

1 **H. B. 2300**

2  
3 (By Delegate Andes)

4 [Introduced January 12, 2011; referred to the  
5 Committee on the Judiciary.]  
6  
7  
8  
9

10 A BILL to amend and reenact §3-4-10 and §3-4-11 of the Code of West  
11 Virginia, 1931, as amended; to amend and reenact §3-4A-11a and  
12 §3-4A-27 of said code; and to amend and reenact §3-6-2, §3-6-  
13 3, §3-6-5 and §3-6-6 of said code, all relating to abolishing  
14 the one-vote straight ticket voting in all general and special  
15 elections within West Virginia.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §3-4-10 and §3-4-11 of the Code of West Virginia, 1931,  
18 as amended, be amended and reenacted; that §3-4A-11a and §3-4A-27  
19 of said code be amended and reenacted; and that §3-6-2, §3-6-3, §3-  
20 6-5 and §3-6-6 of said code be amended and reenacted, all to read  
21 as follows:

22 **ARTICLE 4. VOTING MACHINES.**

23 **§3-4-10. Ballot labels, instructions and other supplies; vacancy**  
24 **changes; procedure and requirements.**

1           (a) The ballot commissioners of any county in which voting  
2 machines are to be used in any election shall cause to be printed  
3 for use in the election the ballot labels for the voting machines  
4 and paper ballots for absentee voting, voting by persons unable to  
5 use the voting machine and provisional ballots or if an electronic  
6 voting system or direct recording election equipment is to be used  
7 in an election, the ballot commissioners shall comply with  
8 requirements of section eleven, article four-a of this chapter.  
9 The labels shall be clearly printed in black ink on clear white  
10 material in a size that will fit the ballot frames. The paper  
11 ballots shall be printed in compliance with ~~the provisions of this~~  
12 chapter governing paper ballots.

13           (b) The heading, the names and arrangement of offices and the  
14 printing and arrangement of names of the candidates for each office  
15 indicated must be placed on the ballot for the primary election as  
16 nearly as possible according to ~~the provisions of~~ sections thirteen  
17 and thirteen-a, article five of this chapter and for the general  
18 election according to ~~the provisions of~~ section two, article six of  
19 this chapter. ~~Provided, That~~ The staggering of the names of  
20 candidates in multicandidate races ~~and the instructions to straight~~  
21 ~~ticket voters~~ prescribed by section two, article six of this chapter  
22 shall appear on paper ballots but shall not appear on ballot labels  
23 for voting machines which mechanically control crossover voting.

24           (c) Each question to be voted on must be placed at the end of

1 the ballot and must be printed according to ~~the provisions of~~ the  
2 laws and rules governing the question.

3 (d) The ballot labels printed must total in number one and  
4 one-half times the total number of corresponding voting machines to  
5 be used in the several precincts of the county in the election.  
6 All the labels must be delivered to the clerk of the county  
7 commission at least twenty-eight days prior to the day of the  
8 election. The clerk of the county commission shall determine the  
9 number of paper ballots needed for absentee voting and to supply  
10 the precincts for provisional ballots and ballots to be cast by  
11 persons unable to use the voting machine. All required paper  
12 ballots shall be delivered to the clerk of the county commission at  
13 least forty-six days prior to the day of the election.

14 (e) When the ballot labels and absentee ballots are delivered,  
15 the clerk of the county commission shall examine them for accuracy,  
16 assure that the appropriate ballots and ballot labels are  
17 designated for each voting precinct and insert one set in each  
18 machine prior to the inspection of the machines as prescribed in  
19 section twelve of this article. The remainder of the ballot labels  
20 for each machine shall be retained by the clerk of the county  
21 commission for use in an emergency.

22 (f) In addition to all other equipment and supplies required  
23 by ~~the provisions of~~ this article, the ballot commissioners shall  
24 cause to be printed a supply of instruction cards, sample ballots

1 and facsimile diagrams of the voting machine ballot adequate for  
2 the orderly conduct of the election in each precinct in their  
3 county. In addition, they shall provide appropriate facilities for  
4 the reception and safekeeping of the ballots of absent voters and  
5 of challenged voters and of the "independent" voters who shall, in  
6 primary elections, cast their votes on nonpartisan candidates and  
7 public questions submitted to the voters.

