

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 249

(By Senators Trump, Blair, Ferns, M. Hall and Walters)

[Originating in the Committee on the Judiciary;
reported January 29, 2015.]

A BILL to amend and reenact §3-4A-9, §3-4A-11a and §3-4A-27 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-6-2, §3-6-3, §3-6-5 and §3-6-6 of said code, all relating to disallowing voting a straight party ticket by one mark or punch in a general election.

Be it enacted by the Legislature of West Virginia:

That §3-4A-9, §3-4A-11a and §3-4A-27 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §3-6-2, §3-6-3, §3-6-5 and §3-6-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and
2 design may not be approved by the State Election
3 Commission or be purchased, leased or used by any county
4 commission unless it meets the following requirements:

5 (1) It secures or ensures the voter absolute secrecy in the
6 act of voting or, at the voter's election, provides for open
7 voting;

8 (2) It is constructed to ensure that, except in instances of
9 open voting as provided in this section, the contents of a
10 marked ballot may not be seen or known by anyone other
11 than the voter who has voted or is voting;

12 (3) It permits each voter to vote at any election for all
13 persons and offices for whom and which he or she is lawfully
14 entitled to vote, whether or not the name of any person appears
15 on a ballot as a candidate; and it permits each voter to vote for
16 as many persons for an office as he or she is lawfully entitled to
17 vote for; and to vote for or against any question upon which he

18 or she is lawfully entitled to vote. The automatic tabulating
19 equipment used in electronic voting systems is to reject choices
20 recorded on any ballot if the number of choices exceeds the
21 number to which a voter is entitled;

22 (4) It permits each voter to write in the names of persons for
23 whom he or she desires to vote whose names do not appear
24 upon the ballots;

25 (5) It permits each voter to change his or her vote for any
26 candidate and upon any question appearing upon the ballots or
27 ballot labels up to the time when his or her ballot is deposited
28 in the ballot box or his or her ballot is cast by electronic means;

29 (6) It contains programming media containing sequentially
30 numbered program instructions and coded or otherwise
31 protected from tampering or substitution of the media or
32 program instructions by unauthorized persons and capable of
33 tabulating all votes cast in each election;

34 (7) It contains two standard validation test decks
35 approved as to form and testing capabilities by the State
36 Election Commission;

37 (8) It correctly records and counts accurately all votes
38 cast for each candidate and for and against each question
39 appearing upon the ballots;

40 ~~(9) It permits each voter at any election, other than a~~
41 ~~primary election, to vote a straight party ticket, as provided~~
42 ~~in section five, article six of this chapter by one mark or~~
43 ~~punch;~~

44 ~~(10)~~ (9) It permits a voter in a primary election to: (A)
45 Vote only for the candidates of the party for which the voter
46 is legally permitted to vote; (B) vote for the candidates, if
47 any, for nonpartisan nominations or election; and (C) vote on
48 public questions; and precludes the voter from voting for any
49 candidate seeking nomination by any other political party
50 unless that political party has determined that the voter may
51 participate in its primary election;

52 ~~(11)~~ (10) It, where applicable, is provided with means
53 for sealing or electronically securing the vote recording
54 device to prevent its use and to prevent tampering with the
55 device, both before the polls are open or before the

56 operation of the vote recording device for an election is
57 begun and immediately after the polls are closed or after the
58 operation of the vote recording device for an election is
59 completed;

60 ~~(12)~~ (11) It has the capacity to contain the names of
61 candidates constituting the tickets of at least nine political
62 parties and accommodates the wording of at least fifteen
63 questions;

64 ~~(13)~~ (12) (A) Direct recording electronic voting machines
65 must generate a paper copy of each voter's vote that will be
66 automatically kept within a storage container that is locked,
67 closely attached to the direct recording electronic voting
68 machine and inaccessible to all but authorized voting
69 officials, who will handle such storage containers and such
70 paper copies contained therein in accordance with section
71 nineteen of this article.

72 (B) The paper copy of the voter's vote shall be generated
73 at the time the voter is at the voting station using the direct
74 recording electronic voting machine.

75 (C) The voter may examine the paper copy visually or
76 through headphone readout, and may accept or reject the
77 printed copy.

78 (D) The voter may not touch, handle or manipulate the
79 printed copy manually in any way.

80 (E) Once the printed copy of the voter's votes is accepted
81 by the voter as correctly reflecting the voter's intent, but not
82 before, it will automatically be stored for recounts or random
83 checks and the electronic vote will be cast within the
84 computer mechanism of the direct recording electronic voting
85 machine.

86 (F) Direct recording electronic voting machines with a
87 mandatory paper copy shall be approved by the Secretary of
88 State. The Secretary of State may promulgate rules and
89 emergency rules to implement or enforce this subsection
90 pursuant to the provisions of section five, article three,
91 chapter twenty-nine-a of this code.

