

Bill as Introduced

SB 157 - AS INTRODUCED

2009 SESSION

09-0995
03/05

SENATE BILL

157

AN ACT

relative to the procedure for listing candidates on election ballots.

SPONSORS:

Sen. Houde, Dist 5; Sen. Fuller Clark, Dist 24; Sen. Cilley, Dist 6; Rep. Clemons, Hills 24

COMMITTEE:

Election Law and Veterans' Affairs

ANALYSIS

This bill establishes a procedure for the random drawing of a candidate's name for the ordering of names on election ballots and requires the rotation of candidate names and party columns on the ballots. This bill also changes the limitations on a candidate designating a name to be placed on the ballot.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to the procedure for listing candidates on election ballots.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Municipal Elections; City Charters; Preparation of Ballots. Amend RSA 49-C:6 to read as
2 follows:

3 49-C:6 Preparation of Ballots. The city clerk shall prepare the ballots to be used at the
4 municipal elections. Under charters providing for election by the Australian ballot system, the
5 ballots shall be prepared in accordance with the procedure provided for in general election laws
6 governing such system. Under charters providing for non-partisan elections, the ballot shall contain
7 the names in alphabetical order by surname ***according to the alphabetization and rotation***
8 ***procedure established in RSA 656:5-a, with the city clerk acting in lieu of the secretary of***
9 ***state***, without party designation, of all who file with the city clerk as candidates for elective office.
10 In the alternative, the charter may provide for a random selection of the order of names on the
11 ballot. The charter shall specify a filing period, the filing fee to be paid for each office, and, as an
12 alternative method of becoming a candidate on the ballot, the number of qualified voters which may
13 be subscribed to a nominating petition in such form as the charter may set out.

14 2 Nominations for Special State Elections; Order of Names on Ballot. Amend RSA 655:81, IX to
15 read as follows:

16 IX. The names of all candidates for a party nomination at a special election primary shall be
17 printed in alphabetical order on the ballot [~~and the same ballot listing shall be used at all polling~~
18 ~~places where the special primary election is held]~~ ***according to the alphabetization and rotation***
19 ***procedure established in RSA 656:5-a; and***

20 3 Preparation of State General Election Voting Materials; Party Columns. Amend RSA 656:5 to
21 read as follows:

22 656:5 Party Columns. The names of all candidates nominated in accordance with the election
23 laws shall be arranged upon the state general election ballot in successive party columns. Each
24 separate column shall contain the names of the candidates of one party; except that, if only a part of
25 a full list of candidates is nominated by a political party, 2 or more such lists may be arranged
26 whenever practicable in the same column. The party columns that list the names of candidates for
27 offices that elect more than one person shall stagger the names of the candidates so that they do not
28 line up evenly in a horizontal direction. The left-most column shall begin one line below the column
29 to its right. The secretary of state shall determine the *vertical* location of any additional columns
30 that may appear on the ballot. ***The position of party columns shall be rotated on the ballots***
31 ***used so that each party column shall appear thereon, to the extent practicable, an***

1 *approximately equal number of times in the first, last, and each intermediate column*
2 *position across the state, without requiring more than one unique column order or ballot*
3 *format for each town and city ward. The secretary of state shall develop a column rotation*
4 *order plan for each general election starting with a reasonably balanced rotation across*
5 *each state representative district consisting of more than one town or ward. Only after*
6 *establishing a party column rotation order for all towns and wards shall the secretary of*
7 *state publicly select by lot the actual party column to be positioned in the first column and*
8 *each subsequent column in the first rotation order.*

9 4 New Section; Preparation of State General Election Voting Materials; Order of Candidate
10 Names on Ballots. Amend RSA 656 by inserting after section 5 the following new section:

11 656:5-a Order of Candidate Names on Ballots. Whenever there are 2 or more candidates for the
12 same office whose names will appear within the same column or list on a ballot, the names of such
13 candidates shall be rotated on the ballots used so that each name shall appear thereon, to the extent
14 practicable, an equal number of times at or near the top, at or near the bottom, and in each
15 intermediate position, if any, of the list in which it belongs, without requiring more than one unique
16 name order or ballot format for each town and city ward. The secretary of state shall randomly
17 select one candidate's name, by lot or otherwise, to appear at the top of each such list for the first
18 name order rotation. Other candidates' names shall be arranged to follow in alphabetical order of
19 their surnames with the letter "a" following "z."

20 5 Primary Election Voting Materials; Order of Names. Amend RSA 656:24 to read as follows:

21 656:24 Order of Names. With the exception of the office of state representative, whenever there
22 are 2 or more candidates for nomination to the same office, the names of such candidates shall be
23 alternated on the state primary election ballots used so that each name shall appear thereon as
24 nearly as may be an equal number of times at the top, at the bottom, and in each intermediate place,
25 if any, of the list in which it belongs. Names of candidates for nomination to the office of state
26 representative shall be arranged in the alphabetical order of their surnames *according to the*
27 *alphabetization and rotation procedure established in RSA 656:5-a.*

28 6 Presidential Primary Election Voting Materials; Order of Names. Amend RSA 656:32 to read
29 as follows:

30 656:32 Other Provisions. The provisions of RSA 656:24-656:28 relating to state primary election
31 ballots shall apply to presidential primary ballots, except that candidates on the presidential
32 primary ballot shall be listed in the alphabetical order of their surnames *according to the*
33 *alphabetization and rotation procedure established in RSA 656:5-a.*

34 7 Constitutional Convention Ballots; Form. Amend RSA 667:12 to read as follows:

35 667:12 Form. Every ballot for the election shall contain the name and domicile of each
36 candidate who has filed a declaration of candidacy for delegate. The names of candidates upon the
37 ballot shall be arranged in perpendicular columns under the title "For Delegate to the Constitutional

1 Convention." Below the title shall be printed in easily legible type the words "Vote for" followed by a
2 spelled number designating the number of persons to be elected to such office. At the right of the
3 name of each candidate and on the same line, there shall be a square. Following the names there
4 shall be as many blank lines as there are persons to be elected. Whenever there are 2 or more
5 candidates, the names shall be printed upon the ballot in alphabetical order of their surnames
6 *according to the alphabetization and rotation procedure established in RSA 656:5-a.*

7 8 Town Elections; Official Ballot; Voting Materials. Amend RSA 669:23 to read as follows:

8 669:23 Preparation of Voting Materials. The town clerk shall prepare the official ballots for the
9 town and shall arrange the names of candidates upon said ballots in parallel columns. Immediately
10 above the names of each block of candidates shall be printed the title of the office for which they are
11 candidates, such as "For Selectman." Below the title of each office shall be printed in small but
12 easily legible type the words "Vote for not more than (here insert a number designating how many
13 persons are to be voted for)." Directly to the right of the name of each candidate there shall be a
14 square. Whenever there are 2 or more candidates for the same office the names shall be printed
15 upon the ballot in the alphabetical order of their surnames *according to the alphabetization and*
16 *rotation procedure established in RSA 656:5-a, with the town clerk acting in lieu of the*
17 *secretary of state. In the alternative, the governing body may provide for a random*
18 *selection of the order of names on the ballot.* Following the names printed on the ballot under
19 the title of each office, there shall be as many blank lines as there are persons to be elected to that
20 office.

