

RECEIVED

NOV 22 11 39 PM '71

OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1971

ENROLLED

SENATE BILL NO. 3

(By Mr. Hainer & Mr. Dillon)

PASSED November 4, 1971

In Effect from Passage



FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 11-22-71

3 - Vetoed

ENROLLED

Senate Bill No. 3

(By MR. GAINER and MR. DILLON)

[Passed November 4, 1971; in effect from passage.]

AN ACT to amend and reenact section one, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the division of the state into seventeen senatorial districts; providing that regardless of the changes made in district boundaries, the senators elected at the general elections held in the years one thousand nine hundred sixty-eight and one thousand nine hundred seventy shall continue to hold their offices as members of the Senate for the term, and as representatives of the senatorial district, for which each thereof, respectively, was elected; providing for the election of senators in the seventeenth senatorial districts established in said section; establishing certain county resi-

dency requirements when a county is contained with one or more other counties within more than one senatorial district, there being eleven such senatorial districts established in said section, all as related to senatorial representation ratio and an incumbent senator or incumbent senators; defining the term "senatorial representation ratio"; setting forth certain legislative findings; establishing provisions to avoid the possibility of more than the permissible number of persons from the same county being nominated for or elected or appointed to the Senate for any of said eleven senatorial districts; defining the terms "incumbent senator" and "incumbent senators"; relating to certificates of candidacy for nomination to the Senate in said eleven senatorial districts; relating to the selection of nominees in said eleven senatorial districts; relating to the selection under the supervision of the secretary of state of the specific district and the term for which nominated in said eleven senatorial districts; providing that in making such selection of the specific district and term, priority in choice shall be given to each nominee of both political parties in one direct sequence from the highest to the

lowest number of lawful votes cast for each nominee at the primary election; establishing provisions as to the nominees of opposite political parties who are to oppose one another in said eleven senatorial districts; providing special provisions applicable only to the primary and general elections to be held in the year one thousand nine hundred seventy-two with respect to certain of said eleven senatorial districts; providing special provisions with respect to the election of senators in said eleven senatorial districts; relating to the filling of a vacancy in a nomination or in the office of state senator in said eleven senatorial districts; authorizing the secretary of state to promulgate rules and regulations; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-1. Senatorial districts.

- 1 (a) The state shall consist of seventeen senatorial
- 2 districts as follows:

3 (1) The counties of Brooke, Doddridge, Hancock, Mar-
4 shall, Ohio, Tyler and Wetzel shall constitute the first
5 senatorial district.

6 (2) The counties of Brooke, Doddridge, Hancock, Mar-
7 shall, Ohio, Tyler and Wetzel shall constitute the second
8 senatorial district.

9 (3) The counties of Pleasants, Wirt and Wood shall
10 constitute the third senatorial district.

11 (4) The counties of Cabell, Jackson, Mason, Roane and
12 Wayne shall constitute the fourth senatorial district.

13 (5) The counties of Cabell, Jackson, Mason, Roane
14 and Wayne shall constitute the fifth senatorial district.

15 (6) The counties of Logan, McDowell, Mercer, Mingo
16 and Summers shall constitute the sixth senatorial district.

17 (7) The counties of Boone, Kanawha, Lincoln and
18 Putnam shall constitute the seventh senatorial district.

19 (8) The counties of Boone, Kanawha, Lincoln and
20 Putnam shall constitute the eighth senatorial district.

21 (9) The counties of Raleigh and Wyoming shall con-
22 stitute the ninth senatorial district.

23 (10) The counties of Logan, McDowell, Mercer, Mingo

24 and Summers shall constitute the tenth senatorial dis-
25 trict.

26 (11) The counties of Clay, Fayette, Greenbrier and
27 Monroe shall constitute the eleventh senatorial district.

28 (12) The counties of Braxton, Calhoun, Gilmer, Nich-
29 olas, Pocahontas, Randolph, Ritchie and Webster shall
30 constitute the twelfth senatorial district.

31 (13) The counties of Harrison, Lewis, Marion and
32 Monongalia shall constitute the thirteenth senatorial
33 district.

34 (14) The counties of Harrison, Lewis, Marion and
35 Monongalia shall constitute the fourteenth senatorial dis-
36 trict.

37 (15) The counties of Barbour, Grant, Hardy, Pendle-
38 ton, Preston, Taylor, Tucker and Upshur shall constitute
39 the fifteenth senatorial district.

40 (16) The counties of Berkeley, Hampshire, Jefferson,
41 Mineral and Morgan shall constitute the sixteenth sena-
42 torial district.

43 (17) The counties of Boone, Kanawha, Lincoln and
44 Putnam shall constitute the seventeenth senatorial dis-
45 trict.

