WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2876

(By Delegates Mahan, Smirl, C. White, Coleman and Craig)

Passed April 14, 2001

In Effect Ninety Days from Passage
AN ACT to amend and reenact sections twenty-eight, twenty-nine, thirty and forty-four, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to election officials; allowing a person registered within the county where a municipality lies to serve as an election official in a municipal election; eliminating the eligibility restriction against persons who have served as deputy sheriffs within six months prior to an election; eliminating the requirement that a person be registered as affiliated with the political party which nominates that person as an election official; reducing the number of election officials in a standard receiving board for municipal elections; and increasing the authorized maximum amount of compensation for election officials.

Be it enacted by the Legislature of West Virginia:
That sections twenty-eight, twenty-nine, thirty 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.

§3-1-28. Election officials; eligibility, suspension of eligibility.

(a) To be eligible to be appointed or serve as an election official in any state, county or municipal election held in West Virginia, a person:

1. Must be a registered voter of the county for elections held throughout the county, and a registered voter of the municipality for elections held within the municipality; 

Provided, That if the required number of persons eligible to serve as election officials for a municipal election are not available or are not willing to serve as election officials for a municipal election, a registered voter of the county in which the municipality is located may serve as an election official for elections held within the municipality.

2. Must be able to read and write the English language;

3. May not be a candidate on the ballot in the election;

4. May not be the parent, child, sibling or spouse of a candidate on the ballot in the precinct where the official serves;

5. May not be a person prohibited from serving as an election official pursuant to any other federal or state statute; and

6. May not have been previously convicted of a violation of any election law.

(b) The county commission may, upon majority vote, suspend the eligibility to serve as election official in any election for four years, for the following reasons:
(1) Failure to appear at the polling place at the designated time without proper notice and just cause;

(2) Failure to perform the duties of an election official as required by law;

(3) Improper interference with a voter casting a ballot, or violating the secrecy of the voter's ballot;

(4) Being under the influence of alcohol or drugs while serving as an election official; or

(5) Having anything wagered or bet on an election.

(c) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for two years, upon petition of twenty-five registered voters of the precinct where the official last served and upon presentation of evidence of any of the grounds set forth in subsection (b) of this section: Provided, That the petition requesting the suspension of the election official is filed with the county commission at least ninety days prior to an election date. The names of those persons signing the petition must be kept confidential.

§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.

(a) For the purpose of this article:

(1) The term “standard receiving board” means those election officials charged with conducting the process of voting within a precinct and consists of five persons, including one team of poll clerks, one team of election commissioners for the ballot box and one additional election commissioner: Provided, That if a municipal election is held at a time when there is no county or state election, then the standard receiving board is to
consist of four persons, including one team of poll clerks and one team of election commissioners for the ballot box.

(2) The term “expanded receiving board” means a standard receiving board as defined in subdivision (1) of this subsection and one additional team of poll clerks;

(3) The term “counting board” means those election officials charged with counting the ballots at the precinct in counties using paper ballots and includes one team of poll clerks, one team of election commissioners and one additional commissioner; and

(4) The term “team of poll clerks” or “team of election commissioners” means two persons appointed by opposite political parties to perform the specific functions of the office: Provided, That no team of poll clerks or team of election commissioners may consist of two persons with the same registered political party affiliation or two persons registered with no political party affiliation.

(b) The composition of boards of election officials shall be as follows:

(1) In any primary, general or special election other than a presidential primary or presidential general election, each election precinct is to have one standard receiving board;

(2) In presidential primary and presidential general elections, each election precinct is to have one receiving board, as follows:

(A) For precincts of less than five hundred registered voters, one standard receiving board;

(B) For precincts of five hundred to seven hundred registered voters, one standard receiving board or, at the discretion of the county commission, one expanded receiving board; and
(C) For precincts of more than seven hundred registered voters, one expanded receiving board;

(3) In any election conducted using paper ballots, counting boards may be allowed, disallowed or required as follows:

(A) For any state, county or municipal special election, no counting board may be allowed;

(B) In a statewide primary or general election, one counting board is required for any precinct of more than four hundred registered voters, and one counting board may be allowed, at the discretion of the county commission for any precinct of at least two hundred but no more than four hundred registered voters; and

(C) In a municipal primary or general election, one counting board may be allowed, at the discretion of the municipal governing body for any precinct of more than two hundred registered voters.

(c) For each primary and general election in the county, the county commission shall designate the number and type of election boards for the various precincts according to the provisions of this section. At least eighty-four days before each primary and general election, the county commission shall notify the county executive committees of the two major political parties in writing of the number of nominations which may be made for poll clerks and election commissioners.