92 ~~(14)~~ (13) Where vote recording devices are used, they
93 shall:

94 (A) Be durably constructed of material of good quality
95 and in a workmanlike manner and in a form which makes it
96 safely transportable;

97 (B) Bear a number that will identify it or distinguish it
98 from any other machine;

99 (C) Be constructed to ensure that a voter may easily
100 learn the method of operating it and may expeditiously cast
101 his or her vote for all candidates of his or her choice and
102 upon any public question; and

103 (D) Be accompanied by a mechanically or electronically
104 operated instruction model which shows the arrangement of
105 the ballot, party columns or rows and questions;

106 ~~(15)~~ (14) For electronic voting systems that utilize a
107 screen upon which votes may be recorded by means of a
108 stylus or by means of touch, they shall:

109 (A) Be constructed to provide for the direct electronic
110 recording and tabulating of votes cast in a system
111 specifically designed and engineered for the election
112 application;

113 (B) Be constructed to prevent any voter from voting for
114 more than the allowable number of candidates for any
115 office, to include an audible or visual signal, or both,
116 warning any voter who attempts to vote for more than the
117 allowable number of candidates for any office or who
118 attempts to cast his or her ballot prior to its completion and
119 are constructed to include a visual or audible confirmation,
120 or both, to the voter upon completion and casting of the
121 ballot;

122 (C) Be constructed to present the entire ballot to the
123 voter, in a series of sequential pages, and to ensure that the
124 voter sees all of the ballot options on all pages before
125 completing his or her vote and to allow the voter to review
126 and change all ballot choices prior to completing and
127 casting his or her ballot;

128 (D) Be constructed to allow election commissioners to
129 spoil a ballot where a voter fails to properly cast his or her
130 ballot, has departed the polling place and cannot be recalled
131 by a poll clerk to complete his or her ballot;

132 (E) Be constructed to allow election commissioners, poll
133 clerks or both to designate, mark or otherwise record
134 provisional ballots;

135 (F) Consist of devices which are independent,
136 nonnetworked voting systems in which each vote is recorded
137 and retained within each device's internal nonvolatile
138 electronic memory and contain an internal security, the
139 absence of which prevents substitution of any other device;

140 (G) Store each vote in no fewer than three separate,
141 independent, nonvolatile electronic memory components and
142 that each device contains comprehensive diagnostics to
143 ensure that failures do not go undetected;

144 (H) Contain a unique, embedded internal serial number
145 for auditing purposes for each device used to activate, retain
146 and record votes;

147 (I) Be constructed to record all preelection, election and
148 post-election activities, including all ballot images and system
149 anomalies, in each device's internal electronic memory and are
150 to be accessible in electronic or printed form;

151 (J) Be constructed with a battery backup system in each
152 device to, at a minimum, prevent the loss of any votes, as
153 well as all preelection, election and post-election activities,
154 including all ballot images and system anomalies, stored in
155 the device's internal electronic memory and to allow voting
156 to continue for two hours of uninterrupted operation in case
157 of an electrical power failure; and

158 (K) Be constructed to prevent the loss of any votes, as
159 well as all preelection, election and post-election activities,
160 including all ballot images and system anomalies, stored in
161 each device's internal electronic memory even in case of an
162 electrical and battery power failure.

**§3-4A-11a. Ballots tabulated electronically; arrangement; quantity to be
printed; ballot stub numbers.**

1 (a) The board of ballot commissioners in counties using
2 ballots upon which votes may be recorded by means of
3 marking with electronically sensible ink or pencil and which
4 marks are tabulated electronically shall cause the ballots to be

5 printed or displayed upon the screens of the electronic voting
6 system for use in elections.

7 (b) (1) For the primary election, the heading of the ballot,
8 the type faces, the names and arrangement of offices and the
9 printing of names and arrangement of candidates within each
10 office are to conform as nearly as possible to the provisions
11 of sections thirteen and thirteen-a, article five of this chapter.

12 (2) For the general election, the heading of the ballot, ~~the~~
13 ~~straight ticket positions, the instructions to straight ticket~~
14 ~~voters,~~ the type faces, the names and arrangement of offices
15 and the printing of names and the arrangement of candidates
16 within each office are to conform as nearly as possible to the
17 provisions of section two, article six of this chapter, except
18 as otherwise provided in this article.

19 (3) Nonpartisan elections for board of education and any
20 question to be voted upon are to be separated from the
21 partisan ballot and separately headed in display type with a
22 title clearly identifying the purpose of the election and

23 constituting a separate ballot wherever a separate ballot is
24 required under the provisions of this chapter.

25 (4) Both the face and the reverse side of the ballot may
26 contain the names of candidates only if means to ensure the
27 secrecy of the ballot are provided and lines for the
28 signatures of the poll clerks on the ballot are printed on a
29 portion of the ballot which is deposited in the ballot box and
30 upon which marks do not interfere with the proper
31 tabulation of the votes.