8 **§3-4-11. Ballot label arrangement in machines; drawing by lot to**  
9 **determine position of candidates on machines;**  
10 **adjustment; records.**

11 When the ballot labels are printed and delivered to the clerk  
12 of the county commission, they shall be placed in the ballot frames  
13 of the voting machines in such manner as will most nearly conform  
14 to the arrangement prescribed for paper ballots, and as will  
15 clearly indicate the party designation or emblem of each candidate.  
16 Each column or row containing the names of the office and  
17 candidates for such office shall be so arranged as to clearly  
18 indicate the office for which the candidate is running. The names  
19 of the candidates for each office indicated shall be placed on the  
20 ballot.

21 The clerk of the county commission shall cause the voting  
22 machines to be programmed so that each lever is properly set to  
23 record a vote and that the voter can vote for the maximum number of  
24 candidates allowed for each office and no more. ~~In general~~

1 ~~elections, the straight ticket lever shall cause a vote to be cast~~  
2 ~~for every candidate of the straight ticket party unless the voter~~  
3 ~~cancels a vote within that party by resetting one or more~~  
4 ~~individual levers at the positions of specific candidates to the~~  
5 ~~no-vote position.~~

6       The clerk shall then see that the counters referred to in  
7 subsection (11) of section eight of this article are set at zero  
8 (000) and shall lock the operating device and mechanism and devices  
9 protecting the counter and ballot labels. The clerk shall then  
10 enter in an appropriate book, opposite the number of each precinct,  
11 the identifying or distinguishing number of the specific voting  
12 machine or machines to be used in that precinct.

13 **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

14 **§3-4A-11a. Ballots tabulated electronically; arrangement, quantity**  
15 **to be printed, ballot stub numbers.**

16       (a) The board of ballot commissioners in counties using  
17 ballots upon which votes may be recorded by means of marking with  
18 electronically sensible ink or pencil and which marks are tabulated  
19 electronically shall cause the ballots to be printed or displayed  
20 upon the screens of the electronic voting system for use in  
21 elections.

22       (b) (1) For the primary election, the heading of the ballot,  
23 the type faces, the names and arrangement of offices and the  
24 printing of names and arrangement of candidates within each office

1 are to conform as nearly as possible to ~~the provisions of~~ sections  
2 thirteen and thirteen-a, article five of this chapter.

3 (2) For the general election, the heading of the ballot, ~~the~~  
4 ~~straight ticket positions, the instructions to straight ticket~~  
5 ~~voters,~~ the type faces, the names and arrangement of offices and  
6 the printing of names and the arrangement of candidates within each  
7 office are to conform as nearly as possible to ~~the provisions of~~  
8 section two, article six of this chapter, except as otherwise  
9 provided in this article.

10 (3) Nonpartisan elections for board of education and any  
11 question to be voted upon are to be separated from the partisan  
12 ballot and separately headed in display type with a title clearly  
13 identifying the purpose of the election and constituting a separate  
14 ballot wherever a separate ballot is required ~~under the provisions~~  
15 ~~of~~ by this chapter.

16 (4) Both the face and the reverse side of the ballot may  
17 contain the names of candidates only if means to ensure the secrecy  
18 of the ballot are provided and lines for the signatures of the poll  
19 clerks on the ballot are printed on a portion of the ballot which  
20 is deposited in the ballot box and upon which marks do not  
21 interfere with the proper tabulation of the votes.

22 (5) The arrangement of candidates within each office is to be  
23 determined in the same manner as for other electronic voting  
24 systems, as prescribed in this chapter. On the general election

1 ballot for all offices, and on the primary election ballot only for  
2 those offices to be filled by election, except delegate to national  
3 convention, lines for entering write-in votes are to be provided  
4 below the names of candidates for each office, and the number of  
5 lines provided for any office shall equal the number of persons to  
6 be elected, or three, whichever is fewer. The words "WRITE-IN, IF  
7 ANY" are to be printed, where applicable, directly under each line  
8 for write-ins. The lines are to be opposite a position to mark the  
9 vote.

