

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1971



## ENROLLED

HOUSE BILL No. 1182

(By Mr. McKenzie and Mr. Scott)



PASSED March 13 1971

In Effect from Passage



FILED IN THE OFFICE  
JOHN D. ROCKEFELLER, IV  
SECRETARY OF STATE  
THIS DATE 4-2-71

1182

**ENROLLED**  
**House Bill No. 1182**

(By MR. McKENZIE and MR. SCOTT)

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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 appointment of deputy sheriffs and conservators of the peace; their duties and compensation.

*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; vacating appointment of deputy sheriff; removal of conservators.**

- 1     (a)   (1) The clerk of the supreme court of appeals,  
2 or of any circuit, criminal, common pleas, intermediate

3 or county court, or of any tribunal established by law  
4 in lieu thereof, may, with the consent of the court,  
5 or such tribunal, duly entered of record, appoint any  
6 person or persons his deputy or deputies.

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

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

16 (4) Each deputy so appointed shall take the same  
17 oath of office required of his principal, and may, dur-  
18 ing his continuance in office, perform and discharge  
19 any of the official duties of his principal, and any de-  
20 fault or misfeasance in office of the deputy shall con-  
21 stitute a breach of the conditions of the official bond of  
22 his principal.

23 (5) A sheriff in any county in which there are more  
24 than four deputies shall devote his full time to the

25 performance of the services or duties required by law  
26 of such sheriff, and he shall not receive any compen-  
27 sation or reimbursement, directly or indirectly, from  
28 any person, firm or corporation for the performance  
29 of any private or public services or duties: *Provided*,  
30 That any such sheriff may retain or make any invest-  
31 ment and receive income therefrom, unless such in-  
32 vestment is otherwise prohibited by law or will im-  
33 pair his independence of judgment in the exercise of,  
34 or might reasonably tend to conflict with the proper  
35 discharge of, the services or duties of his office. A  
36 sheriff in any county in which there are four or fewer  
37 deputies, or a deputy sheriff in any county irrespec-  
38 tive of the number of deputies, need not devote his  
39 full time to the services or duties of his office as sheriff  
40 or his employment as deputy sheriff, as the case may  
41 be; but any such sheriff or deputy sheriff shall not  
42 engage in any business or transaction, accept other  
43 employment or make any investment which is other-  
44 wise prohibited by law or which will impair his in-  
45 dependence of judgment in the exercise of, or might

46 reasonably tend to conflict with the proper discharge  
47 of, the services or duties of his office as sheriff or his  
48 employment as deputy sheriff, as the case may be. A  
49 sheriff and his deputies in any county, irrespective of  
50 the number of deputies, shall receive for the perfor-  
51 mance of their public services and duties no com-  
52 pensation or remuneration except such as may be reg-  
53 ularly provided and paid out of public funds to the  
54 amount and in the manner provided by law. No sheriff  
55 or deputy sheriff in any county, irrespective of the  
56 number of deputies, may receive, directly or indirectly,  
57 any gift or donation from any person, firm or corpora-  
58 tion.

59 (6) Except as hereinafter expressly provided by sub-  
60 section (b) of this section no sheriff shall appoint or  
61 continue the appointment of any deputy contrary to  
62 the provisions hereof. Any sheriff or deputy sheriff  
63 who shall violate any of the provisions of this section  
64 shall be guilty of a misdemeanor, and, upon conviction  
65 thereof, shall be fined not less than five hundred nor  
66 more than five thousand dollars, or confined in jail

67 not to exceed one year, or both, in the discretion of  
68 the court.

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

81 (b) (1) Any resident or group of residents of any  
82 unincorporated community, as hereinafter defined, may  
83 petition the sheriff for the appointment of a local con-  
84 servator of the peace and such sheriff, when in his  
85 opinion the public interests require it, may with the  
86 assent of said county court and the judge of the circuit  
87 court duly entered of record, either in term or vacation

