

**H. B. 2441**

(By Delegates Miley, Hunt, Ellem and Longstreth)  
[Introduced January 13, 2011; referred to the  
Committee on the Judiciary.]

A BILL to amend and reenact §3-1-31, §3-1-34 and §3-1-50 of the  
Code of West Virginia, 1931, as amended; and to amend and  
reenact §8-5-14 of said code, all relating to elections;  
hours of municipal elections and notice of changes; voting  
procedures; and administrative complaint procedures.

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

That §3-1-31, §3-1-34 and §3-1-50 of the Code of West  
Virginia, 1931, as amended, be amended and reenacted; and that §8-  
5-14 of said code be amended and reenacted, all to read as follows:

**CHAPTER 3. ELECTIONS.**

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§3-1-31. Days and hours of elections.**

General elections shall be held in the several election  
precincts of the state on the Tuesday next after the first Monday

1 in November of each even year. Primary and special elections shall  
2 be held on the days provided by law therefor.

3 Other than as provided for municipal elections in section  
4 fourteen, article five, chapter eight of this code, at every  
5 primary, general or special election the polls shall be opened in  
6 each precinct on the day of such election at six-thirty o'clock  
7 in the forenoon and be closed at seven-thirty o'clock in the  
8 evening.

9 **§3-1-34. Voting procedures generally; assistance to voters; voting**  
10 **records; penalties.**

11 (a) Any person desiring to vote in an election shall, upon  
12 entering the election room, clearly state his or her name and  
13 residence to one of the poll clerks who shall thereupon announce  
14 the same in a clear and distinct tone of voice. If that person is  
15 found to be duly registered as a voter at that precinct, he or she  
16 shall sign his or her name in the designated location provided at  
17 the precinct. If that person is physically or otherwise unable to  
18 sign his or her name, his or her mark shall be affixed by one of  
19 the poll clerks in the presence of the other and the name of the  
20 poll clerk affixing the voter's mark shall be indicated immediately  
21 under the affixation. No ballot may be given to the person until  
22 he or she signs his or her name on the designated location or his  
23 or her signature is affixed thereon.

24 (b) The clerk of the county commission is authorized, upon

1 verification that the precinct at which a handicapped person is  
2 registered to vote is not handicap accessible, to transfer that  
3 person's registration to the nearest polling place in the county  
4 which is handicap accessible. A request by a handicapped person  
5 for a transfer of registration must be received by the county clerk  
6 no later than thirty days prior to the date of the election. Any  
7 handicapped person who has not made a request for a transfer of  
8 registration at least thirty days prior to the date of the election  
9 may vote a provisional ballot at a handicap accessible polling  
10 place in the county of his or her registration. If during the  
11 canvass the county commission determines that the person had been  
12 registered in a precinct that is not handicap accessible, the voted  
13 ballot, if otherwise valid, shall be counted. The handicapped  
14 person may vote in the precinct to which the registration was  
15 transferred only as long as the disability exists or the precinct  
16 from which the handicapped person was transferred remains  
17 inaccessible to the handicapped. To ensure confidentiality of the  
18 transferred ballot, the county clerk processing the ballot shall  
19 provide the voter with an unmarked envelope and an outer envelope  
20 designated "provisional ballot/handicapped voter". After  
21 validation of the ballot at the canvass, the outer envelope shall  
22 be destroyed and the handicapped voter's ballot shall be placed  
23 with other approved provisional ballots prior to removal of the  
24 ballot from the unmarked envelope.

1           (c) When the voter's signature is properly marked, the two  
2 poll clerks shall sign their names in the places indicated on the  
3 back of the official ballot and deliver the ballot to the voter to  
4 be voted by him or her without leaving the election room. If he or  
5 she returns the ballot spoiled to the clerks, they shall  
6 immediately mark the ballot "spoiled" and it shall be preserved and  
7 placed in a spoiled ballot envelope together with other spoiled  
8 ballots to be delivered to the board of canvassers and deliver to  
9 the voter another official ballot, signed by the clerks on the  
10 reverse side. The voter shall thereupon retire alone to the booth  
11 or compartment prepared within the election room for voting  
12 purposes and there prepare his or her ballot. In voting for  
13 candidates in general and special elections, the voter shall comply  
14 with the rules and procedures prescribed in section five, article  
15 six of this chapter.