46 (b) Regardless of the changes in district boundaries
47 made by the provisions of subsection (a) of this section,
48 the senators elected at the general elections held in the
49 years one thousand nine hundred sixty-eight and one
50 thousand nine hundred seventy shall continue to hold
51 their offices as members of the Senate for the term, and
52 as representatives of the senatorial district, for which
53 each thereof, respectively, was elected.

54 (c) One senator shall be elected at the general elec-
55 tion to be held in the year one thousand nine hundred
56 seventy-two from each of the senatorial districts described
57 in subsection (a) of this section for a term of four years,
58 and one senator shall be elected from each of the said
59 senatorial districts biennially thereafter for a term of
60 four years, but with the effect by virtue of the provisions
61 of subsection (b) and this subsection (c) of this section
62 that the Senate shall never at any time consist of more
63 than thirty-four members.

64 (d) Section four, article six of the Constitution of West
65 Virginia provides that where a senatorial district is com-
66 posed of more than one county, both senators for such

67 district shall not be chosen from the same county. Con-
68 sistent with and in furtherance of that rationale, when a
69 county is contained with one or more other counties
70 within more than one senatorial district, no more than
71 one person shall be chosen from such county as a senator
72 unless such county has more than one senatorial repre-
73 sentation ratio. For the purposes of this subsection (d),
74 the term "senatorial representation ratio" shall be
75 obtained by dividing the population of the state by the
76 total number of senatorial districts as constituted by the
77 provisions of subsection (a) of this section. The Legis-
78 lature recognizes (i) that the second and third sentences
79 of this subsection (d) would be applicable only to the
80 first and second, fourth and fifth, sixth and tenth, seventh,
81 eighth and seventeenth, and thirteenth and fourteenth
82 senatorial districts as said eleven senatorial districts are
83 constituted by the provisions of subsection (a) of this
84 section; (ii) that each of the counties contained within
85 the said first and second, sixth and tenth and thirteenth
86 and fourteenth senatorial districts has less than one
87 senatorial representation ratio, and, hence, under said

88 foregoing provisions of this subsection (d), more than
89 one person could not be chosen as a senator from any one
90 county contained within the said first and second, sixth
91 and tenth and thirteenth and fourteenth senatorial dis-
92 tricts; (iii) that of the counties contained within the said
93 fourth and fifth senatorial districts, only Cabell county
94 has more than one senatorial representation ratio, and,
95 hence, under said foregoing provisions of this subsection
96 (d), no more than two persons could be chosen as senators
97 from Cabell county; and (iv) that of the counties con-
98 tained within the seventh, eighth and seventeenth sena-
99 torial districts, only Kanawha county has more than two
100 senatorial representation ratios, and, hence, under said
101 foregoing provisions of this subsection (d), more than
102 one person could be chosen as a senator only from Ka-
103 nawha county. Consequently, subdivisions (1), (2), (3),
104 (4) and (5) of this subsection (d) are set forth to avoid
105 the possibility of more than the permissible number of
106 persons from the same county being nominated for or
107 elected or appointed to the Senate for any of the said
108 eleven senatorial districts listed at the beginning of this

109 subsection (d), only to be declared ineligible to sit as a
110 member of the Senate. As used in this subsection (d),
111 the terms "incumbent senator" or "incumbent senators"
112 shall mean any senator or senators elected at the general
113 election held in the year one thousand nine hundred
114 seventy or at any general election thereafter, with an
115 unexpired term of at least two years in duration.

116 (1) Notwithstanding any other provisions of this code
117 to the contrary, a certificate of candidacy for nomination
118 to the Senate filed by or for any person residing in any
119 county contained within the first or second senatorial
120 district as said senatorial districts are constituted by the
121 provisions of subsection (a) of this section shall be desig-
122 nated as a certificate of candidacy for the first-second
123 senatorial district. The two nominees of a political party
124 for the two four-year terms in these two senatorial dis-
125 tricts shall be the two candidates of that political party
126 who receive the highest number of lawful votes cast at
127 the primary election and who neither reside in the same
128 county as the other nor reside in the same county wherein
129 resides an incumbent senator: *Provided*, That if in addi-

130 tion to the two four-year terms, there is one or more
131 unexpired terms to be filled, the nominees of a political
132 party for the four-year terms and all unexpired terms in
133 these two senatorial districts shall be the candidates of
134 that political party equal to the total number of terms
135 to be filled who receive the highest number of lawful
136 votes cast at the primary election and who neither reside
137 in the same county as the other nor reside in the same
138 county wherein resides an incumbent senator. Within
139 fifteen days after certification of the results of any such
140 primary election to the secretary of state, the nominees
141 of the political parties for election to the Senate in these
142 said two senatorial districts shall appear in the secretary
143 of state's office and under his supervision designate in
144 writing the specific senatorial district, and term (either
145 a four-year term or an unexpired term, if there be any
146 unexpired term to be filled), for which each chooses to
147 be declared the nominee, priority in choice being given
148 to each nominee of both political parties in one direct
149 sequence from the highest to the lowest number of law-
150 ful votes cast for each nominee at the primary election,

