

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2846**

By Delegates Holstein, Foster, Steele, and Forsht

[Introduced January 20, 2023; Referred to the  
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §3-5-5; and to amend and reenact §3-5-13 and §3-5-13a of said code, all  
3 relating to placing of questions on the ballot in primary elections submitted by a political  
4 party.

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

**ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

**§3-5-5. Referendums placed on ballots submitted by political parties in primary elections.**

1 (a) A political party state executive committee may provide by resolution that a proposal to  
2 include a demand for specific legislation or any other matter in the party's platform or resolutions  
3 be submitted to a vote by placement on the primary election ballot. The state executive committee  
4 submitting the proposal shall prescribe the wording of the proposition. Not more than three  
5 proposals submitted by a political party may be placed on the primary ballot.

6 (b) The Secretary of State shall propose rules for legislative approval in accordance with  
7 §29A-3-1 et seq. of this code implement and administer the provisions of this section.

**§3-5-13. Form and contents of ballots.**

1 The following provisions apply to the form and contents of election ballots:

2 (1) The face of every primary election ballot shall conform as nearly as practicable to that  
3 used at the general election.

4 (2) The heading of every ballot is to be printed in display type. The heading is to contain a  
5 ballot title, the name of the county, the state, the words "Primary Election" and the month, day and  
6 year of the election. The ballot title of the political party ballots is to contain the words "Official  
7 Ballot of the (Name) Party" and the official symbol of the political party may be included in the  
8 heading.

9 (A) The ballot title of any separate paper ballot or portion of any electronic or voting  
10 machine ballot for all judicial officers shall commence with the words "Nonpartisan Ballot of  
11 Election of Judicial Officers" and each such office shall be listed in the following order:

12 (i) The ballot title of any separate paper ballot or portion of any electronic or voting machine  
13 ballot for all justices of the Supreme Court of Appeals shall contain the words "Nonpartisan Ballot  
14 of Election of Justice(s) of the Supreme Court of Appeals of West Virginia". The names of the  
15 candidates for the Supreme Court of Appeals shall be printed by division without references to  
16 political party affiliation or registration.

17 (ii) The ballot title of any separate paper ballot or portion of any electronic or voting  
18 machine ballot for all judges of the Intermediate Court of Appeals shall contain the words  
19 "Nonpartisan Ballot of Election of Judge(s) of the Intermediate Court of Appeals". The names of  
20 the candidates for the Intermediate Court of Appeals shall be printed by division without  
21 references to political party affiliation or registration.

22 (iii) The ballot title of any separate paper ballot or portion of any electronic or voting  
23 machine ballot for all circuit court judges in the respective circuits shall contain the words  
24 "Nonpartisan Ballot of Election of Circuit Court Judge(s)". The names of the candidates for the  
25 respective circuit court judge office shall be printed by division without references to political party  
26 affiliation or registration.

27 (iv) The ballot title of any separate paper ballot or portion of any electronic or voting  
28 machine ballot for all family court judges in the respective circuits shall contain the words  
29 "Nonpartisan Ballot of Election of Family Court Judge(s)". The names of the candidates for the  
30 respective family court judge office shall be printed by division without references to political party  
31 affiliation or registration.

32 (v) The ballot title of any separate paper ballot or portion of any electronic or voting  
33 machine ballot for all magistrates in the respective circuits shall contain the words "Nonpartisan  
34 Ballot of Election of Magistrate(s)". The names of the candidates for the respective magistrate  
35 office shall be printed by division without references to political party affiliation or registration.

36 (B) The ballot title of any separate paper ballot or portion of any electronic or voting  
37 machine ballot for the Board of Education is to contain the words "Nonpartisan Ballot of Election of

38 Members of the \_\_\_\_\_ County Board of Education". The districts for which fewer than  
39 two candidates may be elected and the number of available seats are to be specified and the  
40 names of the candidates are to be printed without reference to political party affiliation and without  
41 designation as to a particular term of office.

42 (C) Any other ballot or portion of a ballot on a question is to have a heading which clearly  
43 states the purpose of the election according to the statutory requirements for that question. This  
44 heading shall include any proposal to include a demand for specific legislation or any other matter  
45 in a party's platform presented by a political party state executive committee, or resolutions that  
46 are submitted by a political party state executive committee for a vote through placement on the  
47 primary election ballot, as further set forth in §3-5-5 of this code.

