

1 **H. B. 2481**

2
3 (By Delegates Kump and Howell)

4 [Introduced January 13, 2011; referred to the
5 Committee on the Judiciary then Finance.]

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10 A BILL to amend and reenact §3-6-2 of the Code of West Virginia,
11 1931, as amended, relating to elections; forms and contents of
12 ballots; providing a "none of the above" category of primary
13 and general election ballots for state-wide elections of state
14 elected offices; requiring subsequent election if the "none of
15 the above" receives the most votes; and providing for the
16 election to be held within one hundred twenty days or as
17 otherwise determined by the Secretary of State.

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

19 That §3-6-2 of the Code of West Virginia, 1931, as amended, be
20 amended and reenacted, to read as follows:

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 this section
24 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
25 voting system, the party emblem, the position for straight party

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

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

17 (4) (A) The following general instructions for straight party
18 voters are to be printed in no smaller than eight point bold type:
19 "IF YOU MARKED A STRAIGHT TICKET: When you mark any individual
20 candidate in a different party, that vote will override your
21 straight party vote for that office. When you mark any individual
22 candidate in a different party for an office where more than one
23 will be elected, YOU MUST MARK EACH OF YOUR CHOICES FOR THAT OFFICE
24 because your straight ticket vote will not be counted for that
25 office". The last sentence of the instructions may not be included

1 on any ballot which does not contain any office or division where
2 more than one candidate will be elected.

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

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

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

24 (5) For all ballots, any columns, rows or sections in which
25 the ticket of one party appears are to be clearly separated from

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

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

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

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

22 (3) In any office where more than one person is to be elected,
23 the names of the candidates for the office are to be staggered so
24 that no two candidates for that office appear directly opposite any
25 other candidate, as shown in the example below: *Provided*, That if

1 the voting system cannot accurately tabulate any ballot due to this
2 requirement, the ballot may be adjusted so that it is accurately
3 tabulated. However, each candidate shall be separated by a thin
4 line to distinguish between each candidate.

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8 For House of Delegates	For House of Delegates
9 First Delegate District	First Delegate District
10 (Vote For Not More Than Two)	(Vote For Not More Than Two)

11 _____

12 SUSAN B. ANTHONY

13 City (County)

14 _____

15 JOHN ADAMS

16 City (County)

17 _____

18 ABRAHAM LINCOLN

19 City (County)

20 _____

21 JAMES MONROE

22 City (County)

23 _____

24

25 (4) Each voting system is to provide a means for voters to

1 vote for any person whose name does not appear on the ticket by
2 writing it with pen or pencil or by using stamps, stickers, tapes,
3 labels or other means of writing in the name of a candidate which
4 does not interfere with the tabulation of the ballot.

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

15 (B) In machine and electronically tabulated ballot systems in
16 which write-in votes must be made in a place other than on the
17 ballot, if there is a vacancy in nomination leaving fewer
18 candidates in any party than can be elected to that office, the
19 words "No Candidate Nominated" is to be printed in the space that
20 would be occupied by the name of the candidate and for an office
21 for which more than one is to be elected, any vacancy is to appear
22 after any other candidates for the office. Notwithstanding any
23 other provision of this code, if there are multiple vacant
24 positions on a ballot for one office, the multiple vacant positions
25 which would otherwise be filled with the words "No Candidate Filed"

1 may be replaced with a brief detailed description, approved by the
2 Secretary of State, indicating that there are no candidates listed
3 for the vacant positions.

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

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

15 (f) The board of ballot commissioners may not place any issue
16 on the ballot for election which is not specifically authorized
17 under the West Virginia Constitution or statutes or which has not
18 been properly ordered by the appropriate governmental body charged
19 with calling the election.

20 (g) Every official ballot for state-wide elected offices shall
21 contain, at the bottom of the list of candidates, a separated line
22 containing the words "none of the above". If the "none of the
23 above" receives a majority of the votes for the election to the
24 state-wide office, that office shall be declared vacant and a
25 subsequent election shall be held within one hundred twenty days,

1 or at such time as otherwise determined by the Secretary of State.

NOTE: The purpose of this bill is to provide a "none of the above" category on general election ballots for state-wide elections of state elected offices. It also provides for declaring an state-wide office vacant if "none of the above" votes are in the majority and requires subsequent election within one hundred twenty days or as otherwise determined by the Secretary of State.

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