10 (c) Except for electronic voting systems that utilize screens  
11 upon which votes may be recorded by means of a stylus or by means  
12 of touch, the primary election ballots are to be printed in the  
13 color of ink specified by the Secretary of State for the various  
14 political parties, and the general election ballot is to be printed  
15 in black ink. For electronic voting systems that utilize screens  
16 upon which votes may be recorded by means of a stylus or by means  
17 of touch, the primary ballots and the general election ballot are  
18 to be printed in black ink. All ballots are to be printed, where  
19 applicable, on white paper suitable for automatic tabulation and  
20 are to contain a perforated stub at the top or bottom of the  
21 ballot, which is to be numbered sequentially in the same manner as  
22 provided in section thirteen, article five of this chapter, or are  
23 to be displayed on the screens of the electronic voting system upon  
24 which votes are recorded by means of a stylus or touch. The number

1 of ballots printed and the packaging of ballots for the precincts  
2 are to conform to the requirements for paper ballots provided in  
3 this chapter.

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

7 **§3-4A-27. Proceedings at the central counting center.**

8 (a) All proceedings at the central counting center are to be  
9 under the supervision of the clerk of the county commission and are  
10 to be conducted under circumstances which allow observation from a  
11 designated area by all persons entitled to be present. The  
12 proceedings shall take place in a room of sufficient size and  
13 satisfactory arrangement to permit observation. Those persons  
14 entitled to be present include all candidates whose names appear on  
15 the ballots being counted or if a candidate is absent, a  
16 representative of the candidate who presents a written  
17 authorization signed by the candidate for the purpose and two  
18 representatives of each political party on the ballot who are  
19 chosen by the county executive committee chairperson. A reasonable  
20 number of the general public is also freely admitted to the room.  
21 In the event all members of the general public desiring admission  
22 to the room cannot be admitted at one time, the county commission  
23 shall provide for a periodic and convenient rotation of admission  
24 to the room for observation, to the end that each member of the



1 general public desiring admission, during the proceedings at the  
2 central counting center, is to be granted admission for reasonable  
3 periods of time for observation. ~~Provided, That~~ However, no person  
4 except those authorized for the purpose may touch any ballot or  
5 ballot card or other official records and papers utilized in the  
6 election during observation.

7 (b) All persons who are engaged in processing and counting the  
8 ballots are to work in teams consisting of two persons of opposite  
9 political parties, and are to be deputized in writing and take an  
10 oath that they will faithfully perform their assigned duties.  
11 These deputies are to be issued an official badge or identification  
12 card which is assigned an identity control number and the deputies  
13 are to prominently wear on his or her outer garments the issued  
14 badge or identification card. Upon completion of the deputies'  
15 duties, the badges or identification cards are to be returned to  
16 the county clerk.

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

20 (1) In systems using punch card ballots, the ballot cards and  
21 secrecy envelopes for a precinct are to be removed from the box and  
22 examined for write-in votes before being separated and stacked for  
23 delivery to the tabulator. Immediately after valid write-in votes  
24 are tallied, the ballot cards are to be delivered to the tabulator.

1 No write-in vote may be counted for an office unless the voter has  
2 entered the name of that office and the name of an official write-  
3 in candidate for that office on the inside of the secrecy envelope,  
4 either by writing, affixing a sticker or label or placing an ink-  
5 stamped impression thereon;

6       (2) In systems using ballots marked with electronically  
7 sensible ink, ballots are to be removed from the boxes and stacked  
8 for the tabulator which separates ballots containing marks for a  
9 write-in position. Immediately after tabulation, the valid write-  
10 in votes are to be tallied. No write-in vote may be counted for an  
11 office unless the voter has entered the name of an official write-  
12 in candidate for that office on the line provided, either by  
13 writing, affixing a sticker or placing an ink-stamped impression  
14 thereon;

15       (3) In systems using ballots in which votes are recorded upon  
16 screens with a stylus or by means of touch, the personalized  
17 electronic ballots are to be removed from the containers and  
18 stacked for the tabulator. Systems using ballots in which votes  
19 are recorded upon screens with a stylus or by means of touch are to  
20 tally write-in ballots simultaneously with the other ballots;

21       (4) When more than one person is to be elected to an office  
22 and the voter desires to cast write-in votes for more than one  
23 official write-in candidate for that office, a single punch or  
24 mark, as appropriate for the voting system, in the write-in

1 location for that office is sufficient for all write-in choices.