16           (d) It is the duty of a poll clerk, in the presence of the  
17 other poll clerk, to indicate by a check mark, or by other means,  
18 inserted in the appropriate place on the registration record of  
19 each voter the fact that the voter voted in the election. In  
20 primary elections the clerk shall also insert thereon a  
21 distinguishing initial or initials of the political party for whose  
22 candidates the voter voted. If a person is challenged at the  
23 polls, the challenge shall be indicated by the poll clerks on the  
24 registration record, together with the name of the challenger. The

1 subsequent removal of the challenge shall be recorded on the  
2 registration record by the clerk of the county commission.

3       (e) (1) No voter may receive any assistance in voting unless,  
4 by reason of blindness, disability, advanced age or inability to  
5 read and write, that voter is unable to vote without assistance.  
6 Any voter qualified to receive assistance in voting under the  
7 provisions of this section may:

8       (A) Declare his or her choice of candidates to an election  
9 commissioner of each political party who, in the presence of the  
10 voter and in the presence of each other, shall prepare the ballot  
11 for voting in the manner hereinbefore provided and, on request,  
12 shall read to the voter the names of the candidates selected on the  
13 ballot;

14       (B) Require the election commissioners to indicate to him or  
15 her the relative position of the names of the candidates on the  
16 ballot, whereupon the voter shall retire to one of the booths or  
17 compartments to prepare his or her ballot in the manner  
18 hereinbefore provided;

19       (C) Be assisted by any person of the voter's choice, other  
20 than the voter's present or former employer or agent of that  
21 employer, the officer or agent of a labor union of which the voter  
22 is a past or present member or a candidate on the ballot or an  
23 official write-in candidate; or

24       (D) If he or she is handicapped, vote from an automobile

1 outside the polling place or precinct by the absentee balloting  
2 method provided in subsection (e), section five, article three of  
3 this chapter in the presence of an election commissioner of each  
4 political party if all of the following conditions are met:

5 (i) The polling place is not handicap accessible; and

6 (ii) No voters are voting or waiting to vote inside the  
7 polling place.

8 (2) The voted ballot shall then be returned to the precinct  
9 officials and secured in a sealed envelope to be returned to the  
10 clerk of the county commission with all other election materials.

11 The ballot shall then be tabulated using the appropriate method  
12 provided in section eight of this chapter as it relates to the  
13 specific voting system in use.

14 (3) Any voter who requests assistance in voting but who is  
15 believed not to be qualified for assistance under the provisions of  
16 this section shall nevertheless be permitted to vote a provisional  
17 ballot with the assistance of any person herein authorized to  
18 render assistance.

19 (4) Any one or more of the election commissioners or poll  
20 clerks in the precinct may challenge the ballot on the ground that  
21 the voter thereof received assistance in voting it when in his, her  
22 or their opinion the person who received assistance in voting is  
23 not so illiterate, blind, disabled or of such advanced age as to  
24 have been unable to vote without assistance. The election

1 commissioner or poll clerk or commissioners or poll clerks making  
2 the challenge shall enter the challenge and reason therefor on the  
3 form and in the manner prescribed or authorized by article three of  
4 this chapter.