32 (5) The arrangement of candidates within each office is
33 to be determined in the same manner as for other electronic
34 voting systems, as prescribed in this chapter. On the general
35 election ballot for all offices, and on the primary election
36 ballot only for those offices to be filled by election, except
37 delegate to national convention, lines for entering write-in
38 votes are to be provided below the names of candidates for
39 each office, and the number of lines provided for any office
40 shall equal the number of persons to be elected, or three,
41 whichever is fewer. The words "WRITE-IN, IF ANY" are to

42 be printed, where applicable, directly under each line for
43 write-ins. The lines are to be opposite a position to mark the
44 vote.

45 (c) Except for electronic voting systems that utilize
46 screens upon which votes may be recorded by means of a
47 stylus or by means of touch, the primary election ballots are
48 to be printed in the color of ink specified by the Secretary of
49 State for the various political parties, and the general election
50 ballot is to be printed in black ink. For electronic voting
51 systems that utilize screens upon which votes may be
52 recorded by means of a stylus or by means of touch, the
53 primary ballots and the general election ballot are to be
54 printed in black ink. All ballots are to be printed, where
55 applicable, on white paper suitable for automatic tabulation
56 and are to contain a perforated stub at the top or bottom of
57 the ballot, which is to be numbered sequentially in the same
58 manner as provided in section thirteen, article five of this
59 chapter, or are to be displayed on the screens of the electronic
60 voting system upon which votes are recorded by means of a

61 stylus or touch. The number of ballots printed and the
62 packaging of ballots for the precincts are to conform to the
63 requirements for paper ballots provided in this chapter.

64 (d) In addition to the official ballots, the ballot
65 commissioners shall provide all other materials and
66 equipment necessary to the proper conduct of the election.

§3-4A-27. Proceedings at the central counting center.

1 (a) All proceedings at the central counting center are to
2 be under the supervision of the clerk of the county
3 commission and are to be conducted under circumstances
4 which allow observation from a designated area by all
5 persons entitled to be present. The proceedings shall take
6 place in a room of sufficient size and satisfactory
7 arrangement to permit observation. Those persons entitled to
8 be present include all candidates whose names appear on the
9 ballots being counted or, if a candidate is absent, a
10 representative of the candidate who presents a written
11 authorization signed by the candidate for the purpose and two
12 representatives of each political party on the ballot who are

13 chosen by the county executive committee chairperson. A
14 reasonable number of the general public is also freely
15 admitted to the room. In the event all members of the general
16 public desiring admission to the room cannot be admitted at
17 one time, the county commission shall provide for a periodic
18 and convenient rotation of admission to the room for
19 observation, to the end that each member of the general
20 public desiring admission, during the proceedings at the
21 central counting center, is to be granted admission for
22 reasonable periods of time for observation: *Provided*, That no
23 person except those authorized for the purpose may touch
24 any ballot or other official records and papers utilized in the
25 election during observation.

26 (b) All persons who are engaged in processing and
27 counting the ballots are to work in teams consisting of two
28 persons of opposite political parties, and are to be deputized
29 in writing and take an oath that they will faithfully perform
30 their assigned duties. These deputies are to be issued an
31 official badge or identification card which is assigned an

32 identity control number and the deputies are to prominently
33 wear on his or her outer garments the issued badge or
34 identification card. Upon completion of the deputies' duties,
35 the badges or identification cards are to be returned to the
36 county clerk.

37 (c) Ballots are to be handled and tabulated and the
38 write-in votes tallied according to procedures established by
39 the Secretary of State, subject to the following requirements:

40 (1) In systems using ballots marked with electronically
41 sensible ink, ballots are to be removed from the ballot boxes
42 and stacked for the tabulator which separates ballots
43 containing marks for a write-in position. Immediately after
44 tabulation, the valid write-in votes are to be tallied. No
45 write-in vote may be counted for an office unless the voter
46 has entered the name of an official write-in candidate for that
47 office on the line provided, either by writing, affixing a
48 sticker or placing an ink-stamped impression thereon;

49 (2) In systems using ballots in which votes are recorded
50 upon screens with a stylus or by means of touch, the ballots

51 are to be tabulated according to the processes of the system.
52 Systems using ballots in which votes are recorded upon
53 screens with a stylus or by means of touch are to tally
54 write-in ballots simultaneously with the other ballots;

55 (3) When more than one person is to be elected to an
56 office and the voter desires to cast write-in votes for more
57 than one official write-in candidate for that office, the voter
58 shall mark the location appropriate for the voting system, in
59 the write-in location for that office. When there are multiple
60 write-in votes for the same office and the combination of
61 choices for candidates on the ballot and write-in choices for
62 the same office exceed the number of candidates to be
63 elected, the ballot is to be duplicated or hand counted, with
64 all votes for that office rejected;

65 (4) Write-in votes for nomination for any office and
66 write-in votes for any person other than an official write-in
67 candidate are to be disregarded; and

68 ~~(5) When a voter casts a straight ticket vote and also~~
69 ~~marks the location for a write-in vote for an office, the~~

70 ~~straight ticket vote for that office is to be rejected, whether~~
71 ~~or not a vote can be counted for a write-in candidate; and~~
72 (6) (5) Official write-in candidates are those who have
73 filed a write-in candidate's certificate of announcement and
74 have been certified according to the provisions of section
75 four-a, article six of this chapter.