2 When there are multiple write-in votes for the same office and the  
3 combination of choices for candidates on the ballot and write-in  
4 choices for the same office exceed the number of candidates to be  
5 elected, the ballot is to be duplicated or hand counted, with all  
6 votes for that office rejected;

7 (5) Write-in votes for nomination for any office and write-in  
8 votes for any person other than an official write-in candidate are  
9 to be disregarded;

10 ~~(6) When a voter casts a straight ticket vote and also punches~~  
11 ~~or marks the location for a write-in vote for an office, the~~  
12 ~~straight ticket vote for that office is to be rejected, whether or~~  
13 ~~not a vote can be counted for a write-in candidate; and~~

14 ~~(7)~~ (6) Official write-in candidates are those who have filed  
15 a write-in candidate's certificate of announcement and have been  
16 certified according to ~~the provisions of~~ section four-a, article  
17 six of this chapter.

18 (d) If any ballot card is damaged or defective so that it  
19 cannot properly be counted by the automatic tabulating equipment,  
20 a true duplicate copy is to be made of the damaged ballot card in  
21 the presence of representatives of each political party on the  
22 ballot and substituted for the damaged ballot card. All duplicate  
23 ballot cards are to be clearly labeled "duplicate" and are to bear  
24 a serial number which is recorded on the damaged or defective

1 ballot card and on the replacement ballot card.

2 (e) The returns printed by the automatic tabulating equipment  
3 at the central counting center, to which have been added write-in  
4 and other valid votes, are, when certified by the clerk of the  
5 county commission, to constitute the official preliminary returns  
6 of each precinct or election district. Further, all the returns  
7 are to be printed on a precinct basis. Periodically throughout and  
8 upon completion of the count, the returns are to be open to the  
9 public by posting the returns as have been tabulated precinct by  
10 precinct at the central counting center. Upon completion of the  
11 canvass, the returns are to be posted in the same manner.

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

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

21 **ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.**

22 **§3-6-2. Preparation and form of general election ballots.**

23 (a) All ballots prepared ~~under the provisions of~~ by this  
24 section are to contain:

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

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

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

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

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

23           (2) After the heading, each ballot is to contain, laid out in  
24 parallel columns, rows or pages as required by the particular

1 voting system, the party emblem, ~~the position for straight party~~  
2 ~~voting for each party~~ and the name of each party as prescribed in  
3 subsection (a) of this section. ~~On paper ballots, the position for~~  
4 ~~straight party voting is to be a heavy circle, three-fourths inch~~  
5 ~~in diameter, surrounded by the words "For a straight ticket mark~~  
6 ~~within this circle" printed in bold six point type. On all other~~  
7 ~~ballots or ballot labels, the positions for straight party voting~~  
8 ~~is to be marked "Straight Party Ticket".~~

9       (3) The party whose candidate for president received the  
10 highest number of votes at the last preceding presidential election  
11 is to be placed in the left, or first column, row or page, as is  
12 appropriate to the voting system. The party which received the  
13 second highest vote is to be next and so on. Any groups or third  
14 parties which did not have a candidate for president on the ballot  
15 in the previous presidential election are to be placed in the  
16 sequence in which the final certificates of nomination by petition  
17 were filed.

18       ~~(4) (A) The following general instructions for straight party~~  
19 ~~voters are to be printed in no smaller than eight point bold type:~~  
20 ~~"IF YOU MARKED A STRAIGHT TICKET: When you mark any individual~~  
21 ~~candidate in a different party, that vote will override your~~  
22 ~~straight party vote for that office. When you mark any individual~~  
23 ~~candidate in a different party for an office where more than one~~  
24 ~~will be elected, YOU MUST MARK EACH OF YOUR CHOICES FOR THAT OFFICE~~

~~1 because your straight ticket vote will not be counted for that  
2 office". The last sentence of the instructions may not be included  
3 on any ballot which does not contain any office or division where  
4 more than one candidate will be elected.~~

~~5 On paper ballots, the general instructions are to be placed  
6 below the party name and across the top of all columns, followed by  
7 a heavy line separating them from the rest of the ballot:  
8 Provided, That the instructions may be centered among the columns  
9 running the full width of the ballot. On ballots marked with  
10 electronically sensible ink, the general instructions are to be  
11 placed after the position for straight voting and before any  
12 office.~~