88 of any such court, appoint any person or persons a local  
89 conservator or conservators of the peace to perform  
90 the duties of a conservator of the peace outside of  
91 any incorporated city, town or village. No person shall  
92 be appointed such local conservator of the peace who  
93 has not been a bona fide resident and taxpayer of the  
94 county for at least one year prior to his appointment.  
95 Such local conservator of the peace during his con-  
96 tinuance in office, may perform and discharge any  
97 of the official duties of the sheriff, subject neverthe-  
98 less to the provisions of this section. No local con-  
99 servator so appointed shall be subject to the direction  
100 or control of any person other than his principal and  
101 he shall not perform any services or duties, either  
102 private or public, except the duties required by law  
103 of conservators of the peace pursuant to the provisions  
104 hereof, for any person, firm, or corporation. No such  
105 local conservator shall be entitled to collect or receive  
106 any fees provided by law to be paid to the sheriff  
107 or to a deputy sheriff, but all fees provided by law  
108 for the sheriff, when such duties and services are ren-

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

129 (2) When the sheriff shall have been petitioned for  
130 the appointment of a local conservator and has de-



131 terminated that the appointment is proper, he shall select  
132 the person whom he proposes to have appointed such  
133 conservator and shall notify the county court of the  
134 community for which such conservator is to be ap-  
135 pointed and the name of the person proposed for such  
136 appointment. The county court shall thereupon cause  
137 notice that the sheriff has recommended the appoint-  
138 ment of the person named as conservator for the com-  
139 munity named to be published as a Class II legal ad-  
140 vertisement in compliance with the provisions of article  
141 three, chapter fifty-nine of this code, and the publi-  
142 cation area for such publication shall be the county.  
143 The notice shall designate a day not less than five days  
144 after the date of the last publication when the county  
145 court will act upon the petition and recommendation.  
146 Neither the county court nor the judge of the circuit  
147 court shall assent and approve the appointment of such  
148 local conservator until such publication has been made.  
149 The costs of the publication shall be paid by the per-  
150 son or persons petitioning for the appointment of the  
151 conservator.

152 No local conservator shall be appointed except it  
153 be made to appear to the satisfaction of the county  
154 court and the judge of the circuit court that because  
155 of the lack of sufficient funds, geographical location  
156 of the unincorporated community for which such con-  
157 servator is to be appointed, or other good reason, the  
158 sheriff and his regular deputies and the constables  
159 of the county are not sufficient to afford proper local  
160 policing of such community and that the person or  
161 persons moving for the appointment of such local con-  
162 servator have made satisfactory arrangements to com-  
163 pensate him for his services as such local conservator of  
164 the peace.

165 (3) Such local conservator of the peace shall have  
166 all the powers and duties of a regularly appointed  
167 deputy sheriff except that he shall not execute any  
168 civil process except such process as may be necessary  
169 to bring parties before the court in any action at law  
170 or suit in equity and subpoenas for witnesses within  
171 the unincorporated community for which he is appointed  
172 and within a distance of one mile outside the boun-

173 daries thereof, except as hereinafter expressly pro-  
174 vided, but he shall not participate in any strike, un-  
175 employment boycott, or other industrial or labor dispute,  
176 nor serve any court process of any character relating  
177 thereto. He shall act as such local conservator only  
178 in the unincorporated community for which he is ap-  
179 pointed, and within a distance of one mile from the  
180 boundaries thereof as fixed by the county court: *Pro-*  
181 *vided, however,* That the authority of one local con-  
182 servator shall not extend into any other unincorporated  
183 community for which another local conservator is ap-  
184 pointed and acting, except as otherwise expressly pro-  
185 vided by subdivision (6) of this subsection, except  
186 that in fresh pursuit he may affect arrests anywhere in  
187 the county. He may also exercise the powers of a  
188 regularly appointed deputy anywhere in the county  
189 when required to guard or assist in guarding a pay-  
190 roll, or any other property of value in transit to or  
191 from the unincorporated community for which he is  
192 appointed. Any person arrested by such local con-  
193 servator shall, with all convenient speed, be turned

194 over to the sheriff, or one of his regular deputies,  
195 or to a regular constable of the county to be dealt  
196 with according to law, and his authority for that pur-  
197 pose shall be coextensive with the county.

198     (4) Any local conservator appointed to perform  
199 the duties of conservator of the peace shall be a public  
200 officer and the payment, or contribution to the pay-  
201 ment of compensation of such local conservator shall  
202 not constitute the person, firm or corporation making  
203 such payment or contribution the employer of such  
204 local conservator and no person, firm or corporation  
205 paying, or contributing to the payment of compensa-  
206 tion to such local conservator shall be answerable  
207 in law or in equity for any damages to person or prop-  
208 erty resulting from any official act of such local con-  
209 servator.