48 (3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the  
49 ballot by heavy lines and the offices shall be arranged in columns with the following headings, from  
50 left to right across the ballot: "National Ticket", "State Ticket", "Nonpartisan Judicial Ballot",  
51 "County Ticket", "Nonpartisan Ballot" in a nonpresidential election year, "District Ticket" or, in a  
52 presidential election year, "National Convention". The columns are to be separated by heavy lines.  
53 Within the columns, the offices are to be arranged in the order prescribed in §3-5-13a of this code.

54 (B) For voting machines, electronic voting devices and any ballot tabulated by electronic  
55 means, the offices are to appear in the same sequence as prescribed in §3-5-13a of this code and  
56 under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages,  
57 columns or rows, where applicable, may be modified to meet the limitations of ballot size and  
58 composition requirements subject to approval by the Secretary of State.

59 (C) The title of each office is to be separated from preceding offices or candidates by a line  
60 and is to be printed in bold type no smaller than eight point. Below the office is to be printed the  
61 number of the district, if any, the number of the division, if any, and the words "Vote for \_\_\_\_\_"  
62 with the number to be nominated or elected or "Vote For Not More Than \_\_\_\_\_" in  
63 multicandidate elections. For offices in which there are limitations relating to the number of

64 candidates which may be nominated, elected or appointed to or hold office at one time from a  
65 political subdivision within the district or county in which they are elected, there is to be a clear  
66 explanation of the limitation, as prescribed by the Secretary of State, printed in bold type  
67 immediately preceding the names of the candidates for those offices on the ballot in every voting  
68 system. For counties in which the number of county commissioners exceeds three and the total  
69 number of members of the county commission is equal to the number of magisterial districts within  
70 the county, the office of county commission is to be listed separately for each district to be filled  
71 with the name of the magisterial district and the words "Vote for One" printed below the name of  
72 the office: *Provided*, That the office title and applicable instructions may span the width of the ballot  
73 so as it is centered among the respective columns.

74 (D) The location for indicating the voter's choices on the ballot is to be clearly shown. For  
75 paper ballots, other than those tabulated electronically, the official primary ballot is to contain a  
76 square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular  
77 column of squares before each column of names.

78 (4) (A) The name of every candidate certified by the Secretary of State or the board of  
79 ballot commissioners is to be printed in capital letters in no smaller than eight point type on the  
80 ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the  
81 name of each candidate is to appear in the form set out by the candidate on the certificate of  
82 announcement, but in no case may the name misrepresent the identity of the candidate nor may  
83 the name include any title, position, rank, degree, or nickname implying or inferring any status as a  
84 member of a class or group or affiliation with any system of belief.

85 (B) The city of residence of every candidate, the state of residence of every candidate  
86 residing outside the state, the county of residence of every candidate for an office on the ballot in  
87 more than one county and the magisterial district of residence of every candidate for an office  
88 subject to magisterial district limitations are to be printed in lower case letters beneath the names  
89 of the candidates.

90 (C) The arrangement of names within each office must be determined as prescribed in §3-  
91 5-13a of this code.

92 (D) If the number of candidates for an office exceeds the space available on a column or  
93 ballot page and requires that candidates for a single office be separated, to the extent possible, the  
94 number of candidates for the office on separate columns or pages are to be nearly equal and clear  
95 instructions given the voter that the candidates for the office are continued on the following column  
96 or page.

97 (5) When an insufficient number of candidates has filed for a party to make the number of  
98 nominations allowed for the office or for the voters to elect sufficient members to the Board of  
99 Education or to executive committees, the vacant positions on the ballot shall be filled with the  
100 words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to be  
101 made directly on the ballot, a blank line shall be placed in any vacant position in the office of Board  
102 of Education or for election to any party executive committee. A line shall separate each candidate  
103 from every other candidate for the same office. Notwithstanding any other provision of this code, if  
104 there are multiple vacant positions on a ballot for one office, the multiple vacant positions which  
105 would otherwise be filled with the words "No Candidate Filed" may be replaced with a brief detailed  
106 description, approved by the Secretary of State, indicating that there are no candidates listed for  
107 the vacant positions.