76 (d) If any ballot is damaged or defective so that it
77 cannot properly be counted by the automatic tabulating
78 equipment, a true duplicate copy is to be made of the
79 damaged ballot in the presence of representatives of each
80 political party on the ballot and substituted for the damaged
81 ballot. All duplicate ballots are to be clearly labeled
82 "duplicate" and are to bear a serial number which is
83 recorded on the damaged or defective ballot and on the
84 replacement ballot.

85 (e) The returns printed by the automatic tabulating
86 equipment at the central counting center, to which have
87 been added write-in and other valid votes, are, when
88 certified by the clerk of the county commission, to

89 constitute the unofficial preliminary returns of the county.
90 Upon completion of the count, the returns are to be open to
91 the public by posting a summary of the returns as have been
92 tabulated at the central counting center. Upon completion
93 of the canvass, the returns are to be posted as tabulated
94 precinct by precinct.

95 (f) If for any reason it becomes impracticable to count
96 all or a part of the ballots with tabulating equipment, the
97 county commission may direct that they be counted
98 manually, following as far as practicable the provisions
99 governing the counting of paper ballots.

100 (g) As soon as possible after the completion of the
101 count, the clerk of the county commission shall have the
102 vote recording devices properly boxed or securely covered
103 and removed to a proper and secure place of storage.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

1 (a) All ballots prepared under the provisions of this
2 section are to contain:

3 (1) The name and ticket of each party which is a political
4 party under the provisions of section eight, article one of this
5 chapter;

6 (2) The name chosen as the party name by each group of
7 citizens which has secured nomination for two or more
8 candidates by petition under the provisions of section
9 twenty-three, ~~of this article~~ five of this chapter; and

10 (3) The names of every candidate for any office to be
11 voted for at the election whose nomination in the primary
12 election, nomination by petition or nomination by
13 appointment to fill a vacancy on the ballot has been certified
14 and filed according to law and no others.

15 (b) The provisions of paragraphs (C) and (D), subdivision
16 (2), section thirteen, article five of this chapter; subdivision
17 (3) of said section; paragraphs (A) and (B), subdivision (4) of
18 said section; and subdivisions (6), (7), (8) and (9) of said
19 section pertaining to the preparation and form of primary
20 election ballots shall likewise apply to general election
21 ballots.

22 (c) (1) For all ballot systems, the ballot heading is to be
 23 in display type and contain the words "Official Ballot,
 24 General Election" and the name of the county and the month,
 25 day and year of the election.

26 (2) After the heading, each ballot is to contain, laid out
 27 in parallel columns, rows or pages as required by the
 28 particular voting system, the party emblem ~~the position for~~
 29 ~~straight party voting for each party~~ and the name of each
 30 party as prescribed in subsection (a) of this section. ~~On~~
 31 ~~paper ballots, the position for straight party voting is to be~~
 32 ~~a heavy circle, three-fourths inch in diameter, surrounded~~
 33 ~~by the words "For a straight ticket mark within this circle"~~
 34 ~~printed in bold six-point type. On all other ballots or ballot~~
 35 ~~labels, the positions for straight party voting is to be marked~~
 36 ~~"Straight Party Ticket".~~

37 (3) The party whose candidate for president received the
 38 highest number of votes at the last preceding presidential
 39 election is to be placed in the left, or first column, row or
 40 page, as is appropriate to the voting system. The party

41 which received the second highest vote is to be next and so
42 on. Any groups or third parties which did not have a
43 candidate for president on the ballot in the previous
44 presidential election are to be placed in the sequence in
45 which the final certificates of nomination by petition were
46 filed.

47 ~~(4)(A) The following general instructions for straight~~
48 ~~party voters are to be printed in no smaller than eight point~~
49 ~~bold type: "IF YOU MARKED A STRAIGHT TICKET:~~
50 ~~When you mark any individual candidate in a different~~
51 ~~party, that vote will override your straight party vote for~~
52 ~~that office. When you mark any individual candidate in a~~
53 ~~different party for an office where more than one will be~~
54 ~~elected, YOU MUST MARK EACH OF YOUR CHOICES~~
55 ~~FOR THAT OFFICE because your straight ticket vote will~~
56 ~~not be counted for that office". The last sentence of the~~
57 ~~instructions may not be included on any ballot which does~~
58 ~~not contain any office or division where more than one~~
59 ~~candidate will be elected.~~

60 ~~On paper ballots, the general instructions are to be placed~~
61 ~~below the party name and across the top of all columns,~~
62 ~~followed by a heavy line separating them from the rest of the~~
63 ~~ballot. *Provided, That the instructions may be centered*~~
64 ~~among the columns running the full width of the ballot. On~~
65 ~~ballots marked with electronically sensible ink, the general~~
66 ~~instructions are to be placed after the position for straight~~
67 ~~voting and before any office.~~

