

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967



ENROLLED

HOUSE BILL No. 809

(By Mr. Anderson)



PASSED February 25, 1967

In Effect per Passage



FILED IN THE OFFICE  
ROBERT D. BAILEY  
SECRETARY OF STATE  
THIS DATE 3-9-67

#809

**ENROLLED**

# House Bill No. 809

(By MR. ANDERSON)

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[Passed February 25, 1967; in effect from passage.]

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AN ACT to amend and reenact section one, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the employment and the appointment of deputies and local conservators of the peace and the compensation of sheriffs and deputies.

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

That section one, article three, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**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; removal of conservators.**

1 (a) (1) The clerk of the supreme court of appeals, or  
2 of any circuit, criminal, common pleas, intermediate or  
3 county court, or of any tribunal established by law in lieu  
4 thereof, may, with the consent of the court, or such tri-  
5 bunal, duly entered of record, appoint any person or per-  
6 sons his deputy or deputies.

7 (2) A sheriff, surveyor of lands, or assessor may, with  
8 the consent of the county court duly entered of record,  
9 appoint any person or persons his deputy or deputies.

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

15 (4) Each deputy so appointed shall take the same oath  
16 of office required of his principal, and may, during his  
17 continuance in office, perform and discharge any of the  
18 official duties of his principal, and any default or mis-

19 feaſance in office of the deputy ſhall conſtitute a breach  
20 of the conditions of the official bond of his principal.

21 (5) A ſheriff in any county in which there are more  
22 than four deputies ſhall devote his full time to the per-  
23 formance of the ſervices or duties required by law of  
24 ſuch ſheriff, and he ſhall not receive any compensation  
25 or reimbursement, directly or indirectly, from any per-  
26 ſon, firm or corporation for the performance of any  
27 private or public ſervices or duties: *Provided*, That any  
28 ſuch ſheriff may retain or make any investment and  
29 receive income therefrom, unleſs ſuch investment is  
30 otherwiſe prohibited by law or will impair his indepen-  
31 dence of judgment in the exerciſe of, or might reason-  
32 ably tend to conflict with the proper diſcharge of, the  
33 ſervices or duties of his office. A ſheriff in any county  
34 in which there are four or fewer deputies, or a deputy  
35 ſheriff in any county irrefpective of the number of  
36 deputies, need not devote his full time to the ſervices  
37 or duties of his office as ſheriff or his employment as  
38 deputy ſheriff, as the caſe may be; but any ſuch ſheriff  
39 or deputy ſheriff ſhall not engage in any buſineſs or

40 transaction, accept other employment or make any invest-  
41 ment which is otherwise prohibited by law or which  
42 will impair his independence of judgment in the exer-  
43 cise of, or might reasonably tend to conflict with the  
44 proper discharge of, the services or duties of his office  
45 as sheriff or his employment as deputy sheriff, as the  
46 case may be. A sheriff and his deputies in any county,  
47 irrespective of the number of deputies, shall receive for  
48 the performance of their public services and duties no  
49 compensation or remuneration except such as may be  
50 regularly provided and paid out of public funds to the  
51 amount and in the manner provided by law. No sheriff  
52 or deputy sheriff in any county, irrespective of the num-  
53 ber of deputies, may receive, directly or indirectly, any  
54 gift or donation from any person, firm or corporation.

55 (6) Except as hereinafter expressly provided by para-  
56 graph (subsection) (b) of this section no sheriff shall  
57 appoint or continue the appointment of any deputy con-  
58 trary to the provisions hereof. Any sheriff or deputy  
59 sheriff who shall violate any of the provisions of this  
60 section shall be guilty of a misdemeanor and upon con-

61 viction thereof shall be fined not less than five hundred  
62 dollars nor more than five thousand dollars, or confined  
63 in jail not to exceed one year, or both, in the discretion  
64 of the court.

65 (7) Circuit courts shall have jurisdiction in equity and  
66 mandamus, and the supreme court of appeals shall have  
67 jurisdiction in mandamus, upon the filing of a petition  
68 by the prosecuting attorney, the attorney general, or any  
69 three or more citizens of the county, to require any  
70 sheriff and the county court to vacate the appointment  
71 of any deputy, the appointment of which is made or  
72 continued in violation of the provisions hereof. Any such  
73 proceeding may be instituted and prosecuted by the  
74 attorney general either in the circuit court of Kanawha  
75 county or in the county for which such appointment was  
76 made.

