the purposes of this section.

157 (s) No elected or appointed office holder, lobbyist, official of a political party, or other  
158 person affiliated with an elected or appointed office holder, lobbyist or official of a political party,  
159 may influence or attempt to influence the district-mapping proposals of the Independent  
160 Redistricting Commission.

161 (t) Each commissioner's duties established by this section expire upon the completion of  
162 redistricting. The Independent Redistricting Commission may not meet or incur expenses after  
163 the proposed redistricting plan is completed, except if litigation or government approval of the plan  
164 is pending, or to revise districts if required by court decisions or if the number of congressional or  
165 legislative districts is changed.

NOTE: The purpose of this bill is to provide for an Independent Redistricting Commission to propose redistricting plans during census years. The commission consists of five members who are initially nominated by the State Election Commission. The actual appointments are made by the leaders of both houses of the Legislature and by the first four commission members selected. The commission's main task is to propose plans to the Legislature based on constitutional and legal requirements and considerations and which is removed from stark political aspirations or concerns. The bill provides that commission members receive remuneration and reimbursement of expenses associated with their work. The bill also requires that the commission publish their proposal to the public at large, fully address any legislator's questions before issuing a final draft proposal and submitting the plan to the full body of the Legislature for its action. The bill allows for multiple plans, if the Legislature or Governor reject a plan. The bill gives the Supreme Court of Appeals the final decision if the Legislature and Governor cannot agree on three potential plans.

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