68 ~~(B) The following specific instructions are to be printed~~
69 ~~on the ballot for any partisan election for an office or division~~
70 ~~to which more than one candidate is to be elected: "If you~~
71 ~~marked a straight ticket and you mark any candidate in a~~
72 ~~different party for this office, you must mark all your choices~~
73 ~~for this office because your straight ticket vote will not be~~
74 ~~counted for this office".~~

75 ~~On paper ballots, the specific instructions are to be~~
76 ~~placed below the office name of any partisan office where~~
77 ~~more than one is to be elected and across the top of all~~
78 ~~columns for that office or centered among the columns~~

~~79 before the names of any candidates. On all other ballots
80 and ballot labels, the specific instructions are to be placed
81 above or to the side of the names of the candidates as the
82 voting system requires.~~

83 ~~(5)~~ (4) For all ballots, any columns, rows or sections in
84 which the ticket of one party appears are to be clearly
85 separated from the other columns, rows or sections by a
86 heavy line or other clear division. For each party, the offices
87 are to be arranged in the order prescribed in section
88 thirteen-a, article five of this chapter under the appropriate
89 tickets, which are to be headed “National Ticket”, “State
90 Ticket” and “County Ticket”. The number of pages, columns
91 or rows, where applicable, may be modified to meet the
92 limitations of ballot size and composition requirements,
93 subject to approval by the Secretary of State.

94 (d) The arrangement of names within each office for all
95 ballot systems is to be as follows:

96 (1) In elections for presidential electors, the names of the
97 candidates for president and vice president of each party are

98 to be placed beside a brace with a single voting position, so
 99 that a vote for any presidential candidate is a vote for the
 100 electors of the party for which the candidates were named.

101 (2) The order of names of candidates for any office or
 102 division for which more than one is to be elected is
 103 determined as prescribed in section thirteen-a, article five of
 104 this chapter: *Provided*, That the drawing by lot is to be
 105 conducted on the seventieth day next preceding the date of
 106 the general election, beginning at 9:00 a.m.

107 (3) In any office where more than one person is to be
 108 elected, the names of the candidates for the office are to be
 109 staggered so that no two candidates for that office appear
 110 directly opposite any other candidate, as shown in the
 111 example below: *Provided*, That if the voting system cannot
 112 accurately tabulate any ballot due to this requirement, the
 113 ballot may be adjusted so that it is accurately tabulated.
 114 However, each candidate shall be separated by a thin line to
 115 distinguish between each candidate.

116	_____	
117	_____	
118	For House of Delegates	For House of Delegates
119	First Delegate District	First Delegate District
120	(Vote For Not More Than Two)	(Vote For Not More Than Two)
121	_____	_____
122	SUSAN B. ANTHONY	
123	City (County)	
124	_____	_____
125		JOHN ADAMS
126		City (County)
127	_____	_____
128	ABRAHAM LINCOLN	
129	City (County)	
130	_____	_____
131		JAMES MONROE
132		City (County)
133	_____	_____

134 (4) Each voting system is to provide a means for voters
 135 to vote for any person whose name does not appear on the
 136 ticket by writing it with pen or pencil or by using stamps,
 137 stickers, tapes, labels or other means of writing in the name
 138 of a candidate which does not interfere with the tabulation of
 139 the ballot.

140 (A) In paper ballot systems which allow for write-ins to
 141 be made directly on the ballot, a blank square and a blank
 142 line equal to the space which would be occupied by the name
 143 of the candidate is to be placed under the proper office for
 144 each vacancy in nomination and for an office for which more
 145 than one is to be elected, any vacancy is to appear after any
 146 other candidates for the office. If no write-in lines are
 147 included on the ballot, specific instructions are to be added to
 148 the top of the ballot notifying the voter that a write-in vote
 149 may be cast by writing the name and office on any location
 150 on the front of the ballot.

151 (B) In machine and electronically tabulated ballot
 152 systems in which write-in votes must be made in a place

153 other than on the ballot, if there is a vacancy in nomination
154 leaving fewer candidates in any party than can be elected to
155 that office, the words “No Candidate Nominated” ~~is~~ are to be
156 printed in the space that would be occupied by the name of
157 the candidate and for an office for which more than one is to
158 be elected, any vacancy is to appear after any other
159 candidates for the office. Notwithstanding any other
160 provision of this code, if there are multiple vacant positions
161 on a ballot for one office, the multiple vacant positions which
162 would otherwise be filled with the words “No Candidate
163 Filed” may be replaced with a brief detailed description,
164 approved by the Secretary of State, indicating that there are
165 no candidates listed for the vacant positions.

166 (5) In a general election in any county in which
167 unexpired terms of the board of education are to be filled by
168 election, a separate section or page of the ballot is to be set
169 off by means clearly separating the nonpartisan ballot from
170 the ballot for the political party candidates and is to be
171 headed “Nonpartisan Board of Education”.

172 (e) Any constitutional amendment is to be placed
 173 following all offices, followed by any other issue upon which
 174 the voters are to cast a vote. The heading for each
 175 amendment or issue is to be printed in large, bold type
 176 according to the requirements of the resolution authorizing
 177 the election.