~~13 (B) The following specific instructions are to be printed on  
14 the ballot for any partisan election for an office or division to  
15 which more than one candidate is to be elected: "If you marked a  
16 straight ticket and you mark any candidate in a different party for  
17 this office, you must mark all your choices for this office because  
18 your straight ticket vote will not be counted for this office".~~

~~19 On paper ballots, the specific instructions are to be placed  
20 below the office name of any partisan office where more than one is  
21 to be elected and across the top of all columns for that office or  
22 centered among the columns before the names of any candidates. On  
23 all other ballots and ballot labels, the specific instructions are  
24 to be placed above or to the side of the names of the candidates as~~

1 ~~the voting system requires.~~

2       ~~(5)~~ (4) For all ballots, any columns, rows or sections in  
3 which the ticket of one party appears are to be clearly separated  
4 from the other columns, rows or sections by a heavy line or other  
5 clear division. For each party, the offices are to be arranged in  
6 the order prescribed in section thirteen-a, article five of this  
7 chapter under the appropriate tickets, which are to be headed  
8 "National Ticket", "State Ticket" and "County Ticket". The number  
9 of pages, columns or rows, where applicable, may be modified to  
10 meet the limitations of ballot size and composition requirements,  
11 subject to approval by the Secretary of State.

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

14       (1) In elections for presidential electors, the names of the  
15 candidates for president and vice president of each party are to be  
16 placed beside a brace with a single voting position, so that a vote  
17 for any presidential candidate is a vote for the electors of the  
18 party for which the candidates were named.

19       (2) The order of names of candidates for any office or  
20 division for which more than one is to be elected is determined as  
21 prescribed in section thirteen-a, article five of this chapter.

22 ~~Provided, That~~ The drawing by lot is to be conducted on the  
23 seventieth day next preceding the date of the general election,  
24 beginning at 9:00 a.m.



1 (3) In any office where more than one person is to be elected,  
2 the names of the candidates for the office are to be staggered so  
3 that no two candidates for that office appear directly opposite any  
4 other candidate, as shown in the example below. ~~Provided, That~~  
5 However, if the voting system cannot accurately tabulate any ballot  
6 due to this requirement, the ballot may be adjusted so that it is  
7 accurately tabulated. However, each candidate shall be separated  
8 by a thin line to distinguish between each candidate.

9 \_\_\_\_\_  
10 \_\_\_\_\_

11  
12 For House of Delegates For House of Delegates  
13 First Delegate District First Delegate District  
14 (Vote For Not More Than Two) (Vote For Not More Than Two)  
15 \_\_\_\_\_

16 SUSAN B. ANTHONY  
17 City (County)  
18 \_\_\_\_\_

19 JOHN ADAMS  
20 City (County)  
21 \_\_\_\_\_

22 ABRAHAM LINCOLN  
23 City (County)  
24 \_\_\_\_\_

1 JAMES MONROE

2 City (County)

3 \_\_\_\_\_

\_\_\_\_\_

4

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

10 (A) In paper ballot systems which allow for write-ins to be  
11 made directly on the ballot, a blank square and a blank line equal  
12 to the space which would be occupied by the name of the candidate  
13 is to be placed under the proper office for each vacancy in  
14 nomination and for an office for which more than one is to be  
15 elected, any vacancy is to appear after any other candidates for  
16 the office. If no write-in lines are included on the ballot,  
17 specific instructions are to be added to the top of the ballot  
18 notifying the voter that a write-in vote may be cast by writing the  
19 name and office on any location on the front of the ballot.

20 (B) In machine and electronically tabulated ballot systems in  
21 which write-in votes must be made in a place other than on the  
22 ballot, if there is a vacancy in nomination leaving fewer  
23 candidates in any party than can be elected to that office, the  
24 words "No Candidate Nominated" is to be printed in the space that

1 would be occupied by the name of the candidate and for an office  
2 for which more than one is to be elected, any vacancy is to appear  
3 after any other candidates for the office. Notwithstanding any  
4 other provision of this code, if there are multiple vacant  
5 positions on a ballot for one office, the multiple vacant positions  
6 which would otherwise be filled with the words "No Candidate Filed"  
7 may be replaced with a brief detailed description, approved by the  
8 Secretary of State, indicating that there are no candidates listed  
9 for the vacant positions.