151 thereby determining the nominees of opposite political
152 parties who will be the candidates for election to the
153 Senate for the first senatorial district and the nominees
154 of opposite political parties who will be the candidates
155 for election to the Senate for the second senatorial dis-
156 trict: *Provided, however,* That any nominees of opposite
157 political parties from the same county shall be designated
158 as candidates to oppose each other for election to the
159 Senate for the same senatorial district. The exact same
160 procedure as outlined in the foregoing provisions of this
161 subsection (d) shall be followed with respect to the
162 nomination, designation and election of candidates for
163 the Senate in the sixth and tenth and the thirteenth and
164 fourteenth senatorial districts, as said senatorial districts
165 are constituted by the provisions of subsection (a) of
166 this section.

167 (2) Notwithstanding any other provisions of this code
168 to the contrary, a certificate of candidacy for nomination
169 to the Senate filed by or for any person residing in any
170 county contained within the fourth or fifth senatorial
171 district as said senatorial districts are constituted by the

172 provisions of subsection (a) of this section shall be desig-
173 nated as a certificate of candidacy for the fourth-fifth
174 senatorial district. No nominee of a political party may
175 reside in a county having more than one senatorial
176 representation ratio if there are at the time residing in
177 such county two incumbent senators; no more than one
178 nominee of a political party may reside in a county having
179 more than one senatorial representation ratio if there is
180 at the time residing in such county an incumbent senator;
181 but otherwise both nominees of a political party may
182 reside in a county having more than one senatorial rep-
183 resentation ratio. Consequently, the two nominees of a
184 political party for the two four-year terms in these two
185 senatorial districts shall be the two candidates of that
186 political party who receive the highest number of lawful
187 votes cast at the primary election and who reside in a
188 county having more than one senatorial representation
189 ratio and who are eligible for election under the rationale
190 of the preceding sentence of this subdivision (2) or who
191 reside in a county having less than one senatorial repre-
192 sentation ratio and who neither reside in the same county

193 as the other nor reside in the same county wherein resides
194 an incumbent senator: *Provided further*, That if in addi-
195 tion to the two four-year terms, there is one or more
196 unexpired terms to be filled, the nominees of a political
197 party for the four-year terms and all unexpired terms in
198 these two senatorial districts shall be the candidates of
199 that political party equal to the total number of terms
200 to be filled who receive the highest number of lawful
201 votes cast at the primary election and who reside in a
202 county having more than one senatorial representation
203 ratio and who are eligible for election under the rationale
204 of the second sentence of this subdivision (2) or who
205 reside in a county having less than one senatorial repre-
206 sentation ratio and who neither reside in the same county
207 as the other nor reside in the same county wherein resides
208 an incumbent senator. Within fifteen days after certifica-
209 tion of the results of any such primary election to the
210 secretary of state, the nominees of the political parties
211 for election to the Senate in these said two senatorial
212 districts shall appear in the secretary of state's office and
213 under his supervision designate in writing the specific

214 senatorial district, and term (either a four-year term or
215 an unexpired term, if there be any unexpired term to be
216 filled), for which each chooses to be declared the nominee,
217 priority in choice being given to each nominee of both
218 political parties in one direct sequence from the highest
219 to the lowest number of lawful votes cast for each
220 nominee at the primary election, thereby determining the
221 nominees of opposite political parties who will be the
222 candidates for election to the Senate for the fourth sena-
223 torial district and the nominees of opposite political
224 parties who will be the candidates for election to the
225 Senate for the fifth senatorial district: *And provided fur-*
226 *ther*, That any nominees of opposite political parties from
227 the same county shall be designated as candidates to
228 oppose each other for election to the Senate for the same
229 senatorial district, except that the foregoing provisions
230 of this proviso shall be applied only to the extent neces-
231 sary to make certain that no more than a total of two
232 persons from a county having more than one senatorial
233 representation ratio could serve in the Senate at the same
234 time.