108 (6) In presidential election years, the words "For election in accordance with the plan  
109 adopted by the party and filed with the Secretary of State" is to be printed following the names of all  
110 candidates for delegate to national convention.

111 (7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the  
112 printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted  
113 pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens  
114 Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type,  
115 envelope type, or notarization requirement. Ballot cards and paper for printing ballots using

116 electronically sensible ink are to meet minimum requirements of the tabulating systems and are to  
117 conform in size and weight to ensure ease in tabulation.

118 (8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with  
119 unique sequential numbers from one to the highest number representing the total number of  
120 ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of  
121 an inch wide and the ballot is to be trimmed to within one-half inch of that border.

122 (9) On the back of every official ballot or ballot card the words "Official Ballot" with the name  
123 of the county and the date of the election are to be printed. Beneath the date of the election there  
124 are to be two blank lines followed by the words "Poll Clerks".

125 (10) The face of sample paper ballots and sample ballot labels are to be like other official  
126 ballots or ballot labels except that the word "sample" is to be prominently printed across the front of  
127 the ballot in a manner that ensures the names of candidates are not obscured and the word  
128 "sample" may be printed in red ink. No printing may be placed on the back of the sample.

**§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.**

1 (a) The order of offices for state and county elections on all ballots within the state shall be  
2 as prescribed herein. When the office does not appear on the ballot in an election, then it shall be  
3 omitted from the sequence. When an unexpired term for an office appears on the ballot along with  
4 a full term, the unexpired term shall appear immediately below the full term.

5 NATIONAL TICKET: President (and Vice President in the general election), United States  
6 Senator, member of the United States House of Representatives.

7 STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of  
8 Agriculture, Attorney General, State Senator, member of the House of Delegates, any other  
9 multicounty office, state executive committee.

10 NONPARTISAN JUDICIAL BALLOT: Justice of the Supreme Court of Appeals, judge of  
11 the circuit court, family judge, magistrate.

12 COUNTY TICKET: Clerk of the circuit court, county commissioner, clerk of the county

13 commission, prosecuting attorney, sheriff, assessor, surveyor, congressional district executive  
14 committee, senatorial district executive committee in multicounty districts, delegate district  
15 executive committee in multicounty districts.

16 NONPARTISAN BALLOT: Nonpartisan elections for board of education, conservation  
17 district supervisor, any question to be voted upon, referendums placed on ballots submitted by  
18 political parties in primary elections.

19 DISTRICT TICKET: County executive committee.

20 NATIONAL CONVENTION: Delegate to the national convention -- congressional district,  
21 delegate to the national convention -- at-large.

22 (b) Except for office divisions in which no more than one person has filed a certificate of  
23 announcement, the arrangement of names for all offices shall be determined by lot according to  
24 the following provisions:

25 (1) On the fourth Tuesday following the close of the candidate filing, beginning at 9:00 a.m.,  
26 a drawing by lot shall be conducted in the office of the clerk of the county commission in each  
27 county. Notice of the drawing shall be given on the form for the certificate of announcement and no  
28 further notice shall be required. The clerk of the county commission shall superintend and conduct  
29 the drawing and the method of conducting the drawing shall be prescribed by the Secretary of  
30 State.

31 (2) Except as provided herein, the position of each candidate within each office division  
32 shall be determined by the position drawn for that candidate individually: *Provided*, That if fewer  
33 candidates file for an office division than the total number to be nominated or elected, the vacant  
34 positions shall appear following the names of all candidates for the office.

35 (3) Candidates for delegate to national convention who have filed a commitment to a  
36 candidate for president shall be listed alphabetically within the group of candidates committed to  
37 the same candidate for president and uncommitted candidates shall be listed alphabetically in an  
38 uncommitted category. The position of each group of committed candidates and uncommitted



39 candidates shall be determined by lot by drawing the names of the presidential candidates and for  
40 an uncommitted category.

41 (4) A candidate or the candidate's representative may attend the drawings.

NOTE: The purpose of this bill is to provide for the placing of questions on the primary election ballot submitted by a political party.

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