10 (5) In a general election in any county in which unexpired  
11 terms of the board of education are to be filled by election, a  
12 separate section or page of the ballot is to be set off by means  
13 clearly separating the nonpartisan ballot from the ballot for the  
14 political party candidates and is to be headed "Nonpartisan Board  
15 of Education".

16 (e) Any Constitutional amendment is to be placed following all  
17 offices, followed by any other issue upon which the voters are to  
18 cast a vote. The heading for each amendment or issue is to be  
19 printed in large, bold type according to the requirements of the  
20 resolution authorizing the election.

21 (f) The board of ballot commissioners may not place any issue  
22 on the ballot for election which is not specifically authorized  
23 under the West Virginia Constitution or statutes or which has not  
24 been properly ordered by the appropriate governmental body charged

1 with calling the election.

2 **§3-6-3. Publication of sample ballots and lists of candidates.**

3 (a) The ballot commissioners of each county shall prepare a  
4 sample official general election ballot for all political party or  
5 independent nominees, nonpartisan candidates for election, if any,  
6 and all ballot issues to be voted for at the general election,  
7 according to ~~the provisions of~~ this article and articles four and  
8 four-a of this chapter, as appropriate to the voting system, and  
9 for any ballot issue, according to the provisions of law  
10 authorizing the election.

11 (b) The facsimile sample general election ballot shall be  
12 published as follows:

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

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

1 official general election ballot as a Class I legal advertisement  
2 in the qualified newspaper within the county having the largest  
3 circulation in compliance with ~~the provisions of~~ article three,  
4 chapter fifty-nine of this code; and

5       (3) Each facsimile sample ballot shall be a photographic  
6 reproduction of the official sample ballot or ballot pages and  
7 shall be printed in a size no less than sixty-five percent of the  
8 actual size of the ballot, at the discretion of the ballot  
9 commissioners. ~~Provided, That~~ However, when the ballots for the  
10 precincts within the county contain different senatorial, delegate,  
11 magisterial or executive committee districts or when the ballots  
12 for precincts within a city contain different municipal wards, the  
13 facsimile shall be altered to include each of the various districts  
14 in the appropriate order. If, in order to accommodate the size of  
15 each ballot, the ballot or ballot pages must be divided onto more  
16 than one page, the arrangement and order shall be made to conform  
17 as nearly as possible to the arrangement of the ballot. The  
18 publisher of the newspaper shall submit a proof of the ballot and  
19 the arrangement to the ballot commissioners for approval prior to  
20 publication.

21       (c) The ballot commissioners of each county shall prepare, in  
22 the form and manner prescribed by the Secretary of State, an  
23 official list of offices and nominees for each office which will  
24 appear on the general election ballot for each political party or

1 as independent nominees and, as the case may be, for the  
2 nonpartisan candidates to be voted for at the general election:

3 (1) All information which appears on the ballot, including ~~the~~  
4 ~~names of parties for which a straight ticket may be cast,~~  
5 ~~instructions relating to straight ticket voting,~~ instructions as to  
6 the number of candidates for whom votes may be cast for the office,  
7 any additional language which will appear on the ballot below the  
8 name of the office, any identifying information relating to the  
9 candidates, such as his or her residence and magisterial district  
10 or presidential preference. Following the names of all candidates,  
11 the list shall include the full title, text and voting positions of  
12 any issue to appear on the ballot.

13 (2) The order of the ~~straight ticket positions~~ offices and  
14 candidates for each office and the manner of designating the  
15 parties shall be as follows:

16 ~~(A) The straight ticket positions shall be designated~~  
17 ~~"straight (party name) ticket", with the parties listed in the~~  
18 ~~order in which they appear on the ballot, from left to right or~~  
19 ~~from top to bottom, as the case may be;~~

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

22 ~~(C)~~ (B) The candidates within each office for which one is to  
23 be elected shall be listed in the order they appear on the ballot,  
24 from left to right or from top to bottom, as the case may be, and

1 the candidate's political party affiliation or independent status  
2 shall be indicated by the one or two letter initial specifying the  
3 affiliation, placed in parenthesis to the right of the candidate's  
4 name; and

5 ~~(D)~~ (C) The candidates within each office for which more than  
6 one is to be elected shall be arranged by political party groups in  
7 the order they appear on the ballot and the candidate's affiliation  
8 shall be indicated as provided in paragraph (C) of this  
9 subdivision.