210     (5) No person appointed such local conservator shall  
211 thereby be entitled to carry weapons, but such local  
212 conservator may carry weapons when he shall be duly  
213 licensed and shall have given bond as provided by  
214 section two, article seven, chapter sixty-one of the

215 code of West Virginia, one thousand nnie hundred thirty-  
216 one.

217 (6) Not more than one local conservator of the peace  
218 shall be appointed, to perform the duties of conservator  
219 of the peace, for each two thousand five hundred in-  
220 habitants of the county as ascertained by the last reg-  
221 ular decennial census after deducting the number of  
222 inhabitants of the county residing in the incorporated  
223 cities, towns and villages in such county. Not more  
224 than one local conservator shall be appointed for any  
225 unincorporated community unless the population thereof  
226 exceed fifteen hundred people and in such case not  
227 more than two conservators shall be appointed for  
228 such community.

229 (7) The phrase "unincorporated community" within  
230 the meaning of this section shall mean any center of  
231 population wherein fifty or more persons reside within  
232 an area of not more than one square mile.

233 (8) The county court and the judge of the cricuit  
234 court in approving the appointment of a local conser-  
235 vator shall enter of record an order making such ap-

236 pointment and shall show therein the necessity for the  
237 appointment, the person or persons on whose motion  
238 the appointment is made, the arrangement for the  
239 payment of compensation to such local conservator, the  
240 unincorporated community or communities, for which  
241 the appointment is made, including the general boun-  
242 dary of each unincorporated community for which he  
243 is appointed.

244 (9) No local conservator shall act as an election  
245 official or remain in, about or near any voting place  
246 or place of political convention, further than is neces-  
247 sary for him to promptly cast his vote and retire from  
248 the voting place.

249 (10) Any local conservator violating any of the pro-  
250 visions of subdivisions (3) and (9) of this subsection  
251 shall be guilty of a misdemeanor, and, upon conviction  
252 thereof, shall be fined not less than fifty nor more  
253 than three hundred dollars, or be confined in the county  
254 jail not more than six months, or both, in the discre-  
255 tion of the court; and it shall be the duty of the sheriff  
256 and the county court to forthwith revoke his appoint-

257 ment irrespective of any criminal prosecution. A pro-  
258 ceeding in mandamus or injunction shall lie in the  
259 circuit court and a proceeding in mandamus shall lie  
260 in the supreme court of appeals at the instance of the  
261 prosecuting attorney, the attorney general, or of any  
262 three or more citizens of the community for which such  
263 conservator is appointed, to require the performance of  
264 such duty by the sheriff and the county court.

265 (11) Such local conservator shall serve during the  
266 joint will and pleasure of the sheriff and the county  
267 court and his appointment may be revoked by order  
268 entered of record by the county court either with or  
269 without the assignment of cause therefor.

270 A local conservator may be removed by the judge of  
271 the circuit court, either in term or vacation, for drunk-  
272 enness, gross immorality, incompetence, neglect of duty,  
273 or other good cause, upon the petition of three or more  
274 residents of the community for which he has been ap-  
275 pointed. The petition shall set forth the cause or causes  
276 for which such removal is asked and shall show that  
277 demand for removal has been made of the sheriff and

278 the county court and that the sheriff and the county  
279 court have failed to remove the local conservator. At  
280 least three copies of the petition shall be filed, and upon  
281 the filing of the petition the judge shall fix a time and  
282 place for a hearing thereon, which time shall not be less  
283 than ten days after the filing of the petition, and shall  
284 cause a copy thereof to be served upon the sheriff and  
285 such local conservator at least ten days before the hear-  
286 ing thereon.



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

Russell J. Beall  
Chairman Senate Committee

Phyllis J. Rutledge  
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

E. Hans McEwen  
President of the Senate

Lewis N. McManus  
Speaker House of Delegates

The within approved this the 1st  
day of April, 1971.

Archd. Shaver Jr.  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/22/71

Time 12 noon

RECEIVED

APR 2 11 55 PM '71

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA