

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965



ENROLLED

HOUSE BILL No. 862

(By Mr. Speaker, Mr. White)



PASSED March 12, 1965

In Effect from Passage



FILED IN THE OFFICE OF
JOE F. BARNETT
SECRETARY OF STATE
THIS DATE 3-19-65

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(By MR. SPEAKER, MR. WHITE)

[Passed March 12, 1965; in effect from passage.]

AN ACT to amend and reenact sections two, three, eighteen, twenty-eight and forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to definitions of certain terms as used in the West Virginia election code, persons entitled to vote in certain elections, elections to fill certain offices, election officials in certain elections, and compensation of election officials in certain elections, and providing that expenses of certain elections be borne by the state.

Be it enacted by the Legislature of West Virginia:

That sections two, three, eighteen, twenty-eight 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.

Section 2. Scope of Chapter; Definitions.—Unless restricted by the context, the provisions of this chapter shall apply to every general, primary, and special election in which candidates are nominated or elected or in which voters pass upon any public question submitted to them, except that the provisions hereof shall be construed to be operative in municipal elections only in those instances in which they are made expressly so applicable.

Unless the context clearly requires a different meaning, as herein used:

“Voter” shall mean any person who possesses the statutory and constitutional qualifications for voting;

“Election” shall mean the procedure whereby the voters of this state or any subdivision thereof elect persons to fill public offices, or elect members of a constitutional convention, or vote on public questions;

“Any election” or “all elections” shall include every general, primary, or special election held in this state, or in any of its subdivisions, for the purpose of nominating or electing federal or state officers, or county, city, town

22 or village officers of any subdivision now existing or
23 hereafter created, or for the purpose of electing members
24 of a constitutional convention, or for voting upon any
25 public question submitted to the people of the state or
26 any of the aforesaid subdivisions;

27 "Office" shall be construed to mean "public office"
28 which shall include (1) any elective office provided for
29 by the constitution or laws of the United States or of
30 this state to which a salary or other compensation
31 attaches, and (2) membership in a constitutional con-
32 vention;

33 "Candidates" shall mean any person to be voted for
34 at an election;

35 "Public question" shall mean any issue or proposition,
36 now or hereafter required by the governing body of this
37 state or any of its subdivisions to be submitted to the
38 voters of the state or subdivision for decision at elections.

Sec. 3. Persons Entitled to Vote.—Citizens of the state
2 shall be entitled to vote at all elections held within the
3 precincts of the counties and municipalities in which
4 they respectively reside. But no person who has not been

5 registered as a voter as required by law, or who is a
6 minor, or of unsound mind, or a pauper, or who is under
7 conviction of treason, felony or bribery in an election,
8 or who, in the case of state-county elections has not been
9 a bona fide resident of the state for one year and of the
10 county in which he offers to vote for sixty days next pre-
11 ceding such election, or who, in the case of a special elec-
12 tion to elect members to a constitutional convention, has
13 not been a bona fide resident of the state for one year and
14 of the county in which he offers to vote for sixty days next
15 preceding such election, or who in the case of municipal
16 elections has not been a bona fide resident of the state
17 for one year and of the municipality in which he offers
18 to vote for sixty days next preceding such election, shall
19 be permitted to vote at such election while such dis-
20 ability continues. Subject to the qualifications otherwise
21 prescribed in this section, however, a minor shall be per-
22 mitted to vote in a primary election if he will have
23 reached the age of twenty-one years on the date of the
24 general election next to be held after such primary elec-
25 tion.

Sec. 18. Election to Fill Other Offices.—If the legis-

2 lature shall hereafter create any elective office, or make
3 any office now filled by appointment an elective office,
4 in the state or in any subdivision thereof, the person to
5 fill the same shall be elected at the general election last
6 preceding the beginning of the term of such office.

7 The provisions of this section shall not apply to the
8 office of member or to the election of members of a con-
9 stitutional convention.

Sec. 28. Election Commissioners and Clerks; Appoint-

2 **ment and Notification; Vacancies; Authority to Adminis-**
3 **ter Oaths, etc.**—The county court of each county shall
4 hold a regular or special session at the courthouse of
5 the county on the first Tuesday of the month next pre-
6 ceding the date on which any election is to be held and
7 appoint three commissioners and two clerks to hold the
8 election in each precinct in the county. In primary and
9 general elections and in any special election in which
10 political party candidates are to be nominated or elected,
11 the election commissioners and clerks shall be selected
12 from the two political parties which at the last preceding

13 general election cast the highest and the second highest
14 number of votes in this state. For every precinct in
15 which there are three hundred, but not more than four
16 hundred, registered voters, there may be two boards of
17 election officers, and for all precincts in which there are
18 more than four hundred registered voters, there shall be
19 two boards of election officers, and where two boards are
20 used, each board shall consist of three election commis-
21 sioners and two poll clerks, one of which boards shall be
22 designated the "receiving board" and the other the "count-
23 ing board" and not more than two commissioners and
24 one poll clerk of each board shall be appointed from the
25 same political party: *Provided*, That for any special elec-
26 tion for the purpose of taking the sense of the voters
27 on the question of calling a constitutional convention,
28 and for any special election to elect members of a consti-
29 tutional convention, and for any special election to ratify
30 or reject the proposals, acts and ordinances of a consti-
31 tutional convention, there shall be but one board of elec-
32 tion officials in each precinct, consisting of three com-
33 missioners and two poll clerks. If, at any time before or

34 during the session of the county court, the county execu-
35 tive committee of either or both ^{of} the political parties,
36 from which commissioners and clerks of election are to
37 be selected, shall file with or present to the county court
38 a writing signed by them, or by the chairman or secretary
39 of such committee on their behalf, requesting the appoint-
40 ment of a member and of one clerk of each board of the
41 political party for which such committee, chairman or
42 secretary is acting, and designating persons who are quali-
43 fied under this article for such appointment for each elec-
44 tion precinct in the county, the county court shall ap-
45 point the persons so designated.

