

Senate Bill No. 554

(By Senators Hall, McCabe, Wells,
Palumbo, Stollings and Foster)

[Introduced February 9, 2012; referred to
the Committee on the Judiciary.]

A BILL to amend and reenact §3-6-5 of the Code of West Virginia,
1931, as amended, relating to elections and write-in candi-
dates.

Be it enacted by the Legislature of West Virginia:

That §3-6-5 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§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
16 either:

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

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

28 which candidates are marked on other party tickets and the
29 marks for the candidates will cast a vote for them; or

30 (3) Write with ink or other means or affix a sticker or
31 label or place an ink-stamped impression of the name of an
32 official write-in candidate for an office for whom he or she
33 desires to vote in the space designated for write-in votes for
34 the particular voting system or for paper ballot systems,
35 write or place the name and office designation in any
36 position on the face of the ballot which makes the intention
37 of the voter clear as to both the office and the candidate
38 chosen. However, where electronic voting systems authorized
39 by Section 1, Article 4A, Chapter 3, et seq., are used, the
40 voter shall mark the location necessary to indicate that a
41 write-in vote is to be cast.

42 (c) If in marking either a straight or mixed ticket as
43 above defined, a straight ticket voting position is marked,
44 and also one or more marks are made for candidates on the
45 same ticket for offices for which candidates on other party
46 tickets are not individually marked, the marks before the
47 name of candidate on the ticket so marked shall be treated as
48 surplusage and ignored.

49 (d) When a voter casts a straight ticket vote and also
50 writes in any name for an office, the straight ticket vote for
51 that office shall be rejected, whether or not a vote can be
52 counted for a write-in candidate.

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

62 (f) If the voter marks more names than there are persons
63 to be elected to an office or if, for any reason, it is impossible
64 to determine the voter's choice for an office to be filled, the
65 ballot shall not be counted for the office. The intention of the
66 voter shall be deemed to be clear if the write-in vote cast for
67 an office contains both the first and last name of an official
68 write-in candidate for that office; and if no two official
69 write-in candidates for that office share a first or last name,

70 either the first name or last name alone shall be deemed to
71 express the clear intention of the voter.

72 (g) Except as otherwise specifically provided in this
73 chapter, no ballot shall be rejected for any technical error
74 which does not make it impossible to determine the voter's
75 choice.

(NOTE: The purpose of this bill is to require the voter to mark the location necessary to indicate that a write-in vote is to be cast.

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

JUDICIARY COMMITTEE AMENDMENT

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill No. 554—A Bill to amend and reenact §3-6-5 of the Code of West Virginia, 1931, as amended, relating to elections and write-in candidates; and requiring a mark to indicate a write-in vote when electronic voting systems are used.