

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4593

BY DELEGATE HIGGINBOTHAM

[Introduced January 29, 2020; Referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §3-1-5 and §3-1-30 of the Code of West Virginia, 1931, as amended,
2 all relating to authorizing the assignment of poll workers to serve more than one precinct
3 when those precinct polling places are located in the same building or facility.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

1 (a) The precinct is the basic territorial election unit. The county commission shall divide
2 each magisterial district of the county into election precincts, shall number the precincts, shall
3 determine and establish the boundaries thereof and shall designate one voting place in each
4 precinct, which place shall be established as nearly as possible at the point most convenient for
5 the voters of the precinct. Each magisterial district shall contain at least one voting precinct and
6 each precinct shall have but one voting place therein.

7 Each precinct within any urban center shall contain not less than three hundred nor more
8 than one thousand five hundred registered voters. Each precinct in a rural or less thickly settled
9 area shall contain not less than two hundred nor more than seven hundred registered voters. A
10 county commission may permit the establishment or retention of a precinct less than the minimum
11 numbers allowed in this subsection upon making a written finding that to do otherwise would
12 cause undue hardship to the voters. If, at any time the number of registered voters exceeds the
13 maximum number specified, the county commission shall rearrange the precincts within the
14 political division so that the new precincts each contain a number of registered voters within the
15 designated limits: *Provided*, That any precincts with polling places that are within a one mile radius
16 of each other on or after July 1, 2014, may be consolidated, at the discretion of the county clerk
17 and county commission into one or more new precincts that contain not more than three thousand
18 registered voters in any urban center, nor more than one thousand five hundred registered voters
19 in a rural or less thickly settled area: *Provided, however*, That no precincts may be consolidated

20 pursuant to this section if the consolidation would create a geographical barrier or path of travel
21 between voters in a precinct and their proposed new polling place that would create an undue
22 hardship to voters of any current precinct.

23 If a county commission fails to rearrange the precincts as required, any qualified voter of
24 the county may apply for a writ of mandamus to compel the performance of this duty: *Provided,*
25 That when in the discretion of the county commission, there is only one place convenient to vote
26 within the precinct and when there are more than seven hundred registered voters within the
27 existing precinct, the county commission may designate two or more precincts with the same
28 geographic boundaries and which have voting places located within the same building. The
29 county commission shall designate alphabetically the voters who are eligible to vote in each
30 precinct so created. Each precinct shall be operated separately and independently with separate
31 voting booths, ballot boxes, election commissioners and clerks, and whenever possible, in
32 separate rooms. No two of the precincts may use the same counting standard receiving board,
33 notwithstanding the provisions of §3-1-30(j) of this code.

34 (b) In order to facilitate the conduct of local and special elections and the use of election
35 registration records therein, precinct boundaries shall be established to coincide with the
36 boundaries of any municipality of the county and with the wards or other geographical districts of
37 the municipality except in instances where found by the county commission to be wholly
38 impracticable so to do. Governing bodies of all municipalities shall provide accurate and current
39 maps of their boundaries to the clerk of any county commission of a county in which any portion
40 of the municipality is located.

41 (c) To facilitate the federal and state redistricting process, precinct boundaries shall be
42 comprised of intersecting geographic physical features or municipal boundaries recognized by
43 the U. S. Census Bureau. For purposes of this subsection, geographic physical features include
44 streets, roads, streams, creeks, rivers, railroad tracks and mountain ridge lines. The county
45 commission of every county shall modify precinct boundaries to follow geographic physical

46 features or municipal boundaries and submit changes to the Joint Committee on Government and
47 Finance by June 30, 2007, and by June 30, every ten calendar years thereafter. The county
48 commission shall also submit precinct boundary details to the U.S. Census Bureau upon request.

49 (d) The county commission shall keep available at all times during business hours in the
50 courthouse at a place convenient for public inspection a map or maps of the county and
51 municipalities with the current boundaries of all precincts.

**§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;

15 (4) When an executive committee nominates qualified persons as poll clerks, election
16 commissioners or alternates, the committee, or its ~~chairman~~ chair or secretary on its behalf, shall
17 file in 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;

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;

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;

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 ~~(j)~~ (k) If an appointed election official fails to appear at the polling place by 45 minutes past
75 five o'clock a.m. on election day, the election officials present shall contact the office of the clerk
76 of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

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

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

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

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

NOTE: The purpose of this bill is to provide greater flexibility in the assignment of poll workers by allowing poll workers to serve up to three precincts when those precinct polling places are located within the same building.

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