5 (5) An election commissioner or other person who assists a  
6 voter in voting:

7 (A) May not in any manner request or seek to persuade or  
8 induce the voter to vote any particular ticket or for any  
9 particular candidate or for or against any public question and must  
10 not keep or make any memorandum or entry of anything occurring  
11 within the voting booth or compartment and must not, directly or  
12 indirectly, reveal to any person the name of any candidate voted  
13 for by the voter or which ticket he or she had voted or how he or  
14 she had voted on any public question or anything occurring within  
15 the voting booth or compartment or voting machine booth except when  
16 required pursuant to law to give testimony as to the matter in a  
17 judicial proceeding; and

18 (B) Shall sign a written oath or affirmation before assisting  
19 the voter on a form prescribed by the Secretary of State stating  
20 that he or she will not override the actual preference of the voter  
21 being assisted, attempt to influence the voter's choice or mislead  
22 the voter into voting for someone other than the candidate of  
23 voter's choice. The person assisting the voter shall also swear or  
24 affirm that he or she believes that the voter is voting free of

1 intimidation or manipulation: *Provided*, That no person providing  
2 assistance to a voter is required to sign an oath or affirmation  
3 where the reason for requesting assistance is the voter's inability  
4 to vote without assistance because of blindness as defined in  
5 section three, article fifteen, chapter five of this code and the  
6 inability to vote without assistance because of blindness is  
7 certified in writing by a physician of the voter's choice and is on  
8 file in the office of the clerk of the county commission.

9       (6) In accordance with instructions issued by the Secretary of  
10 State, the clerk of the county commission shall provide a form  
11 entitled "list of assisted voters", the form of which list shall  
12 likewise be prescribed by the Secretary of State. The  
13 commissioners shall enter the name of each voter receiving  
14 assistance in voting the ballot, together with the poll slip number  
15 of that voter and the signature of the person or the commissioner  
16 from each party who assisted the voter. If no voter has been  
17 assisted in voting, the commissioners shall likewise make and  
18 subscribe to an oath of that fact on the list.

19       (f) After preparing the ballot, the voter shall fold the  
20 ballot so that the face is not exposed and so that the names of the  
21 poll clerks thereon are seen. The voter shall announce his or her  
22 name and present his or her ballot to one of the commissioners who  
23 shall hand the same to another commissioner, of a different  
24 political party, who shall deposit it in the ballot box if the



1 ballot is the official one and properly signed. The commissioner  
2 of election may inspect every ballot before it is deposited in the  
3 ballot box to ascertain whether it is single, but without unfolding  
4 or unrolling it so as to disclose its content. When the voter has  
5 voted, he or she shall retire immediately from the election room  
6 and beyond the ~~sixty-foot~~ three hundred-foot limit thereof and may  
7 not return except by permission of the commissioners.

8 (g) Following the election, the oaths or affirmations required  
9 by this section from those assisting voters, together with the  
10 "list of assisted voters", shall be returned by the election  
11 commissioners to the clerk of the county commission along with the  
12 election supplies, records and returns. The clerk of the county  
13 commission shall make the oaths, affirmations and list available  
14 for public inspection and shall preserve them for a period of  
15 twenty-two months or until disposition is authorized or directed by  
16 the Secretary of State or court of record: *Provided*, That the  
17 clerk may use these records to update the voter registration  
18 records in accordance with subsection (d), section eighteen,  
19 article two of this chapter.

20 (h) Any person making an oath or affirmation required under  
21 the provisions of this section who knowingly swears falsely or any  
22 person who counsels, advises, aids or abets another in the  
23 commission of false swearing under this section is guilty of a  
24 misdemeanor and, upon conviction thereof, shall be fined not more

1 than \$1,000 or confined in jail for a period of not more than one  
2 year, or both fined and confined.

3 (i) Any election commissioner or poll clerk who authorizes or  
4 provides unchallenged assistance to a voter when the voter is known  
5 to the election commissioner or poll clerk not to require  
6 assistance in voting is guilty of a felony and, upon conviction  
7 thereof, shall be fined not more than \$5,000 or imprisoned in a  
8 state correctional facility for a period of not less than one year  
9 nor more than five years, or both fined and imprisoned.