21 9 Form of Candidate's Name on Ballot; Nicknames. Amend RSA 655:14-b, I-II to read as
22 follows:

23 I. Every candidate for state or federal office who intends to have his or her name printed
24 upon the ballot of any party for a primary shall designate in the declaration of candidacy, or on the
25 primary petitions and assents to candidacy, the form in which the candidate's name shall be printed
26 on the ballot. ~~[The candidate may designate his or her given, first, and middle name, the initials of~~
27 ~~his or her given, first, and middle name, a nickname, or any combination thereof as the form in~~
28 ~~which the candidate's name shall be printed on the ballot, but the candidate shall not designate a~~
29 ~~deceptive name. If the candidate designates a nickname in place of or in combination with the~~
30 ~~candidate's given name or the initials thereof, the nickname shall be set off with quotation marks~~
31 ~~and shall be placed immediately before his or her surname. If the candidate designates a nickname,~~
32 ~~the nickname shall be customarily related to the candidate's given name, or, if the nickname is not~~
33 ~~customarily related to the candidate's given name, the candidate shall submit clear and convincing~~
34 ~~evidence that the candidate has been known by the nickname for at least the 5 years immediately~~
35 ~~preceding the time of filing. If deemed sufficient by the appropriate official, 3 affidavits from voters~~
36 ~~in the district who are not related to the candidate stating that the candidate has been known by the~~
37 ~~nickname for at least 5 years may constitute clear and convincing evidence. Nicknames shall be~~

1 ~~limited to one word, except for 2 word nicknames customarily related to the candidate's given name.]~~
2 ***The designated name may include the candidate's given name or a shortened form of the***
3 ***candidate's given name or a one-word nickname customarily related to the candidate, and***
4 ***by which the candidate is commonly recognized. The designated name may also include an***
5 ***initial for the first or middle name, or both.*** No candidate may designate a nickname that
6 implies that the candidate is some other person, that constitutes a slogan or otherwise associates the
7 candidate with a cause or issue, or that has an offensive or profane meaning. A candidate shall
8 include his or her surname in the designation of the form in which the candidate's name shall be
9 printed on the ballot.

10 II. Every candidate for state or federal office who intends to have his or her name placed on
11 the ballot for the state general election by means other than nomination by party primary shall
12 designate in the declaration of intent the form in which the candidate's name shall be printed on the
13 ballot. ~~[The candidate may designate his or her given, first, and middle name, the initials of his or~~
14 ~~her given, first, and middle name, a nickname, or any combination thereof as the form in which the~~
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31 candidate with a cause or issue, or that has an offensive or profane meaning. A candidate shall
32 include his or her surname in the designation of the form in which the candidate's name shall be
33 printed on the ballot.

34 10 Effective Date.

35 I. Sections 1-8 of this act shall take effect 60 days after its passage.

36 II. The remainder of this act shall take effect upon its passage.

SB 157 - AS AMENDED BY THE SENATE

03/25/09 1002s

2009 SESSION

09-0995

03/05

SENATE BILL **157**

AN ACT relative to the procedure for listing candidates on election ballots and establishing a citizen-funded election task force.

SPONSORS: Sen. Houde, Dist 5; Sen. Fuller Clark, Dist 24; Sen. Cilley, Dist 6; Rep. Clemons, Hills 24

COMMITTEE: Election Law and Veterans' Affairs

AMENDED ANALYSIS

This bill:

I. Establishes a procedure for the random drawing of a candidate's name for the ordering of names on election ballots and requires the rotation of candidate names and party columns on the ballots.

II. Changes the limitations on a candidate designating a name to be placed on the ballot.

III. Establishes a citizen-funded election task force.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to the procedure for listing candidates on election ballots and establishing a citizen-funded election task force.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Municipal Elections; City Charters; Preparation of Ballots. Amend RSA 49-C:6 to read as
2 follows:

3 49-C:6 Preparation of Ballots. The city clerk shall prepare the ballots to be used at the
4 municipal elections. Under charters providing for election by the Australian ballot system, the
5 ballots shall be prepared in accordance with the procedure provided for in general election laws
6 governing such system. Under charters providing for non-partisan elections, the ballot shall contain
7 the names in alphabetical order by surname ***according to the alphabetization and rotation***
8 ***procedure established in RSA 656:5-a, with the city clerk acting in lieu of the secretary of***
9 ***state***, without party designation, of all who file with the city clerk as candidates for elective office.
10 In the alternative, the charter may provide for a random selection of the order of names on the ballot
11 ***or the city clerk may follow an alphabetization and rotation procedure specified by the***
12 ***secretary of state pursuant to RSA 656:5-a***. The charter shall specify a filing period, the filing fee
13 to be paid for each office, and, as an alternative method of becoming a candidate on the ballot, the
14 number of qualified voters which may be subscribed to a nominating petition in such form as the
15 charter may set out.

16 2 Nominations for Special State Elections; Order of Names on Ballot. Amend RSA 655:81, IX to
17 read as follows:

18 IX. The names of all candidates for a party nomination at a special election primary shall be
19 printed in alphabetical order on the ballot [~~and the same ballot listing shall be used at all polling~~
20 ~~places where the special primary election is held]~~ ***according to the alphabetization and rotation***
21 ***procedure established in RSA 656:5-a***; and

22 3 Preparation of State General Election Voting Materials; Party Columns. Amend RSA 656:5 to
23 read as follows:

24 656:5 Party Columns. The names of all candidates nominated in accordance with the election
25 laws shall be arranged upon the state general election ballot in successive party columns. Each
26 separate column shall contain the names of the candidates of one party; except that, if only a part of
27 a full list of candidates is nominated by a political party, 2 or more such lists may be arranged
28 whenever practicable in the same column. The party columns that list the names of candidates for
29 offices that elect more than one person shall stagger the names of the candidates so that they do not

1 line up evenly in a horizontal direction. The left-most column shall begin one line below the column
2 to its right. The secretary of state shall determine the *vertical* location of any additional columns
3 that may appear on the ballot. *The position of party columns shall be rotated on the ballots*
4 *used so that each party column shall appear thereon, to the extent practicable, an*
5 *approximately equal number of times in the first, last, and each intermediate column*
6 *position across the state, without requiring more than one unique column order or ballot*
7 *format for each town and city ward. The secretary of state shall develop a column rotation*
8 *order plan for each general election starting with a reasonably balanced rotation across*
9 *each state representative district consisting of more than one town or ward. Only after*
10 *establishing a party column rotation order for all towns and wards shall the secretary of*
11 *state publicly select by lot the actual party column to be positioned in the first column and*
12 *each subsequent column in the first rotation order. Such public selection shall be held*
13 *after the close of the filing period for the state primary as specified in RSA 655:14 and after*
14 *giving at least 3 days written notice of the date, time, and location of such selection to the*
15 *governor, the state chairmen of the parties, the speaker of the house of representatives, the*
16 *president of the senate, and the minority leaders of both houses of the general court.*

17 4 New Section; Preparation of State General Election Voting Materials; Order of Candidate
18 Names on Ballots. Amend RSA 656 by inserting after section 5 the following new section:

19 656:5-a Order of Candidate Names on Ballots. Whenever there are 2 or more candidates for the
20 same office whose names will appear within the same column or list on a ballot, the names of such
21 candidates shall be rotated on the ballots used so that each name shall appear thereon, to the extent
22 practicable, an equal number of times at or near the top, at or near the bottom, and in each
23 intermediate position, if any, of the list in which it belongs, without requiring more than one unique
24 name order or ballot format for each town and city ward. The secretary of state shall randomly
25 select one candidate's name to appear at the top of each such list for the first name order rotation.
26 Other candidates' names shall be arranged to follow in alphabetical order of their surnames with the
27 letter "a" following "z." The random selection of a candidate's name to go first in the first name order
28 rotation, which may be the only name order if there is only one unique ballot format for the office,
29 shall be made by lot or by another procedure in which each candidate has an equal probability of
30 being chosen first. Such random selection of names, and establishment of a random selection
31 procedure for the ordering of lists of names on ballots to be in effect until the next selection, shall be
32 done publicly and after the close of the filing period for the state primary as specified in RSA 655:14
33 and after giving at least 3 days written notice of the date, time, and location of such selection to the
34 governor, the state chairmen of the parties, the speaker of the house of representatives, the
35 president of the senate, and the minority leaders of both houses of the general court.

36 5 Primary Election Voting Materials; Order of Names. Amend RSA 656:24 to read as follows:

37 656:24 Order of Names. With the exception of the office of state representative, whenever there

1 are 2 or more candidates for nomination to the same office, the names of such candidates shall be
2 alternated on the state primary election ballots used so that each name shall appear thereon as
3 nearly as may be an equal number of times at the top, at the bottom, and in each intermediate place,
4 if any, of the list in which it belongs. Names of candidates for nomination to the office of state
5 representative shall be arranged in the alphabetical order of their surnames *according to the*
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11 primary ballot shall be listed in the alphabetical order of their surnames *according to the*
12 *alphabetization and rotation procedure established in RSA 656:5-a.*

13 7 Constitutional Convention Ballots; Form. Amend RSA 667:12 to read as follows:

14 667:12 Form. Every ballot for the election shall contain the name and domicile of each
15 candidate who has filed a declaration of candidacy for delegate. The names of candidates upon the
16 ballot shall be arranged in perpendicular columns under the title "For Delegate to the Constitutional
17 Convention." Below the title shall be printed in easily legible type the words "Vote for" followed by a
18 spelled number designating the number of persons to be elected to such office. At the right of the
19 name of each candidate and on the same line, there shall be a square. Following the names there
20 shall be as many blank lines as there are persons to be elected. Whenever there are 2 or more
21 candidates, the names shall be printed upon the ballot in alphabetical order of their surnames
22 *according to the alphabetization and rotation procedure established in RSA 656:5-a.*

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25 town and shall arrange the names of candidates upon said ballots in parallel columns. Immediately
26 above the names of each block of candidates shall be printed the title of the office for which they are
27 candidates, such as "For Selectman." Below the title of each office shall be printed in small but
28 easily legible type the words "Vote for not more than (here insert a number designating how many
29 persons are to be voted for)." Directly to the right of the name of each candidate there shall be a
30 square. Whenever there are 2 or more candidates for the same office the names shall be printed
31 upon the ballot in the alphabetical order of their surnames *according to the alphabetization*
32 *procedure established in RSA 656:5-a, with the town clerk acting in lieu of the secretary of*
33 *state. In the alternative, the town clerk may follow an alphabetization procedure specified*
34 *by the secretary of state pursuant to RSA 656:5-a, or the governing body may provide for a*
35 *random selection of the order of names on the ballot.* Following the names printed on the
36 ballot under the title of each office, there shall be as many blank lines as there are persons to be
37 elected to that office.

1 9 Form of Candidate's Name on Ballot; Nicknames. Amend RSA 655:14-b, I-II to read as
2 follows:

3 I. Every candidate for state or federal office who intends to have his or her name printed
4 upon the ballot of any party for a primary shall designate in the declaration of candidacy, or on the
5 primary petitions and assents to candidacy, the form in which the candidate's name shall be printed
6 on the ballot. ~~[The candidate may designate his or her given, first, and middle name, the initials of~~
7 ~~his or her given, first, and middle name, a nickname, or any combination thereof as the form in~~
8 ~~which the candidate's name shall be printed on the ballot, but the candidate shall not designate a~~
9 ~~deceptive name. If the candidate designates a nickname in place of or in combination with the~~
10 ~~candidate's given name or the initials thereof, the nickname shall be set off with quotation marks~~
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16 ~~in the district who are not related to the candidate stating that the candidate has been known by the~~
17 ~~nickname for at least 5 years may constitute clear and convincing evidence. Nicknames shall be~~
18 ~~limited to one word, except for 2 word nicknames customarily related to the candidate's given name.]~~
19 *The designated name may include the candidate's given name or a shortened form of the*
20 *candidate's given name or a one-word nickname customarily related to the candidate, and*
21 *by which the candidate is commonly recognized. The designated name may also include an*
22 *initial for the first or middle name, or both.* No candidate may designate a nickname that
23 implies that the candidate is some other person, that constitutes a slogan or otherwise associates the
24 candidate with a cause or issue, [or] that has an offensive or profane meaning[-], *or that creates a*
25 *perception of a professional or vocational affiliation, such as "Doc" or "Coach."* A candidate
26 shall include his or her surname in the designation of the form in which the candidate's name shall
27 be printed on the ballot.

28 II. Every candidate for state or federal office who intends to have his or her name placed on
29 the ballot for the state general election by means other than nomination by party primary shall
30 designate in the declaration of intent the form in which the candidate's name shall be printed on the
31 ballot. ~~[The candidate may designate his or her given, first, and middle name, the initials of his or~~
32 ~~her given, first, and middle name, a nickname, or any combination thereof as the form in which the~~
33 ~~candidate's name shall be printed on the ballot, but the candidate shall not designate a deceptive~~
34 ~~name. If the candidate designates a nickname in place of or in combination with the candidate's~~
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36 ~~placed immediately before his or her surname. If the candidate designates a nickname, the~~
37 ~~nickname shall be customarily related to the candidate's given name, or, if the nickname is not~~

~~customarily related to the candidate's given name, the candidate shall submit clear and convincing evidence that the candidate has been known by the nickname for at least the 5 years immediately preceding the time of filing. If deemed sufficient by the appropriate official, 3 affidavits from voters in the district who are not related to the candidate stating that the candidate has been known by the nickname for at least 5 years may constitute clear and convincing evidence. Nicknames shall be limited to one word, except for 2 word nicknames customarily related to the candidate's given name.]~~
The designated name may include the candidate's given name or a shortened form of the candidate's given name or a one-word nickname customarily related to the candidate, and by which the candidate is commonly recognized. The designated name may also include an initial for the first or middle name, or both. No candidate may designate a nickname that implies that the candidate is some other person, that constitutes a slogan or otherwise associates the candidate with a cause or issue, [or] that has an offensive or profane meaning[-], ***or that creates a perception of a professional or vocational affiliation, such as "Doc" or "Coach."*** A candidate shall include his or her surname in the designation of the form in which the candidate's name shall be printed on the ballot.

10 Citizen-Funded Election Task Force.

I. There is established a citizen-funded election task force. The members of the task force shall be as follows:

(a) One member of the senate, appointed by the president of the senate.

(b) Three members of the house of representatives, appointed by the speaker of the house of representatives.

(c) Two members representing organizations supporting public financing of campaigns, appointed jointly by the president of the senate and the speaker of the house of representatives.

(d) One member who served on the commission to study the feasibility of public funding of state election campaigns established by 2008, 55, appointed jointly by the president of the senate and the speaker of the house of representatives.

II. Legislative members of the task force shall receive mileage at the legislative rate when attending to the duties of the task force.

III. The task force shall:

(a) Review the report of the commission to study the feasibility of public funding of state election campaigns established by 2008, 55, and develop a detailed plan, including proposals for specific legislation, to implement the recommendations of the report.

(b) Solicit input from senators, representatives, the governor, executive councilors, the attorney general, the secretary of state, and any other persons deemed appropriate by the task force.

(c) Hold public hearings at times and at locations around the state that are likely to elicit substantive input from the general public.

(d) Make the schedule and minutes of meetings of the task force, and all testimony and

1 materials presented to the task force, available to the public on a website.

2 IV. The members of the task force shall elect a chairperson from among the members. The
3 first meeting of the task force shall be called by the first-named senate member. The first meeting of
4 the task force shall be held within 60 days of the effective date of this section. Four members of the
5 task force shall constitute a quorum.

6 V. The task force shall submit an initial report on or before November 16, 2009 and a final
7 report on or before November 15, 2010 of its findings and any recommendations for proposed
8 legislation to the president of the senate, the speaker of the house of representatives, the senate
9 clerk, the house clerk, the chairmen of the senate election law and veterans' affairs committee, the
10 chairmen of the house election law committee, the governor, and the state library.

11 11 Effective Date.

12 I. Sections 1-8 of this act shall take effect 60 days after its passage.

13 II. The remainder of this act shall take effect upon its passage.

LBAO
09-0995
Amended 04/08/09

SB 157 FISCAL NOTE

AN ACT relative to the procedure for listing candidates on election ballots and establishing a citizen-funded election task force.

FISCAL IMPACT:

The Secretary of State states this bill as amended by the Senate (Amendment #2009-1002s) will increase state expenditures by \$102,380 in FY 2010, \$131,900 in FY 2011, \$61,760 in FY 2012, and \$43,900 in FY 2013. There will be no fiscal impact on state, county and local revenue or county and local expenditures.

METHODOLOGY:

This bill establishes a procedure for the random drawing of a candidate's name for the ordering of names on election ballots, requires the rotation of candidate names and party columns on the ballots, changes the limitations on a candidate designating a name to be placed on the ballot, and establishes a citizen-funded election task force. The Secretary of State claims this bill would require the use of additional name order rotations and additional party column rotations in determining the order of names on state, local, and presidential primary ballots. The Secretary states the proposed legislation will increase the complexity of designing and organizing the ballot and will require automation of ballot design and configuration with a computerized election management system, which will mean startup costs of \$100,000 per year in FY 2010 and FY 2011, and \$12,000 per year thereafter for ongoing maintenance. The Secretary also states the assistance of a part-time Program Assistant I will be needed to help ensure the accuracy of the ballots at various stages of production. The Secretary states the proposed legislation will also require increased staff time for the programming of the AVS accessible voting system, at a cost of \$10,000 per election. Additionally, the Secretary claims the reinstatement of the name order rotation on the presidential primary ballot in calendar year 2012 will increase state expenditures in FY 2012 by an additional \$35,000. The total increase in state expenditures associated with the implementation of the proposed legislation is as follows:

Program Assistant I (Labor Grade 12, Step 1 salary):	\$26,540
Part-time Benefits at 7.65%	<u>2,030</u>
Total	\$28,570
Divided by 12 months	\$2,380 per month - Part-time help

SB 157 – AS AMENDED BY THE SENATE

- Page 8 -

<u>Fiscal Year</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Number of Months of Part-time help	1	5	2	5
Total Costs of Part-time Help	\$2,380	\$11,900	\$4,760	\$11,900
Automated Election Management System	\$100,000	\$100,000	\$12,000	\$12,000
AVS Programming @ \$10,000 per election	-	\$20,000	\$10,000	\$20,000
<u>Presidential Primary Ballot Rotation</u>	-	-	\$35,000	-
Total Increase in State Expenditures	\$102,380	\$131,900	\$61,760	\$43,900

This bill does not contain an appropriation or establish positions.

SB 157 FISCAL NOTE

AN ACT relative to the procedure for listing candidates on election ballots and establishing a citizen-funded election task force.

FISCAL IMPACT:

The Secretary of State states this bill as amended by the Senate (Amendment #2009-1002s) will increase state expenditures by \$102,380 in FY 2010, \$131,900 in FY 2011, \$61,760 in FY 2012, and \$43,900 in FY 2013. There will be no fiscal impact on state, county and local revenue or county and local expenditures.

METHODOLOGY:

This bill establishes a procedure for the random drawing of a candidate's name for the ordering of names on election ballots, requires the rotation of candidate names and party columns on the ballots, changes the limitations on a candidate designating a name to be placed on the ballot, and establishes a citizen-funded election task force. The Secretary of State claims this bill would require the use of additional name order rotations and additional party column rotations in determining the order of names on state, local, and presidential primary ballots. The Secretary states the proposed legislation will increase the complexity of designing and organizing the ballot and will require automation of ballot design and configuration with a computerized election management system, which will mean startup costs of \$100,000 per year in FY 2010 and FY 2011, and \$12,000 per year thereafter for ongoing maintenance. The Secretary also states the assistance of a part-time Program Assistant I will be needed to help ensure the accuracy of the ballots at various stages of production. The Secretary states the proposed legislation will also require increased staff time for the programming of the AVS accessible voting system, at a cost of \$10,000 per election. Additionally, the Secretary claims the reinstatement of the name order rotation on the presidential primary ballot in calendar year 2012 will increase state expenditures in FY 2012 by an additional \$35,000. The total increase in state expenditures associated with the implementation of the proposed legislation is as follows:

Program Assistant I (Labor Grade 12, Step 1 salary):	\$26,540			
Part-time Benefits at 7.65%	<u>2,030</u>			
Total	\$28,570			
Divided by 12 months		\$2,380 per month - Part-time help		
<u>Fiscal Year</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Number of Months of Part-time help	1	5	2	5
Total Costs of Part-time Help	\$2,380	\$11,900	\$4,760	\$11,900

Automated Election Management System	\$100,000	\$100,000	\$12,000	\$12,000
AVS Programming @ \$10,000 per election	-	\$20,000	\$10,000	\$20,000
<u>Presidential Primary Ballot Rotation</u>	-	-	<u>\$35,000</u>	-
Total Increase in State Expenditures	\$102,380	\$131,900	\$61,760	\$43,900

This bill does not contain an appropriation or establish positions.

Amendments

Sen. Houde, Dist. 5
Sen. Fuller Clark, Dist. 24
March 16, 2009
2009-0821s
03/05

Amendment to SB 157

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the procedure for listing candidates on election ballots and establishing
4 a citizen-funded election task force.

5

6 Amend the bill by replacing section 1 with the following:

7

8 1 Municipal Elections; City Charters; Preparation of Ballots. Amend RSA 49-C:6 to read as
9 follows:

10 49-C:6 Preparation of Ballots. The city clerk shall prepare the ballots to be used at the
11 municipal elections. Under charters providing for election by the Australian ballot system, the
12 ballots shall be prepared in accordance with the procedure provided for in general election laws
13 governing such system. Under charters providing for non-partisan elections, the ballot shall contain
14 the names in alphabetical order by surname *according to the alphabetization and rotation*
15 *procedure established in RSA 656:5-a, with the city clerk acting in lieu of the secretary of*
16 *state*, without party designation, of all who file with the city clerk as candidates for elective office.
17 In the alternative, the charter may provide for a random selection of the order of names on the ballot
18 *or the city clerk may follow an alphabetization and rotation procedure specified by the*
19 *secretary of state pursuant to RSA 656:5-a*. The charter shall specify a filing period, the filing fee
20 to be paid for each office, and, as an alternative method of becoming a candidate on the ballot, the
21 number of qualified voters which may be subscribed to a nominating petition in such form as the
22 charter may set out.

23

24 Amend the bill by replacing sections 3 and 4 with the following:

25

26 3 Preparation of State General Election Voting Materials; Party Columns. Amend RSA 656:5 to
27 read as follows:

28 656:5 Party Columns. The names of all candidates nominated in accordance with the election
29 laws shall be arranged upon the state general election ballot in successive party columns. Each
30 separate column shall contain the names of the candidates of one party; except that, if only a part of
31 a full list of candidates is nominated by a political party, 2 or more such lists may be arranged
32 whenever practicable in the same column. The party columns that list the names of candidates for

1 offices that elect more than one person shall stagger the names of the candidates so that they do not
2 line up evenly in a horizontal direction. The left-most column shall begin one line below the column
3 to its right. The secretary of state shall determine the *vertical* location of any additional columns
4 that may appear on the ballot. *The position of party columns shall be rotated on the ballots*
5 *used so that each party column shall appear thereon, to the extent practicable, an*
6 *approximately equal number of times in the first, last, and each intermediate column*
7 *position across the state, without requiring more than one unique column order or ballot*
8 *format for each town and city ward. The secretary of state shall develop a column rotation*
9 *order plan for each general election starting with a reasonably balanced rotation across*
10 *each state representative district consisting of more than one town or ward. Only after*
11 *establishing a party column rotation order for all towns and wards shall the secretary of*
12 *state publicly select by lot the actual party column to be positioned in the first column and*
13 *each subsequent column in the first rotation order. Such public selection shall be held*
14 *after the close of the filing period for the state primary as specified in RSA 655:14 and after*
15 *giving at least 3 days written notice of the date, time, and location of such selection to the*
16 *governor, the state chairmen of the parties, the speaker of the house of representatives, the*
17 *president of the senate, and the minority leaders of both houses of the general court.*

18 4 New Section; Preparation of State General Election Voting Materials; Order of Candidate
19 Names on Ballots. Amend RSA 656 by inserting after section 5 the following new section:

20 656:5-a Order of Candidate Names on Ballots. Whenever there are 2 or more candidates for the
21 same office whose names will appear within the same column or list on a ballot, the names of such
22 candidates shall be rotated on the ballots used so that each name shall appear thereon, to the extent
23 practicable, an equal number of times at or near the top, at or near the bottom, and in each
24 intermediate position, if any, of the list in which it belongs, without requiring more than one unique
25 name order or ballot format for each town and city ward. The secretary of state shall randomly
26 select one candidate's name to appear at the top of each such list for the first name order rotation.
27 Other candidates' names shall be arranged to follow in alphabetical order of their surnames with the
28 letter "a" following "z." The random selection of a candidate's name to go first in the first name order
29 rotation, which may be the only name order if there is only one unique ballot format for the office,
30 shall be made by lot or by another procedure in which each candidate has an equal probability of
31 being chosen first. Such random selection of names, and establishment of a random selection
32 procedure for the ordering of lists of names on ballots to be in effect until the next selection, shall be
33 done publicly and after the close of the filing period for the state primary as specified in RSA 655:14
34 and after giving at least 3 days written notice of the date, time, and location of such selection to the
35 governor, the state chairmen of the parties, the speaker of the house of representatives, the
36 president of the senate, and the minority leaders of both houses of the general court.



1 Amend the bill by replacing section 8 with the following:

2

3 8 Town Elections; Official Ballot; Voting Materials. Amend RSA 669:23 to read as follows:

4 669:23 Preparation of Voting Materials. The town clerk shall prepare the official ballots for the
5 town and shall arrange the names of candidates upon said ballots in parallel columns. Immediately
6 above the names of each block of candidates shall be printed the title of the office for which they are
7 candidates, such as "For Selectman." Below the title of each office shall be printed in small but
8 easily legible type the words "Vote for not more than (here insert a number designating how many
9 persons are to be voted for)." Directly to the right of the name of each candidate there shall be a
10 square. Whenever there are 2 or more candidates for the same office the names shall be printed
11 upon the ballot in the alphabetical order of their surnames *according to the alphabetization*
12 *procedure established in RSA 656:5-a, with the town clerk acting in lieu of the secretary of*
13 *state. In the alternative, the town clerk may follow an alphabetization procedure specified*
14 *by the secretary of state pursuant to RSA 656:5-a, or the governing body may provide for a*
15 *random selection of the order of names on the ballot.* Following the names printed on the
16 ballot under the title of each office, there shall be as many blank lines as there are persons to be
17 elected to that office.

18

19 Amend the bill by inserting after section 9 the following and renumbering the original section 10 to
20 read as 11:

21

22 10 Citizen-Funded Election Task Force.

23 I. There is established a citizen-funded election task force. The members of the task force
24 shall be as follows:

25 (a) One member of the senate, appointed by the president of the senate.

26 (b) Three members of the house of representatives, appointed by the speaker of the
27 house of representatives.

28 (c) Two members representing organizations supporting public financing of campaigns,
29 appointed jointly by the president of the senate and the speaker of the house of representatives.

30 (d) One member who served on the commission to study the feasibility of public funding
31 of state election campaigns established by 2008, 55, appointed jointly by the president of the senate
32 and the speaker of the house of representatives.

33 II. Legislative members of the task force shall receive mileage at the legislative rate when
34 attending to the duties of the task force.

35 III. The task force shall:

36 (a) Review the report of the commission to study the feasibility of public funding of state
37 election campaigns established by 2008, 55, and develop a detailed plan, including proposals for

Amendment to SB 157

- Page 4 -

1 specific legislation, to implement the recommendations of the report.

2 (b) Solicit input from senators, representatives, the governor, executive councilors, the
3 attorney general, the secretary of state, and any other persons deemed appropriate by the task force.

4 (c) Hold public hearings at times and at locations around the state that are likely to
5 elicit substantive input from the general public.

6 (d) Make the schedule and minutes of meetings of the task force, and all testimony and
7 materials presented to the task force, available to the public on a website.

8 IV. The members of the task force shall elect a chairperson from among the members. The
9 first meeting of the task force shall be called by the first-named senate member. The first meeting of
10 the task force shall be held within 60 days of the effective date of this section. Four members of the
11 task force shall constitute a quorum.

12 V. The task force shall submit an initial report on or before November 16, 2009 and a final
13 report on or before November 15, 2010 of its findings and any recommendations for proposed
14 legislation to the president of the senate, the speaker of the house of representatives, the senate
15 clerk, the house clerk, the chairmen of the senate election law and veterans' affairs committee, the
16 chairmen of the house election law committee, the governor, and the state library.



2009-0821s

AMENDED ANALYSIS

This bill:

I. Establishes a procedure for the random drawing of a candidate's name for the ordering of names on election ballots and requires the rotation of candidate names and party columns on the ballots.

II. Changes the limitations on a candidate designating a name to be placed on the ballot.

III. Establishes a citizen-funded election task force.

Amendment to SB 157

1 Amend the title of the bill by replacing it with the following:

2

3 AN ACT relative to the procedure for listing candidates on election ballots and establishing
4 a citizen-funded election task force.
5

6 Amend the bill by replacing section 1 with the following:

7

8 1 Municipal Elections; City Charters; Preparation of Ballots. Amend RSA 49-C:6 to read as
9 follows:

10 49-C:6 Preparation of Ballots. The city clerk shall prepare the ballots to be used at the
11 municipal elections. Under charters providing for election by the Australian ballot system, the
12 ballots shall be prepared in accordance with the procedure provided for in general election laws
13 governing such system. Under charters providing for non-partisan elections, the ballot shall contain
14 the names in alphabetical order by surname *according to the alphabetization and rotation*
15 *procedure established in RSA 656:5-a, with the city clerk acting in lieu of the secretary of*
16 *state*, without party designation, of all who file with the city clerk as candidates for elective office.
17 In the alternative, the charter may provide for a random selection of the order of names on the ballot
18 *or the city clerk may follow an alphabetization and rotation procedure specified by the*
19 *secretary of state pursuant to RSA 656:5-a*. The charter shall specify a filing period, the filing fee
20 to be paid for each office, and, as an alternative method of becoming a candidate on the ballot, the
21 number of qualified voters which may be subscribed to a nominating petition in such form as the
22 charter may set out.

23

24 Amend the bill by replacing sections 3 and 4 with the following:

25

26 3 Preparation of State General Election Voting Materials; Party Columns. Amend RSA 656:5 to
27 read as follows:

28 656:5 Party Columns. The names of all candidates nominated in accordance with the election
29 laws shall be arranged upon the state general election ballot in successive party columns. Each
30 separate column shall contain the names of the candidates of one party; except that, if only a part of
31 a full list of candidates is nominated by a political party, 2 or more such lists may be arranged
32 whenever practicable in the same column. The party columns that list the names of candidates for

Amendment to SB 157

- Page 2 -

1 offices that elect more than one person shall stagger the names of the candidates so that they do not
2 line up evenly in a horizontal direction. The left-most column shall begin one line below the column
3 to its right. The secretary of state shall determine the *vertical* location of any additional columns
4 that may appear on the ballot. *The position of party columns shall be rotated on the ballots*
5 *used so that each party column shall appear thereon, to the extent practicable, an*
6 *approximately equal number of times in the first, last, and each intermediate column*
7 *position across the state, without requiring more than one unique column order or ballot*
8 *format for each town and city ward. The secretary of state shall develop a column rotation*
9 *order plan for each general election starting with a reasonably balanced rotation across*
10 *each state representative district consisting of more than one town or ward. Only after*
11 *establishing a party column rotation order for all towns and wards shall the secretary of*
12 *state publicly select by lot the actual party column to be positioned in the first column and*
13 *each subsequent column in the first rotation order. Such public selection shall be held*
14 *after the close of the filing period for the state primary as specified in RSA 655:14 and after*
15 *giving at least 3 days written notice of the date, time, and location of such selection to the*
16 *governor, the state chairmen of the parties, the speaker of the house of representatives, the*
17 *president of the senate, and the minority leaders of both houses of the general court.*

18 4 New Section; Preparation of State General Election Voting Materials; Order of Candidate
19 Names on Ballots. Amend RSA 656 by inserting after section 5 the following new section:

20 656:5-a Order of Candidate Names on Ballots. Whenever there are 2 or more candidates for the
21 same office whose names will appear within the same column or list on a ballot, the names of such
22 candidates shall be rotated on the ballots used so that each name shall appear thereon, to the extent
23 practicable, an equal number of times at or near the top, at or near the bottom, and in each
24 intermediate position, if any, of the list in which it belongs, without requiring more than one unique
25 name order or ballot format for each town and city ward. The secretary of state shall randomly
26 select one candidate's name to appear at the top of each such list for the first name order rotation.
27 Other candidates' names shall be arranged to follow in alphabetical order of their surnames with the
28 letter "a" following "z." The random selection of a candidate's name to go first in the first name order
29 rotation, which may be the only name order if there is only one unique ballot format for the office,
30 shall be made by lot or by another procedure in which each candidate has an equal probability of
31 being chosen first. Such random selection of names, and establishment of a random selection
32 procedure for the ordering of lists of names on ballots to be in effect until the next selection, shall be
33 done publicly and after the close of the filing period for the state primary as specified in RSA 655:14
34 and after giving at least 3 days written notice of the date, time, and location of such selection to the
35 governor, the state chairmen of the parties, the speaker of the house of representatives, the
36 president of the senate, and the minority leaders of both houses of the general court.