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

12 (1) For counties in which two or more qualified newspapers  
13 publish a daily newspaper, on the last day on which a newspaper is  
14 published immediately preceding the general election, the ballot  
15 commissioners shall publish the official list of nominees and  
16 issues as a Class I-0 legal advertisement in the two qualified  
17 daily newspapers of different political parties within the county  
18 having the largest circulation in compliance with ~~the provisions of~~  
19 article three, chapter fifty-nine of this code;

20 (2) For counties having no more than one daily paper, or  
21 having only one or more qualified newspapers which publish weekly,  
22 on the last day on which a newspaper is published immediately  
23 preceding the general election, the ballot commissioners shall  
24 publish the sample official list of nominees and issues as a Class

1 I legal advertisement in the qualified newspaper within the county  
2 having the largest circulation in compliance with ~~the provisions of~~  
3 article three, chapter fifty-nine of this code;

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

8 (A) The words "official list of nominees and issues", the name  
9 of the county, the words "General Election" and the date of the  
10 election shall be printed in all capital letters and in bold type  
11 no smaller than fourteen point;

12 (B) The designation of the ~~straight ticket~~ party positions  
13 shall be printed in all capital letters in bold type no smaller  
14 than twelve point and the title of the office shall be printed in  
15 bold type no smaller than twelve point and any voting instructions  
16 or other language printed below the title shall be printed in bold  
17 type no smaller than ten point; and

18 (C) The names of the candidates and the initial within  
19 parenthesis designating the candidate's affiliation shall be  
20 printed in all capital letters in bold type no smaller than ten  
21 point and the residence information shall be printed in type no  
22 smaller than ten point; and

23 (4) When any ballot issue is to appear on the ballot, the  
24 title of that ballot shall be printed in all capital letters in



1 bold type no smaller than twelve point. The text of the ballot  
2 issue shall appear in no smaller than eight point type. The ballot  
3 commissioners may require the publication of the ballot issue under  
4 this subsection in the facsimile sample ballot format in lieu of  
5 the alternate format.

6 (e) Notwithstanding ~~the provisions of~~ subsections (c) and (d)  
7 of this section, beginning with the general election to be held in  
8 the year 2000, the ballot commissioners of any county may choose to  
9 publish a facsimile sample general election ballot, instead of the  
10 official list of candidates and issues, for purposes of the last  
11 publication required before any general election.

12 **§3-6-5. Rules and procedures in election other than primaries.**

13 ~~The provisions of~~ Article one of this chapter relating to  
14 elections generally shall govern and control arrangements and  
15 election officials for the conduct of elections under this article.  
16 The following rules and procedures shall govern the voting for  
17 candidates in general and special elections:

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

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

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

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

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

7 ~~(2) Mark the position designated for a straight ticket for the~~  
8 ~~party for some of whose candidates he or she desires to vote and~~  
9 ~~then mark the name of any candidate of any other party for whom he~~  
10 ~~or she may desire to vote, in which case the cross mark in the~~  
11 ~~circular space above the name of the party straight ticket mark~~  
12 ~~will cast his or her vote for every candidate on the ticket of the~~  
13 ~~party except for offices for which candidates are marked on other~~  
14 ~~party tickets and the marks for the candidates will cast a vote for~~  
15 ~~them; or~~

16 (a) The voter shall either:

17 (1) 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 ~~(3)~~ (2) Write with ink or other means or affix a sticker or  
21 label or place an ink-stamped impression of the name of an official  
22 write-in candidate for an office for whom he or she desires to vote  
23 in the space designated for write-in votes for the particular  
24 voting system or for paper ballot systems, write or place the name

1 and office designation in any position on the face of the ballot  
2 which makes the intention of the voter clear as to both the office  
3 and the candidate chosen.