10 **§3-1-50. Establishment of state-based administrative complaint**  
11 **procedures.**

12 The Secretary of State shall establish and maintain a state-  
13 based administrative complaint procedure for complaints received  
14 concerning election violations which shall meet the following  
15 requirements:

16 (1) The procedures shall be uniform and nondiscriminatory.

17 (2) Under the procedures, any person who believes that there  
18 is a violation of any provision of ~~this chapter~~ Title III of the  
19 Help America Vote Act of 2002, 42 United States Code §§15481 and  
20 15485, including a violation which has occurred, is occurring or is  
21 about to occur, may file a complaint.

22 (3) Any complaint filed under the procedures shall be in  
23 writing, notarized and signed and sworn by the person filing the  
24 complaint.

1           (4) The Secretary of State may consolidate complaints filed  
2 under this section.

3           (5) At the request of the complainant, there shall be a  
4 hearing on the record.

5           (6) Violations of any provision of this chapter shall be  
6 punishable in accordance with the provisions of article nine of  
7 this chapter.

8           (7) If, under the procedures, the Secretary of State  
9 determines that there is no violation, the Secretary of State shall  
10 dismiss the complaint and publish the results of the procedures.

11           (8) The Secretary of State shall make a final determination  
12 with respect to a complaint prior to the expiration of the ninety-  
13 day period which begins on the date the complaint is filed unless  
14 the complainant consents to a longer period for making a  
15 determination.

16           (9) If the Secretary of State fails to meet the deadline  
17 applicable under subdivision (8) of this section, the complaint  
18 shall be resolved within sixty days under alternative dispute  
19 resolution procedures established for purposes of this section.  
20 The record and other materials from any proceedings conducted under  
21 the complaint procedures established under this section shall be  
22 made available for use under the alternative dispute resolution  
23 procedures.

24

**CHAPTER 8. MUNICIPAL CORPORATIONS.**

1 **ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION**  
2 **OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS**  
3 **AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY;**  
4 **CONFLICT OF INTEREST.**

5 **§8-5-14. Municipal executive committees; election expenses;**  
6 **applicability of state primary and general election**  
7 **laws; election days and hours; notice.**

8 Except as otherwise provided by charter provision or ordinance  
9 or this code, municipal executive committees shall exercise similar  
10 functions and be governed by the same laws in regard to municipal  
11 primary elections and regular municipal elections as county  
12 executive committees in regard to county-state primary and general  
13 elections, so far as the same may be applicable. All expenses of  
14 conducting municipal primary elections and regular municipal  
15 elections shall be paid by the municipality. The provisions of  
16 chapter three of this code, referring more particularly to primary  
17 elections and general elections, shall, so far as the same can be  
18 applied and so far as not otherwise provided by charter provision  
19 or ordinance, govern the conduct of municipal primary elections and  
20 regular municipal elections, as the case may be. No municipal  
21 primary election shall be held on the day of the county-state  
22 primary election except as provided in section five of this article  
23 nor less than twenty-five days immediately preceding the regular

1 municipal election, unless a shorter period of time is established  
2 by charter or ordinance. A municipality may, by charter provision  
3 or ordinance, set times that polls are open on election day other  
4 than the times provided in section thirty-one, article one, chapter  
5 three of this code: *Provided, That the municipal election*  
6 officials provide written notice of hours differing from those  
7 proscribed in section thirty-one, article one, chapter three of  
8 this code to each eligible voter not less than twenty-five days  
9 prior to election day through publication in a qualified newspaper  
10 in the manner as outlined in section ten (b), article five, chapter  
11 three of this code.

NOTE: The purpose of this bill is to remove ambiguity in the required hours of municipal elections and to provide for notice to voters of differing times; to correct a conflicting distance limit provided in the voting procedures code from sixty feet to three hundred feet; and to modify the complaint procedure code to reflect passage of the Help America Vote Act of 2002, 42 United States Code §§15481 and 15485.

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