235 (3) Notwithstanding any other provisions of this code
236 to the contrary, a certificate of candidacy for nomination
237 to the Senate filed by or for any person residing in any
238 county contained within the seventh, eighth or seven-
239 teenth senatorial district as said senatorial districts are
240 constituted by the provisions of subsection (a) of this
241 section shall be designated as a certificate of candidacy
242 for the seventh-eighth-seventeenth senatorial district. No
243 nominee of a political party may reside in a county having
244 more than two senatorial representation ratios if there
245 is at the time residing in such county three incumbent
246 senators; no more than one nominee of a political party
247 may reside in a county having more than two senatorial
248 representation ratios if there is at the time residing in
249 such county two incumbent senators; no more than two
250 nominees of a political party may reside in a county
251 having more than two senatorial representation ratios if
252 there is at the time residing in such county one incumbent
253 senator; but otherwise all three nominees may reside in
254 a county having more than two senatorial representation
255 ratios. Consequently, the three nominees of a political

256 party for the three four-year terms in these three sena-
257 torial districts shall be the three candidates of that politi-
258 cal party who receive the highest number of lawful votes
259 cast at the primary election and who reside in a county
260 having more than two senatorial representation ratios
261 and who are eligible for election under the rationale of
262 the preceding sentence of this subdivision (3) or who
263 reside in a county having less than one senatorial repre-
264 sentation ratio and who neither reside in the same county
265 with one or the other nor reside in the same county
266 wherein resides an incumbent senator (except any in-
267 cumbent senator residing in a county having less than
268 one senatorial representation ratio, but this exception
269 shall be applicable only for the primary and general
270 elections to be held in the year one thousand nine hundred
271 seventy-two): *Provided*, That if in addition to the three
272 four-year terms, there is one or more unexpired terms to
273 be filled, the nominees of a political party for the four-
274 year terms and all unexpired terms in these said three
275 senatorial districts shall be the candidates of that political
276 party equal to the total number of terms to be filled

277 who receive the highest number of lawful votes cast at
278 the primary election and who reside in a county having
279 more than two senatorial representation ratios and who
280 are eligible for election under the rationale of the second
281 sentence of this subdivision (3) or who reside in a county
282 having less than one senatorial representation ratio and
283 who neither reside in the same county with one or the
284 other nor reside in the same county wherein resides an
285 incumbent senator (except any incumbent senator re-
286 siding in a county having less than one senatorial repre-
287 sentation ratio, but this exception shall be applicable
288 only for the primary and general elections to be held in
289 the year one thousand nine hundred seventy-two): *Pro-*
290 *vided, however,* That in view of the fact that said three
291 senatorial districts contain only four counties and in
292 view of the provisions of said section four, article six of
293 the Constitution of West Virginia, there must always be
294 on and after December one, one thousand nine hundred
295 seventy-four at least and not more than a total of three
296 persons from any county having more than two sena-
297 torial representation ratios serving in the Senate for the

298 said seventh, eighth and seventeenth senatorial districts
299 as said districts are constituted by the provisions of sub-
300 section (a) of this section. Within fifteen days after
301 certification of the results of any such primary election
302 to the secretary of state, the nominees of the political
303 parties for election to the Senate in these said three
304 senatorial districts shall appear in the secretary of state's
305 office and under his supervision designate in writing the
306 specific senatorial district, and term (either a four-year
307 term or an unexpired term, if there be any unexpired
308 term to be filled), for which each chooses to be declared
309 the nominee, priority in choice being given to each
310 nominee of both political parties in one direct sequence
311 from the highest to the lowest number of lawful votes
312 cast for each nominee at the primary election, thereby
313 determining the nominees of opposite political parties
314 who will be the candidates for election to the Senate for
315 the seventh senatorial district, the nominees of opposite
316 political parties who will be the candidates for election
317 to the Senate for the eighth senatorial district and the
318 nominees of opposite political parties who will be the

319 candidates for election to the Senate for the seventeenth
320 senatorial district: *And provided further*, That any nom-
321 inees of opposite political parties from the same county
322 shall be designated as candidates to oppose each other
323 for election to the Senate for the same senatorial district
324 except that the foregoing provisions of this proviso shall
325 be applied only to the extent necessary to make certain
326 that no less and no more than a total of three persons
327 from any county having more than two senatorial repre-
328 sentation ratios could serve in the Senate at the same
329 time.

330 (4) Any vacancy in a nomination shall be filled, and
331 any appointment to fill a vacancy in the office of state
332 senator shall be made, with respect to any of the said
333 eleven senatorial districts listed at the beginning of this
334 subsection (d) so as to be consistent with the provisions
335 of this subsection (d).

336 (5) The secretary of state may promulgate rules and
337 regulations to implement the provisions of this section.

338 (e) If any provision of this section or the application
339 thereof to any person or circumstance is held invalid,

340 such invalidity shall not affect other provisions or ap-
341 plications of the section, and to this end the provisions of
342 this section are declared to be severable.

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

Russell G. Beane
Chairman Senate Committee

Phyllis J. Rutledge
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Thomas Myers
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

Ernest G. Smith
President of the Senate

Lewis F. R. Thorne
Speaker House of Delegates

The within disapproved this the 22nd
day of November, 1971.

W. A. Thorne Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 11/9/71

Time 1:10 p.m.