77 (b) (1) Any resident or group of residents of any  
78 unincorporated community, as hereinafter defined, may  
79 petition the sheriff for the appointment of a local con-  
80 servator of the peace and such sheriff, when in his opinion  
81 the public interests require it, may with the assent of

82 said county court and the judge of the circuit court  
83 duly entered of record, either in term or vacation of any  
84 such court, appoint any person or persons a local con-  
85 servator or conservators of the peace to perform the  
86 duties of a conservator of the peace outside of any in-  
87 corporated city, town or villege. No person shall be ap-  
88 pointed such local conservator of the peace who has not  
89 been a bona fide resident and taxpayer of the county  
90 for at least one year prior to his appointment. Such local  
91 conservator of the peace during his continuance in  
92 office, may perform and discharge any of the official  
93 duties of the sheriff, subject nevertheless to the provi-  
94 sions of this section. No local conservator so appointed  
95 shall be subject to the direction or control of any per-  
96 son other than his principal, and he shall not perform  
97 any services or duties, either private or public, except  
98 the duties required by law of conservators of the peace  
99 pursuant to the provisions hereof, for any person, firm,  
100 or corporation. No such local conservator shall be en-  
101 titled to collect or receive any fees provided by law to  
102 be paid to the sheriff or to a deputy sheriff, but all fees

103 provided by law for the sheriff when such duties and  
104 services are rendered by such local conservator, shall  
105 be paid to the sheriff as regular collections of the sheriff's  
106 office. The local conservator shall be paid for the public  
107 services performed by him a salary of not less than  
108 seventy-five dollars per month out of the county treasury  
109 from a fund to be paid into such treasury by a resident  
110 or the residents of the community for which he is ap-  
111 pointed, for the sole purpose of compensating such local  
112 conservator or conservators, and no such local conser-  
113 vator shall receive any other compensation, directly or  
114 indirectly, from any person, firm, or corporation, for any  
115 private or public service, except the salary payable to  
116 him for his public services and duties and from such  
117 fund, except that he shall be entitled to witness and  
118 mileage fees when a witness in a court of record. Each  
119 local conservator so appointed shall take the same oath  
120 of office required of his principal and any default or  
121 misfeasance in the office of such local conservator shall  
122 constitute a breach of the conditions of the official bond  
123 of his principal.

124 (2) When the sheriff shall have been petitioned for  
125 the appointment of a local conservator and has deter-  
126 mined that the appointment is proper, he shall select  
127 the person whom he proposes to have appointed such  
128 conservator and shall notify the county court of the com-  
129 munity for which such conservator is to be appointed  
130 and the name of the person proposed for such appoint-  
131 ment. The county court shall thereupon cause notice  
132 that the sheriff has recommended the appointment of  
133 the person named as conservator for the community  
134 named to be published one time each week for two  
135 successive weeks in a newspaper of general circulation  
136 published in the county, and if there be no newspaper  
137 published in the county, then in any other newspaper  
138 published in the state having a general circulation in  
139 the county, and designating a day not less than five days  
140 after the last publication when the county court will  
141 act upon the petition and recommendation. Neither the  
142 county court nor the judge of the circuit court shall  
143 assent and approve the appointment of such local con-  
144 servator until such publication has been made. The costs

145 of the publication shall be paid by the person or persons  
146 petitioning for the appointment of the conservator.

147 No local conservator shall be appointed except it be  
148 made to appear to the satisfaction of the county court  
149 and the judge of the circuit court that because of the  
150 lack of sufficient funds, geographical location of the  
151 unincorporated community for which such conservator  
152 is to be appointed, or other good reason, the sheriff and  
153 his regular deputies and the constables of the county  
154 are not sufficient to afford proper local policing of such  
155 community and that the person or persons moving for  
156 the appointment of such local conservator have made  
157 satisfactory arrangements to compensate him for his  
158 services as such local conservator of the peace.

159 (3) Such local conservator of the peace shall have all  
160 the powers and duties of a regularly appointed deputy  
161 sheriff except that he shall not execute any civil proc-  
162 ess except such process as may be necessary to bring  
163 parties before the court in any action at law or suit in  
164 equity and subpoenas for witnesses within the unincor-  
165 porated community for which he is appointed and within

166 a distance of one mile outside the boundaries thereof,  
167 except as hereinafter expressly provided, but he shall  
168 not participate in any strike, unemployment boycott, or  
169 other industrial or labor dispute, nor serve any court  
170 process of any character relating thereto. He shall act  
171 as such local conservator only in the unincorporated  
172 community for which he is appointed, and within a dis-  
173 tance of one mile from the boundaries thereof as fixed  
174 by the county court: *Provided, however,* That the au-  
175 thority of one local conservator shall not extend into  
176 any other unincorporated community for which another  
177 local conservator is appointed and acting, except as other-  
178 wise expressly provided by clause (6) of this paragraph  
179 (subsection), except that in fresh pursuit he may effect  
180 arrests anywhere in the county. He may also exercise  
181 the powers of a regularly appointed deputy anywhere  
182 in the county when required to guard or assist in guard-  
183 ing a payroll, or any other property of value in transit.  
184 to or from the unincorporated community for which he  
185 is appointed. Any person arrested by such local con-  
186 servator shall, with all convenient speed, be turned over

187 to the sheriff, or one of his regular deputies, or to a  
188 regular constable of the county to be dealt with accord-  
189 ing to law, and his authority for that purpose shall be  
190 coextensive with the county.