37



1 Amend the bill by replacing sections 8 and 9 with the following:

2
3 8 Town Elections; Official Ballot; Voting Materials. Amend RSA 669:23 to read as follows:

4 669:23 Preparation of Voting Materials. The town clerk shall prepare the official ballots for the
5 town and shall arrange the names of candidates upon said ballots in parallel columns. Immediately
6 above the names of each block of candidates shall be printed the title of the office for which they are
7 candidates, such as "For Selectman." Below the title of each office shall be printed in small but
8 easily legible type the words "Vote for not more than (here insert a number designating how many
9 persons are to be voted for)." Directly to the right of the name of each candidate there shall be a
10 square. Whenever there are 2 or more candidates for the same office the names shall be printed
11 upon the ballot in the alphabetical order of their surnames *according to the alphabetization*
12 *procedure established in RSA 656:5-a, with the town clerk acting in lieu of the secretary of*
13 *state. In the alternative, the town clerk may follow an alphabetization procedure specified*
14 *by the secretary of state pursuant to RSA 656:5-a, or the governing body may provide for a*
15 *random selection of the order of names on the ballot.* Following the names printed on the
16 ballot under the title of each office, there shall be as many blank lines as there are persons to be
17 elected to that office.

18 9 Form of Candidate's Name on Ballot; Nicknames. Amend RSA 655:14-b, I-II to read as
19 follows:

20 I. Every candidate for state or federal office who intends to have his or her name printed
21 upon the ballot of any party for a primary shall designate in the declaration of candidacy, or on the
22 primary petitions and assents to candidacy, the form in which the candidate's name shall be printed
23 on the ballot. [~~The candidate may designate his or her given, first, and middle name, the initials of~~
24 ~~his or her given, first, and middle name, a nickname, or any combination thereof as the form in~~
25 ~~which the candidate's name shall be printed on the ballot, but the candidate shall not designate a~~
26 ~~deceptive name. If the candidate designates a nickname in place of or in combination with the~~
27 ~~candidate's given name or the initials thereof, the nickname shall be set off with quotation marks~~
28 ~~and shall be placed immediately before his or her surname. If the candidate designates a nickname,~~
29 ~~the nickname shall be customarily related to the candidate's given name, or, if the nickname is not~~
30 ~~customarily related to the candidate's given name, the candidate shall submit clear and convincing~~
31 ~~evidence that the candidate has been known by the nickname for at least the 5 years immediately~~
32 ~~preceding the time of filing. If deemed sufficient by the appropriate official, 3 affidavits from voters~~
33 ~~in the district who are not related to the candidate stating that the candidate has been known by the~~
34 ~~nickname for at least 5 years may constitute clear and convincing evidence. Nicknames shall be~~
35 ~~limited to one word, except for 2 word nicknames customarily related to the candidate's given name.]
36 *The designated name may include the candidate's given name or a shortened form of the*
37 *candidate's given name or a one-word nickname customarily related to the candidate, and*~~

1 *by which the candidate is commonly recognized. The designated name may also include an*
2 *initial for the first or middle name, or both.* No candidate may designate a nickname that
3 implies that the candidate is some other person, that constitutes a slogan or otherwise associates the
4 candidate with a cause or issue, [or] that has an offensive or profane meaning[-], *or that creates a*
5 *perception of a professional or vocational affiliation, such as "Doc" or "Coach."* A candidate
6 shall include his or her surname in the designation of the form in which the candidate's name shall
7 be printed on the ballot.

8 II. Every candidate for state or federal office who intends to have his or her name placed on
9 the ballot for the state general election by means other than nomination by party primary shall
10 designate in the declaration of intent the form in which the candidate's name shall be printed on the
11 ballot. ~~[The candidate may designate his or her given, first, and middle name, the initials of his or~~
12 ~~her given, first, and middle name, a nickname, or any combination thereof as the form in which the~~
13 ~~candidate's name shall be printed on the ballot, but the candidate shall not designate a deceptive~~
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15 ~~given name or the initials thereof, the nickname shall be set off with quotation marks and shall be~~
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17 ~~nickname shall be customarily related to the candidate's given name, or, if the nickname is not~~
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23 ~~limited to one word, except for 2 word nicknames customarily related to the candidate's given name.]~~

24 *The designated name may include the candidate's given name or a shortened form of the*
25 *candidate's given name or a one-word nickname customarily related to the candidate, and*
26 *by which the candidate is commonly recognized. The designated name may also include an*
27 *initial for the first or middle name, or both.* No candidate may designate a nickname that
28 implies that the candidate is some other person, that constitutes a slogan or otherwise associates the
29 candidate with a cause or issue, [or] that has an offensive or profane meaning[-], *or that creates a*
30 *perception of a professional or vocational affiliation, such as "Doc" or "Coach."* A candidate
31 shall include his or her surname in the designation of the form in which the candidate's name shall
32 be printed on the ballot.

33
34 Amend the bill by inserting after section 9 the following and renumbering the original section 10 to
35 read as 11:

36
37 10 Citizen-Funded Election Task Force.

1 I. There is established a citizen-funded election task force. The members of the task force
2 shall be as follows:

3 (a) One member of the senate, appointed by the president of the senate.

4 (b) Three members of the house of representatives, appointed by the speaker of the
5 house of representatives.

6 (c) Two members representing organizations supporting public financing of campaigns,
7 appointed jointly by the president of the senate and the speaker of the house of representatives.

8 (d) One member who served on the commission to study the feasibility of public funding
9 of state election campaigns established by 2008, 55, appointed jointly by the president of the senate
10 and the speaker of the house of representatives.

11 II. Legislative members of the task force shall receive mileage at the legislative rate when
12 attending to the duties of the task force.

13 III. The task force shall:

14 (a) Review the report of the commission to study the feasibility of public funding of state
15 election campaigns established by 2008, 55, and develop a detailed plan, including proposals for
16 specific legislation, to implement the recommendations of the report.

17 (b) Solicit input from senators, representatives, the governor, executive councilors, the
18 attorney general, the secretary of state, and any other persons deemed appropriate by the task force.