46 The county court shall by mail notify all commissioners
47 and poll clerks of their appointment, and include with
48 such notice an appropriate form for each person so ap-
49 pointed to return indicating whether or not he will serve
50 as such commissioner or poll clerk. It shall be the duty
51 of all persons so appointed to immediately return said
52 form to the county court. In the event any of the persons
53 so appointed refuse to serve as such commissioners or poll
54 clerks, the county court shall immediately notify the

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55 chairman of the county executive committee of the politi-
56 cal party from which such commissioners and poll clerks
57 are to be selected. The chairman of the political com-
58 mittee so notified shall recommend the person or persons
59 to be appointed to replace those declining to serve and
60 it shall be the duty of the county court to appoint the
61 person or persons so recommended.

62 If any person appointed receiving commissioner or
63 clerk of election shall fail to appear at the voting place
64 at the hour for opening the polls, the remaining commis-
65 sioner or commissioners of election of the political party
66 to which the absentee belongs shall select another com-
67 missioner or clerk, as the case may be, of such political
68 party. But if the qualified voters of his party present at
69 the polls shall nominate a voter of his party qualified to
70 act under the provisions of this section, such nominee
71 shall be appointed. If none of the receiving commis-
72 sioners of the election or poll clerks shall appear at the
73 voting place at the hour appointed for opening the polls,
74 the qualified voters present, being at least ten in number,
75 of the political party which cast the highest number of

76 votes in the county at the last preceding election, shall
77 select two commissioners and one clerk and those of the
78 political party which cast the next highest number of
79 votes in the county at such election shall select one com-
80 missioner and one clerk of the receiving board of such
81 precinct, and the persons so selected shall constitute the
82 receiving board for the precinct. A vacancy or vacancies
83 on the county ^{precinct} board shall be filled in the manner herein
84 provided for filling a vacancy or vacancies on the receiv-
85 ing board, except that such vacancy or vacancies shall be
86 determined and filled as of the hour appointed in this
87 chapter for the counting board to attend at the polls.
88 Any commissioner of election acting at any election pre-
89 cinct is hereby empowered and authorized to administer
90 oaths and to take and certify affidavits in relation to any
91 matter or thing required or permitted to be done by any
92 of the provisions of this article in conducting and holding
93 the election.

Sec. 44. Compensation of Election Officials; Expenses.—

2 Each ballot commissioner shall be allowed and paid a
3 sum, to be fixed by the county court, not exceeding

4 twenty dollars for each day he shall serve as such, but
5 in no case shall a ballot commissioner receive allowance
6 for more than ten days' services for any one primary,
7 general or special election. Each commissioner of elec-
8 tion and poll clerk shall be allowed and paid a sum, to
9 be fixed by the county court, not exceeding ten dollars
10 for one day's services for attending the school of instruc-
11 tions for election officials and a sum not exceeding twenty
12 dollars for his services at any one election: *Provided*,
13 That each commissioner of election and poll clerk shall be
14 paid and allowed a sum not exceeding ten dollars for his
15 services at any of the three special elections hereinafter
16 specified and described. The commissioners of election
17 obtaining and delivering the election supplies, as pro-
18 vided in section twenty-four of this article, and returning
19 them as provided in articles five and six of this chapter,
20 shall be allowed and paid an additional sum, likewise
21 fixed by the county court, not exceeding ten dollars for
22 all such services at any one election and, in addition, shall
23 be allowed and paid mileage at the rate of seven cents
24 per mile necessarily traveled in the performance of such

25 services. The compensation of election officers, cost of
26 printing ballots, and all other expenses incurred in hold-
27 ing and making the return of elections, other than the
28 three special elections hereinafter specified and described,
29 shall be audited by the county court and paid out of the
30 county treasury. The compensation of election officers,
31 cost of printing ballots, and all other reasonable and
32 necessary expenses in holding and making the return of
33 a special election for the purpose of taking the sense of
34 the voters on the question of calling a constitutional con-
35 vention, of a special election to elect members of a con-
36 stitutional convention, and of a special election to ratify
37 or reject the proposals, acts and ordinances of a constitu-
38 tional convention shall be obligations of the state incurred
39 by the ballot commissioners, clerks of the circuit courts,
40 clerks of the county courts, and county courts of the
41 various counties as agents of the state, and all such
42 expenses shall be audited by the secretary of state. The
43 secretary of state shall prepare and transmit to the county
44 courts forms on which the county courts shall certify
45 all such expenses of such special elections to the secre-

46 tary of state. If satisfied that such expenses as certified
47 by the county courts are reasonable and were neces-
48 sarily incurred, the secretary of state shall requisition
49 the necessary warrants from the auditor of the state to
50 be drawn on the state treasurer, and shall mail such
51 warrants directly to the vendors of such special election
52 services, supplies and facilities.

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

C. Rayfarber
Chairman Senate Committee

James W. Loop
Chairman House Committee

Originated in the House.

Takes effect from passage.

Thomas Meyer
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Harward W. Gaison
President of the Senate

H. Kahau White
Speaker House of Delegates

The within approved this the 19
day of March, 1965.

Herbert C. Smith
Governor

