

**WEST VIRGINIA LEGISLATURE**  
**Joint Committee on Government and Finance**

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Date: January 9, 2012  
 To: Legislative Post Audits Subcommittee  
 From: Aaron Allred, Legislative Auditor  
 Stacy L. Sneed, Director  
 Subject: May 14, 2011 Special Primary Election Day

It came to our attention some higher education institutions chose to observe the Saturday, May 14, 2011 Special Primary Election Day as a holiday on an alternate date. The Division mailed letters to all 22 higher education institutions requesting they provide us with a response regarding whether or not their respective institution observed the Election Day as a holiday. If the institution did observe this day as a holiday, we asked the institutions if they observed the holiday on a different date, if their employees were allowed to float the holiday to a date of their choosing, or if their employees were paid for the holiday. Additionally, if the institutions either permitted employees to observe the holiday on another date or paid its employees for the holiday, we asked the institutions if this employee benefit was awarded to all employees or only those employees who were scheduled to and did work on May 14. All schools replied and their responses are as follows\*:

FLOATED TO A SPECIFIC DATE			EMPLOYEES CHOSE FLOAT DATE			Certain Saturday Employees Paid or Given Comp Time
Name of School	Applied to All Employees	Applied to Holiday Eligible Employees	Name of School	Applied to Leave Eligible Employees	Applied to Saturday Employees	
Bluefield	X		Potomac	X		Fairmont
Blue Ridge CTC	X		WVU	X		Pierpont CTC
Concord	X		WVU Parkersburg	X		
Eastern CTC	X		WVUIT	X		
Mountwest CTC	X		Marshall University		X	
New River CTC		X				
Northern CTC	X					
Osteopathic School	X					
Shepherd	X					
West Liberty	X					
WV State U	X					

\*Bridgemont Community and Technical College, Glenville State College, Kanawha Valley Community and Technical College, and Southern Community and Technical College did not observe the holiday.

To summarize the table above:

1. Eleven schools floated the holiday to a specific date; of these, ten schools allowed all employees to observe the floated holiday and one school only awarded the holiday to holiday eligible (benefits eligible) employees.
2. Five schools allowed the employees to choose the date of the floated holiday; of these five, four only applied to leave eligible employees and one applied only to employees who worked on the Saturday holiday.
3. Two schools allowed the following: a) Non-exempt (OT eligible) classified benefits-eligible employees whose regular schedule includes Saturdays who worked the holiday received regular pay PLUS time-&-1/2 for each hour worked OR could opt to receive Comp Time accrued at the rate of 1.5 times hours worked; b) Non-exempt (OT-eligible) classified benefits-eligible employees whose regular schedule does NOT include Saturdays but who worked on May 14, 2011 were paid straight time or OT for each hour worked; c) Temporary, student, contract & other hourly workers not benefits-eligible received regular hourly rates if worked May 14, 2011; d) Exempt employees (faculty, non-classified & classified) with a Mon-Fri schedule who worked May 14, 2011 due to graduation did not receive time off later or additional compensation.
4. Four schools did not observe the holiday at all. One of these schools indicated they had planned to observe the May 14 special election holiday on November 22 and had it on their holiday calendar that was submitted to HEPC. However, after questions arose about the propriety of taking that day they revised their holiday calendar and observed Veteran's Day on November 22.

We requested from the sixteen institutions that indicated they observed the holiday in some manner that they provide us with (a) an explanation of why the schools decided to observe the holiday on an alternate date; and (b) they provide us with an estimated cost to the state for awarding the holiday benefit. Their responses to these questions follow \*:

<u>School</u>	<u>Reason Cited</u>	<u>Approximate Cost</u>	<u># of Employees Observing</u>
Bluefield	Procedural Rule 133-14; Board of Governor's Policy #8; Graduation	\$ 5,780	40
Blue Ridge CTC	Procedural Rule 135-14; Attorney opinion	Holiday will be observed in 2012	Holiday will be observed in 2012
Concord	Procedural Rule 133-14; Attorney opinion; Graduation	Did not answer	Did not answer
Eastern CTC	Procedural Rule 133-14; Graduation	Did not answer	Did not answer
Marshall U	Procedural Rule 133-14; WV Code §2-2-1 & §18B.	Did not answer	17
New River CTC	Procedural Rule 135-14, Board of Governor's Policy #8; Graduation	\$ 9,500	Did not answer
Northern CTC	Procedural Rule 133-14; Attorney opinion	\$ 11,444	76
Potomac State	Procedural Rule 133-14; Board of Governor's Policy #8; Graduation	Did not answer	Did not answer
Shepherd	Procedural Rule 133-14; Graduation	Did not answer	Did not answer
West Liberty	Procedural Rule 133-14; Attorney	\$ 54,756	301

<u>School</u>	<u>Reason Cited</u>	<u>Approximate Cost</u>	<u># of Employees Observing</u>
	opinion		
WV State U	Did not answer	\$ 39,802	246
WVU	Procedural Rule 133-14; Board of Governor's Policy #8; Graduation	Did not answer	Did not answer
WVUIT	Procedural Rule 133-14; Board of Governor's Policy #8; Graduation	Did not answer	Did not answer
WVU Parkersburg	Procedural Rule 133-14; Board of Governor's Policy #8; Graduation	Did not answer	Did not answer

\*The West Virginia School of Osteopathic Medicine and Mountwest Community and Technical College did not respond to our second request.

WV Code §2-2-1 states, in part:

“(13) Any day on which a general, primary or special election is held is a holiday throughout the state, a political subdivision of the state, a district or an incorporated city, town or village in which the election is conducted;”

WV Higher Education Policy Commission, Procedural Rule Title 133, Series 14 and Procedural Rule Title 135, Series 14 regarding Holidays state:

“3.1. The number of full holidays shall be twelve, plus additional days for any statewide, primary or general election....

3.2. Proclamation of additional legal holidays by the president of the United States, governor, or other duly constituted authority may be observed by employees as determined and communicated by the president of the institution. The president of the institution may determine that any such additional legal holidays shall be observed at a future date, if operational needs of the institution require the holiday not be observed on the date proclaimed.”

Several of the schools graduations fell on May 14, 2011; therefore, these schools observed the holiday at a future date because they believed the operational needs of the institution required the holiday not be observed on the date proclaimed.

From the information above, it is apparent there was little consistency in how each school interpreted the May 14, 2011 Special Primary Election Day. **We do not believe it was the Legislature's intent for employees to receive a floating holiday for May 14.** Our legislative attorney spoke with the Chief Deputy Attorney General, and she believed that higher education institutions had no statutory authority to observe a floating holiday for the May 14, 2011 Special Primary Election. She further stated that only employees who should have received pay for that day were those scheduled to work on Saturday, not all higher education employees.

We recommend if it is not the Legislature's intent for employees to receive an additional holiday for elections which fall on weekends, they change the statute to contain specific language in how they are to be handled by various institutions of the State.