178 (f) The board of ballot commissioners may not place any
 179 issue on the ballot for election which is not specifically
 180 authorized under the West Virginia Constitution or statutes
 181 or which has not been properly ordered by the appropriate
 182 governmental body charged with calling the election.

183 (g) A ballot may not offer a voter the option of voting a
 184 straight party ticket by one mark or punch.

§3-6-3. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall prepare
 2 a sample official general election ballot for all political party
 3 or independent nominees, nonpartisan candidates for
 4 election, if any, and all ballot issues to be voted for at the
 5 general election, according to the provisions of ~~this~~ article

6 ~~and articles four and four-a of this chapter, as appropriate to~~
7 ~~the voting system,~~ and for any ballot issue, according to the
8 provisions of law authorizing the election.

9 (b) The facsimile sample general election ballot shall be
10 published as follows:

11 (1) For counties in which two or more qualified
12 newspapers publish a daily newspaper, not more than
13 twenty-six nor less than twenty days preceding the general
14 election, the ballot commissioners shall publish the sample
15 official general election ballot as a Class I-0 legal
16 advertisement in the two qualified daily newspapers of
17 different political parties within the county having the largest
18 circulation in compliance with the provisions of article three,
19 chapter fifty-nine of this code;

20 (2) For counties having no more than one daily
21 newspaper, or having only one or more qualified newspapers
22 which publish weekly, not more than twenty-six nor less than
23 twenty days preceding the primary election, the ballot
24 commissioners shall publish the sample official general

25 election ballot as a Class I legal advertisement in the
 26 qualified newspaper within the county having the largest
 27 circulation in compliance with the provisions of article three,
 28 chapter fifty-nine of this code; and

29 (3) Each facsimile sample ballot shall be a photographic
 30 reproduction of the official sample ballot or ballot pages and
 31 shall be printed in a size no less than sixty-five percent of the
 32 actual size of the ballot, at the discretion of the ballot
 33 commissioners: *Provided*, That when the ballots for the
 34 precincts within the county contain different senatorial,
 35 delegate, magisterial or executive committee districts or
 36 when the ballots for precincts within a city contain different
 37 municipal wards, the facsimile shall be altered to include
 38 each of the various districts in the appropriate order. If, in
 39 order to accommodate the size of each ballot, the ballot or
 40 ballot pages must be divided onto more than one page, the
 41 arrangement and order shall be made to conform as nearly as
 42 possible to the arrangement of the ballot. The publisher of
 43 the newspaper shall submit a proof of the ballot and the

44 arrangement to the ballot commissioners for approval prior
45 to publication.

46 (c) The ballot commissioners of each county shall
47 prepare, in the form and manner prescribed by the Secretary
48 of State, an official list of offices and nominees for each
49 office which will appear on the general election ballot for
50 each political party or as independent nominees and, as the
51 case may be, for the nonpartisan candidates to be voted for at
52 the general election:

53 (1) All information which appears on the ballot, including
54 ~~the names of parties for which a straight ticket may be cast,~~
55 ~~instructions relating to straight ticket voting,~~ instructions as to
56 the number of candidates for whom votes may be cast for the
57 office, any additional language which will appear on the ballot
58 below the name of the office, any identifying information
59 relating to the candidates, such as his or her residence and
60 magisterial district or presidential preference. Following the
61 names of all candidates, the list shall include the full title, text
62 and voting positions of any issue to appear on the ballot.

63 (2) The order of the ~~straight ticket positions~~, offices and
 64 candidates for each office and the manner of designating the
 65 parties shall be as follows:

66 ~~(A) The straight ticket positions shall be designated~~
 67 ~~“straight (party name) ticket”, with the parties listed in the~~
 68 ~~order in which they appear on the ballot, from left to right or~~
 69 ~~from top to bottom, as the case may be;~~

70 ~~(B)~~ (A) The offices shall be listed in the same order in
 71 which they appear on the ballot;

72 ~~(C)~~ (B) The candidates within each office for which one
 73 is to be elected shall be listed in the order they appear on the
 74 ballot, from left to right or from top to bottom, as the case
 75 may be, and the candidate’s political party affiliation or
 76 independent status shall be indicated by the one- or two-letter
 77 initial specifying the affiliation, placed in parenthesis to the
 78 right of the candidate’s name; and

79 ~~(D)~~ (C) The candidates within each office for which more
 80 than one is to be elected shall be arranged by political party
 81 groups in the order they appear on the ballot and the

82 candidate's affiliation shall be indicated as provided in
83 paragraph ~~(C)~~ (B) of this subdivision.