191 (4) Any local conservator appointed to perform the  
192 duties of conservator of the peace shall be a public  
193 officer and the payment, or contribution to the payment  
194 of compensation of such local conservator shall not  
195 constitute the person, firm or corporation making such  
196 payment or contribution the employer of such local  
197 conservator and no person, firm or corporation paying, or  
198 contributing to the payment of compensation to such  
199 local conservator shall be answerable in law or in equity  
200 for any damages to person or property resulting from  
201 any official act of such local conservator.

202 (5) No person appointed such local conservator shall  
203 thereby be entitled to carry weapons, but such local con-  
204 servator may carry weapons when he shall be duly li-  
205 censed and shall have given bond as provided by section  
206 two, article seven, chapter sixty-one of the code of West  
207 Virginia, one thousand nine hundred thirty-one.

208 (6) Not more than one local conservator of the peace  
209 shall be appointed, to perform the duties of conservator  
210 of the peace, for each two thousand five hundred in-  
211 habitants of the county as ascertained by the last regular  
212 decennial census after deducting the number of inhabi-  
213 tants of the county residing in the incorporated cities,  
214 towns and villages in such county. Not more than one  
215 local conservator shall be appointed for any unincor-  
216 porated community unless the population thereof exceed  
217 fifteen hundred people and in such case not more than  
218 two conservators shall be appointed for such community.

219 (7) The phrase "unincorporated community" within  
220 the meaning of this section shall mean any center of  
221 population wherein three hundred or more persons reside  
222 within an area of not more than one square mile.

223 (8) The county court and the judge of the circuit court  
224 in approving the appointment of a local conservator shall  
225 enter of record an order making such appointment and  
226 shall show therein the necessity for the appointment, the  
227 person or persons on whose motion the appointment is  
228 made, the arrangement for the payment of compensa-

229 tion to such local conservator, the unincorporated com-  
230 munity, or communities, for which the appointment is  
231 made, including the general boundary of each unincor-  
232 porated community for which he is appointed.

233 (9) No local conservator shall act as an election offi-  
234 cial or remain in, about or near any voting place or place  
235 of political convention, further than is necessary for him  
236 to promptly cast his vote and retire from the voting place.

237 (10) Any local conservator violating any of the pro-  
238 visions of clauses (3) and (9) of this paragraph (sub-  
239 section) shall be guilty of a misdemeanor and, upon con-  
240 viction thereof, shall be fined not less than fifty dollars  
241 nor more than three hundred dollars, or be confined in  
242 the county jail not more than six months, or both, in  
243 the discretion of the court; and it shall be the duty of  
244 the sheriff and the county court to forthwith revoke his  
245 appointment irrespective of any criminal prosecution. A  
246 proceeding in mandamus or injunction shall lie in the  
247 circuit court and a proceeding in mandamus shall lie in  
248 the supreme court of appeals at the instance of the prose-  
249 cuting attorney, the attorney general, or of any three

250 or more citizens of the community for which such con-  
251 servator is appointed, to require the performance of such  
252 duty by the sheriff and the county court.

253 (11) Such local conservator shall serve during the joint  
254 will and pleasure of the sheriff and the county court and  
255 his appointment may be revoked by order entered of  
256 record by the county court either with or without the  
257 assignment of cause therefor.

258 A local conservator may be removed by the judge of  
259 the circuit court, either in term or vacation, for drunk-  
260 enness, gross immorality, incompetency, neglect of duty,  
261 or other good cause, upon the petition of three or more  
262 residents of the community for which he has been ap-  
263 pointed. The petition shall set forth the cause or causes  
264 for which such removal is asked and shall show that  
265 demand for removal has been made of the sheriff and the  
266 county court and that the sheriff and the county court  
267 have failed to remove the local conservator. At least  
268 three copies of the petition shall be filed, and upon the  
269 filing of the petition the judge shall fix a time and place  
270 for a hearing thereon, which time shall not be less than

271 ten days after the filing of the petition, and shall cause  
272 a copy thereof to be served upon the sheriff and such  
273 local conservator at least ten days before the hearing  
274 thereon.

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

William Tompaz  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the House.

Takes effect from passage.

Howard Myers  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

Howard B. Carson  
President of the Senate

H. Lavan Zelite  
Speaker House of Delegates

The within approved this the 8  
day of March, 1968.

Stuett C. Smith  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/7/67

Time 1:40pm