4 ~~(c) If in marking either a straight or mixed ticket as above~~  
5 ~~defined, a straight ticket voting position is marked, and also one~~  
6 ~~or more marks are made for candidates on the same ticket for~~  
7 ~~offices for which candidates on other party tickets are not~~  
8 ~~individually marked, the marks before the name of candidate on the~~  
9 ~~ticket so marked shall be treated as surplusage and ignored.~~

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

14 ~~(e)~~ (b) The Secretary of State may proscribe devices for  
15 casting write-in votes which would cause mechanical difficulty with  
16 voting machines or electronic devices or which would obliterate or  
17 deface a paper ballot or any portion thereof, but the Secretary of  
18 State shall preserve the right to vote by a write-in vote for those  
19 candidates who have filed and have been certified as official  
20 write-in candidates under ~~the provisions of~~ section four-a of this  
21 article.

22 ~~(f)~~ (c) If the voter marks more names than there are persons  
23 to be elected to an office or if, for any reason, it is impossible  
24 to determine the voter's choice for an office to be filled, the

1 ballot shall not be counted for the office. The intention of the  
2 voter shall be deemed to be clear if the write-in vote cast for an  
3 office contains both the first and last name of an official write-  
4 in candidate for that office; and if no two official write-in  
5 candidates for that office share a first or last name, either the  
6 first name or last name alone shall be deemed to express the clear  
7 intention of the voter.

8 ~~(g)~~ (d) Except as otherwise specifically provided in this  
9 chapter, no ballot shall be rejected for any technical error which  
10 does not make it impossible to determine the voter's choice.

11 **§3-6-6. Ballot counting procedures in paper ballot systems.**

12 When the polls are closed in an election precinct where only  
13 a single election board has served, the receiving board shall  
14 perform all of the duties prescribed in this section. When the  
15 polls are closed in an election precinct where two election boards  
16 have served, both the receiving and counting boards shall together  
17 conclude the counting of the votes cast, the tabulating and  
18 summarizing of the number of the votes cast, unite in certifying  
19 and attesting to the returns of the election and join in making out  
20 the certificates of the result of the election provided for in this  
21 article. They shall not adjourn until the work is completed.

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

1           (a) In counties in which the clerk of the county commission  
2 has determined that the absentee ballots should be counted at the  
3 precincts in which the absent voters are registered, the receiving  
4 board must first process the absentee ballots and deposit the  
5 ballots to be counted in the ballot box. The receiving board shall  
6 then proceed as provided in subsections (b) and (c) of this  
7 section. In counties in which the absentee ballots are counted at  
8 the central counting center, the receiving board shall proceed as  
9 provided in subsections (b) and (c) of this section.

10           (b) The receiving board shall ascertain from the pollbooks and  
11 record on the proper form the total number of voters who have  
12 voted. The number of ballots challenged shall be counted and  
13 subtracted from the total, the result should equal the number of  
14 ballots deposited in the ballot box. The commissioners and clerks  
15 shall also report, over their signatures, the number of ballots  
16 spoiled and the number of ballots not voted.

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

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

24           (2) One of the commissioners shall take one ballot from the

1 box at a time and shall determine if the ballot is properly signed  
2 by the two poll clerks of the receiving board. If not properly  
3 signed, the ballot shall be placed in an envelope for the purpose,  
4 without unfolding it. Any ballot which does not contain the proper  
5 signatures shall be challenged. If an accurate accounting is made  
6 for all ballots in the precinct in which the ballot was voted and  
7 no other challenge exists against the voter, the ballot shall be  
8 counted at the canvas. If properly signed, the commissioner shall  
9 hand the ballot to a team of commissioners of opposite politics,  
10 who shall together read the votes marked on the ballot for each  
11 office. Write-in votes for election for any person other than an  
12 official write-in candidate shall be disregarded. ~~When a voter  
13 casts a straight ticket vote and also casts a write-in vote for an  
14 office, the straight ticket vote for that office shall be rejected  
15 whether or not a vote can be counted for a write-in candidate;~~

16 (3) The commissioner responsible for removing the ballots from  
17 the box shall keep a tally of the number of ballots as they are  
18 removed and whenever the number shall equal the number of voters  
19 entered on the pollbook minus the number of provisional ballots, as  
20 determined according to subsection (a) of this section, any other  
21 ballot found in the ballot box shall be placed in the same envelope  
22 with unsigned ballots not counted, without unfolding the same or  
23 allowing anyone to examine or know the contents thereof, and the  
24 number of excess ballots shall be recorded on the envelope;

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

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

NOTE: This bill shall abolish the one-vote straight-ticket voting in all general and special elections within West Virginia.

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