84 (d) The official list of candidates and issues as provided
85 in subsection (c) of this section shall be published as follows:

86 (1) For counties in which two or more qualified
87 newspapers publish a daily newspaper, on the last day on
88 which a newspaper is published immediately preceding the
89 general election, the ballot commissioners shall publish the
90 official list of nominees and issues as a Class I-0 legal
91 advertisement in the two qualified daily newspapers of
92 different political parties within the county having the largest
93 circulation in compliance with the provisions of article three,
94 chapter fifty-nine of this code;

95 (2) For counties having no more than one daily paper, or
96 having only one or more qualified newspapers which publish
97 weekly, on the last day on which a newspaper is published
98 immediately preceding the general election, the ballot
99 commissioners shall publish the sample official list of
100 nominees and issues as a Class I legal advertisement in the

101 qualified newspaper within the county having the largest
102 circulation in compliance with the provisions of article three,
103 chapter fifty-nine of this code;

104 (3) The publication of the official list of nominees for
105 each party and for nonpartisan candidates shall be in single
106 or double columns, as required to accommodate the type size
107 requirements as follows:

108 (A) The words “official list of nominees and issues”, the
109 name of the county, the words “General Election” and the
110 date of the election shall be printed in all capital letters and
111 in bold type no smaller than fourteen point;

112 ~~(B) The designation of the straight ticket party positions~~
113 ~~shall be printed in all capital letters in bold type no smaller~~
114 ~~than twelve point and the title of the office shall be printed in~~
115 ~~bold type no smaller than twelve point and any voting~~
116 ~~instructions or other language printed below the title shall be~~
117 ~~printed in bold type no smaller than ten point; and~~

118 ~~(C)~~ (B) The names of the candidates and the initial within
119 parenthesis designating the candidate’s affiliation shall be

120 printed in all capital letters in bold type no smaller than ten
121 point and the residence information shall be printed in type
122 no smaller than ten point; and

123 (4) When any ballot issue is to appear on the ballot, the
124 title of that ballot shall be printed in all capital letters in bold
125 type no smaller than twelve point. The text of the ballot issue
126 shall appear in no smaller than eight point type. The ballot
127 commissioners may require the publication of the ballot issue
128 under this subsection in the facsimile sample ballot format in
129 lieu of the alternate format.

130 (e) Notwithstanding the provisions of subsections (c) and
131 (d) of this section, ~~beginning with the general election to be~~
132 ~~held in the year two thousand,~~ the ballot commissioners of
133 any county may choose to publish a facsimile sample general
134 election ballot, instead of the official list of candidates and
135 issues, for purposes of the last publication required before
136 any general election.

§3-6-5. Rules and procedures in election other than primaries.

1 The provisions of article one of this chapter relating to
 2 elections generally ~~shall~~ govern and control arrangements
 3 and election officials for the conduct of elections under this
 4 article. The following rules and procedures ~~shall~~ govern the
 5 voting for candidates in general and special elections:

6 ~~(a) If the voter desires to vote a straight ticket, or in other~~
 7 ~~words, for each and every candidate for one party for~~
 8 ~~whatever office nominated, the voter shall either:~~

9 ~~(1) Mark the position designated for a straight ticket in~~
 10 ~~the manner appropriate to the voting system; or~~

11 ~~(2) Mark the voting position for each and every candidate~~
 12 ~~of the chosen party in the manner appropriate to the voting~~
 13 ~~system.~~

14 ~~(b) If the voter desires to vote a mixed ticket, or in other~~
 15 ~~words, for candidates of different parties, the voter shall either:~~

16 ~~(1) Omit marking any straight ticket voting position and~~
 17 ~~mark, in the manner appropriate to the voting system, the~~
 18 ~~name of each candidate for whom he or she desires to vote on~~
 19 ~~whatever ticket the name may be; or~~

20 ~~(2) Mark the position designated for a straight ticket for~~
21 ~~the party for some of whose candidates he or she desires to~~
22 ~~vote and then mark the name of any candidate of any other~~
23 ~~party for whom he or she may desire to vote, in which case~~
24 ~~the cross mark in the circular space above the name of the~~
25 ~~party straight ticket mark will cast his or her vote for every~~
26 ~~candidate on the ticket of the party except for offices for~~
27 ~~which candidates are marked on other party tickets and the~~
28 ~~marks for the candidates will cast a vote for them; or~~

29 ~~(3) Write with ink or other means or affix a sticker or~~
30 ~~label or place an ink-stamped impression of the name of an~~
31 ~~official write-in candidate for an office for whom he or she~~
32 ~~desires to vote in the space designated for write-in votes for~~
33 ~~the particular voting system or for paper ballot systems, write~~
34 ~~or place the name and office designation in any position on~~
35 ~~the face of the ballot which makes the intention of the voter~~
36 ~~clear as to both the office and the candidate chosen.~~

37 ~~(c) If in marking either a straight or mixed ticket as above~~
38 ~~defined, a straight ticket voting position is marked, and also~~

39 ~~one or more marks are made for candidates on the same ticket~~
 40 ~~for offices for which candidates on other party tickets are not~~
 41 ~~individually marked, the marks before the name of candidate~~
 42 ~~on the ticket so marked shall be treated as surplusage and~~
 43 ~~ignored.~~

44 ~~(d) When a voter casts a straight ticket vote and also~~
 45 ~~writes in any name for an office, the straight ticket vote for~~
 46 ~~that office shall be rejected, whether or not a vote can be~~
 47 ~~counted for a write-in candidate.~~

48 ~~(e)~~ (1) The Secretary of State may proscribe devices for
 49 casting write-in votes which would cause mechanical difficulty
 50 with voting machines or electronic devices or which would
 51 obliterate or deface a paper ballot or any portion thereof, but the
 52 Secretary of State shall preserve the right to vote by a write-in
 53 vote for those candidates who have filed and have been
 54 certified as official write-in candidates under the provisions of
 55 section four-a of this article.