(d) For each municipal election, the governing body of the municipality shall perform the duties of the county commission as provided in this section.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.
(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee may also nominate as many qualified persons as alternates as there are precincts in the county, to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chairman or secretary on their behalf, shall file in writing with the appointing body, no later than the fifty-sixth day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;
(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials; or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) The board of education for any special election ordered by the board of education conducted apart from any other election;

(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The appropriate governing body shall appoint the election officials for each designated election board no later than the forty-ninth day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed;

(2) The governing body shall fill any positions for which no nominations were filed.

(e) At the same time as the appointment of election officials, or at a subsequent meeting, the governing body shall appoint persons as alternates: Provided, That no alternate may be eligible for compensation for election training unless the
alternate is subsequently appointed as an election official, or is
instructed to attend and actually attends training as an alternate
and, if called to do so, also serves at the polls on election day.
Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive commit-
tees, shall be appointed;

(2) The governing body may appoint additional alternates,
who may be called upon to fill vacancies after all alternates
designated by the executive committees have been assigned,
have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of
persons who may be instructed to attend training as alternates.

(f) The clerk of the county commission shall appoint
qualified persons to fill all vacancies existing after all previ-
ously appointed alternates have been assigned, have declined to
serve or have failed to attend training.

(g) Within seven days following appointment, the clerk of
the county commission shall notify, by first-class mail, all
election commissioners, poll clerks and alternates of the fact of
their appointment, and include with the notice a response notice
form for the appointed person to return indicating whether or
not he or she agrees to serve in the specified capacity in the
election.

(h) The position of any person notified of appointment who
fails to return the response notice or otherwise confirm to the
clerk of the county commission his or her agreement to serve
within fourteen days following the date of appointment is
considered vacant and the clerk shall proceed to fill the vacan-
cies according to the provisions of this section.

(i) If an appointed election official fails to appear at the
polling place by forty-five minutes past five o’clock a.m. on
election day, the election officials present shall contact the
office of the clerk of the county commission for assistance in filling the vacancy and the clerk shall proceed as follows:

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

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

(3) If two teams of election officials, as defined in section twenty-nine of this article, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

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

§3-1-44. Compensation of election officials; expenses.

(a) Each ballot commissioner is to be paid a sum, to be fixed by the county commission, not exceeding one hundred and twenty-five dollars for each day he or she serves as ballot commissioner, but, in no case may a ballot commissioner receive allowance for more than ten days’ services for any one primary, general or special election.

(b) Each commissioner of election and poll clerk is to be paid a sum, to be fixed by the county commission, not exceed-
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...ing one hundred and twenty-five dollars for one day's services
for attending the school of instruction for election officials if
the commissioner or poll clerk provides at least one day's
service during an election and a sum not exceeding one hundred
seventy-five dollars for his or her services at any one election:
Provided, That each commissioner of election and poll clerk is
to be paid a sum not exceeding one hundred seventy-five
dollars for his or her services at any of the three special
elections described in subsection (e) of this section.

(c) The commissioners of election obtaining and delivering
the election supplies, as provided in section twenty-four of this
article, and returning them as provided in articles five and six
of this chapter, is to be paid an additional sum, fixed by the
county commission, not exceeding one hundred twenty-five
dollars for his or her services pursuant to this subsection at any
one election and, in addition, is to be paid mileage up to the rate
of reimbursement authorized per mile as set by the travel
management office of the department of administration per mile
necessarily traveled in the performance of his or her services.
The rate paid for mileage pursuant to this section may change
from time to time in accordance with changes in the reimburse-
ment rates established by the travel management office, or its
successor agency.

(d) The compensation of election officers, cost of printing
ballots and all other expenses incurred in holding and making
the return of elections, other than the three special elections
described in subsection (e) of this section, is to be audited by
the county commission and paid out of the county treasury.

(e) The compensation of election officers, cost of printing
ballots and all other reasonable and necessary expenses in
holding and making the return of a special election for the
purpose of taking the sense of the voters on the question of
calling a constitutional convention, of a special election to elect
members of a constitutional convention, and of a special
election to ratify or reject the proposals, acts and ordinances of
a constitutional convention are obligations of the state incurred
by the ballot commissioners, clerks of the circuit courts, clerks
of the county commissions and county commissions of the
various counties as agents of the state, and all expenses of these
special elections are to be audited by the secretary of state. The
secretary of state shall prepare and transmit to the county
commissions forms on which the county commissions shall
certify all expenses of these special elections to the secretary of
state. If satisfied that the expenses as certified by the county
commissions are reasonable and were necessarily incurred, the
secretary of state shall requisition the necessary warrants from
the auditor of the state to be drawn on the state treasurer, and
shall mail the warrants directly to the vendors of the special
election services, supplies and facilities.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 30th day of April, 2001.

Governor