56 ~~(f)~~ (2) If the voter marks more names than there are
 57 persons to be elected to an office or if, for any reason, it is

58 impossible to determine the voter's choice for an office to be
59 filled, the ballot ~~shall~~ may not be counted for the office. The
60 intention of the voter ~~shall be deemed~~ is considered to be
61 clear if the write-in vote cast for an office contains both the
62 first and last name of an official write-in candidate for that
63 office; and if no two official write-in candidates for that
64 office share a first or last name, either the first name or last
65 name alone ~~shall be deemed to express~~ expresses the clear
66 intention of the voter.

67 (g) (3) Except as otherwise specifically provided in this
68 chapter, no ballot ~~shall~~ may be rejected for any technical
69 error which does not make it impossible to determine the
70 voter's choice.

§3-6-6. Ballot counting procedures in paper ballot systems.

1 When the polls are closed in an election precinct where
2 only a single election board has served, the receiving board
3 shall perform all of the duties prescribed in this section.
4 When the polls are closed in an election precinct where two
5 election boards have served, both the receiving and counting

6 boards shall together conclude the counting of the votes cast,
7 the tabulating and summarizing of the number of the votes
8 cast, unite in certifying and attesting to the returns of the
9 election and join in making out the certificates of the result
10 of the election provided for in this article. They ~~shall~~ may
11 not adjourn until the work is completed.

12 In all election precincts, as soon as the polls are closed
13 and the last voter has voted, the receiving board shall proceed
14 to ascertain the result of the election in the following manner:

15 (a) In counties in which the clerk of the county
16 commission has determined that the absentee ballots should
17 be counted at the precincts in which the absent voters are
18 registered, the receiving board must first process the absentee
19 ballots and deposit the ballots to be counted in the ballot box.
20 The receiving board shall then proceed as provided in
21 subsections (b) and (c) of this section. In counties in which
22 the absentee ballots are counted at the central counting
23 center, the receiving board shall proceed as provided in
24 subsections (b) and (c) of this section.

25 (b) The receiving board shall ascertain from the
26 pollbooks and record on the proper form the total number of
27 voters who have voted. The number of ballots challenged
28 shall be counted and subtracted from the total and the result
29 should equal the number of ballots deposited in the ballot
30 box. The commissioners and clerks shall also report, over
31 their signatures, the number of ballots spoiled and the
32 number of ballots not voted.

33 (c) The procedure for counting ballots, whether
34 performed throughout the day by the counting board as
35 provided in section thirty-three, article one of this chapter or
36 after the close of the polls by the receiving board or by the
37 two boards together, shall be as follows:

38 (1) The ballot box shall be opened and all votes shall be
39 tallied in the presence of the entire election board;

40 (2) One of the commissioners shall take one ballot from
41 the box at a time and shall determine if the ballot is properly
42 signed by the two poll clerks of the receiving board. If not
43 properly signed, the ballot shall be placed in an envelope for

44 the purpose, without unfolding it. Any ballot which does not
45 contain the proper signatures shall be challenged. If an
46 accurate accounting is made for all ballots in the precinct in
47 which the ballot was voted and no other challenge exists
48 against the voter, the ballot shall be counted at the canvas. If
49 properly signed, the commissioner shall hand the ballot to a
50 team of commissioners of opposite politics, who shall
51 together read the votes marked on the ballot for each office.
52 Write-in votes for election for any person other than an
53 official write-in candidate shall be disregarded. ~~When a~~
54 ~~voter casts a straight ticket vote and also casts a write-in vote~~
55 ~~for an office, the straight ticket vote for that office shall be~~
56 ~~rejected whether or not a vote can be counted for a write-in~~
57 ~~candidate;~~

58 (3) The commissioner responsible for removing the
59 ballots from the box shall keep a tally of the number of
60 ballots as they are removed and whenever the number shall
61 equal the number of voters entered on the pollbook minus the
62 number of provisional ballots, as determined according to

63 subsection (a) of this section, any other ballot found in the
64 ballot box shall be placed in the same envelope with
65 unsigned ballots not counted, without unfolding the same or
66 allowing anyone to examine or know the contents thereof,
67 and the number of excess ballots shall be recorded on the
68 envelope;

69 (4) Each poll clerk shall keep an accurate tally of the
70 votes cast by marking in ink on tally sheets, which shall be
71 provided for the purpose, so as to show the number of votes
72 received by each candidate for each office and for and
73 against each issue on the ballot; and

74 (5) When the reading of the votes is completed, the ballot
75 shall be immediately strung on a thread.

(NOTE: The purpose of this bill is to disallow voting by straight party ticket.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.)