19 (c) Hold public hearings at times and at locations around the state that are likely to
20 elicit substantive input from the general public.

21 (d) Make the schedule and minutes of meetings of the task force, and all testimony and
22 materials presented to the task force, available to the public on a website.

23 IV. The members of the task force shall elect a chairperson from among the members. The
24 first meeting of the task force shall be called by the first-named senate member. The first meeting of
25 the task force shall be held within 60 days of the effective date of this section. Four members of the
26 task force shall constitute a quorum.

27 V. The task force shall submit an initial report on or before November 16, 2009 and a final
28 report on or before November 15, 2010 of its findings and any recommendations for proposed
29 legislation to the president of the senate, the speaker of the house of representatives, the senate
30 clerk, the house clerk, the chairmen of the senate election law and veterans' affairs committee, the
31 chairmen of the house election law committee, the governor, and the state library.

2009-1002s

AMENDED ANALYSIS

This bill:

I. Establishes a procedure for the random drawing of a candidate's name for the ordering of names on election ballots and requires the rotation of candidate names and party columns on the ballots.

II. Changes the limitations on a candidate designating a name to be placed on the ballot.

III. Establishes a citizen-funded election task force.

Committee Minutes

AMENDED
SENATE CALENDAR NOTICE

Printed: 02/05/2009 at 1:33 pm

ELECTION LAW AND VETERANS' AFFAIRS

- ✓ Senator Bette Lasky Chairman
- ✓ Senator Matthew Houde V Chairman
- ✓ Senator Amanda Merrill
- ✓ Senator John Barnes, Jr.
- ✓ Senator Sharon Carson

Attendance

*Start 8:46am
End 9:30*

Reopened!

For Use by Senate Clerk's Office ONLY

Bill Status

Docket

Calendar

Proof: Calendar Bill Status

Date: February 5, 2009

HEARINGS

Tuesday

3/3/2009

ELECTION LAW AND VETERANS' AFFAIRS

LOB 101

8:30 AM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

Comments: ***This is an amended notice, SB57 was recessed on 2/3/09, and will be reopened on 3/3/2009****

8:30 AM SB57

relative to the commission to study the effects of post-traumatic stress disorder and traumatic brain injury suffered by New Hampshire soldiers and veterans returning from Iraq and Afghanistan.

8:45 AM SB157

relative to the procedure for listing candidates on election ballots.

9:00 AM SB21

enabling certain persons to vote in primaries prior to turning 18 years of age.

Sponsors:

SB57

Sen. Sharon Carson

Rep. Alfred Baldasaro

Rep. David Bettencourt

Rep. Kris Roberts

SB157

Sen. Matthew Houde

Sen. Martha Fuller Clark

Sen. Jacalyn Cilley

Rep. Jane Clemons

SB21

Sen. Deborah Reynolds

Sen. Margaret Hassan

Rep. Carolyn Gargasz

Claire Emery 271-1403

Sen. Bette Lasky

Chairman

Election Law and Veterans' Affairs Committee

Hearing Report

TO: Members of the Senate

FROM: Ryan Phinney, *Legislative Aide*

RE: Hearing report on **SB 157**
*AN ACT relative to the procedure for listing candidates on
election ballots.*

HEARING DATE: March 3, 2009

MEMBERS OF THE COMMITTEE PRESENT: Senator Lasky,
Senator Houde, Senator Carson, Senator Barnes, Senator Merrill.

MEMBERS OF THE COMMITTEE ABSENT: None.

Sponsor(s): Senator Houde, Dist 5; Senator Fuller Clark, Dist 24; Senator
Cilley, Dist 6; Rep. Clemons, Hills 24.

What the bill does: This bill establishes a procedure for the random
drawing of a candidate's name for the ordering of names on election ballots
and requires the rotation of candidate names and party columns on the
ballots. This bill also changes the limitations on a candidate designating a
name to be placed on the ballot.

Who supports the bill: Senator Reynolds, Dist 2; Senator Fuller Clark,
Dist 24; Senator Cilley, Dist 6; Rep. Winters, Hills 17; Clifton Below, Self.

Who opposes the bill: None.

Who takes no position: None.

Testimony:

Senator Houde introduced the bill as the Prime Sponsor.

- Senator Houde stated that this bill is important to everyone, as anyone running for an elected position should be given the opportunity to have a fair chance of being elected and favorable positioning on the ballot. Senator Houde stated that there are two ways to rotate the ballot: The first being name rotation and the second being party column rotation. As it is currently done, there is a letter taken out of a hat and that

- letter represents the first name on the ballot and the rest will fall in alphabetical order until returning to the letter chosen. Senator Houde stated that party rotation should be by Senate District, not by Representative District, as that would require a large number of variations of the ballot. This bill does not instruct the Secretary of State how to list the names, rather it just asks for a consistent method. This bill also addresses the use of nicknames on the ballot. Senator Barnes, who goes by Senator John S. "Jack" Barnes Jr., asked if "Jack" was a nickname, which he has gone by for many years. Senator Houde stated that as he understood it, if the name was in quotes or not on your legal birth certificate, it was considered a nickname. Senator Houde also stated that he would be willing to amend the language if Senator Barnes preferred, not intending for this to be exclusionary.
- Senator Cilley testified in support of SB 157. Senator Cilley stated that this came up last session and she was in support of that bill. Senator Cilley stated that it is human nature when looking at a list, especially a long list, to look towards the top and select one of the first few names that appear. This is referred to as the Primacy Effect, and switching the alphabet around is just as bad as running from A-Z. Senator Cilley agreed that if the name is not on your birth certificate, then it is a nickname. Senator Merrill stated that a human cognition study revealed the primacy effect is very real and is how people tend to go through a selection process, especially if they are not well informed as to the characters on the list.
 - Representative Winters testified in support of SB 157. Representative Winters stated that the constitution calls for a fair and equal opportunity for all, and the primacy effect shows that the current method is not a fair or equal opportunity. Representative Winters presented a situation where 2 candidates names start with the same letter, how do you determine who gets listed first if they are trying to give everyone the same opportunity to be listed first. Representative Winters thought that the Secretary of State should decide this process after the filing period to make it the most fair for everyone.
 - Senator Below testified in support of SB 157. Senator Below stated that current laws are in direct conflict with the idea of fair and equal opportunities for all involved. Senator Below stated that the last 2 presidential elections the names were not rotated, this bill would go back to rotating names on the ballot. Senator Below believes that if the names were rotated in the 2000 election the outcome would have turned out different, just by the margin created by the primacy effect. Senator Below quoted page 2 lines 16-19 of the bill, "randomly" as defined in the dictionary as a set of character having an equal probability of occurrence. Senator Below stated that the cost of rotating the names of a ballot would come at a very small cost.
 - David Scanlan, Deputy Secretary of State, did not take a position on SB 157 but gave three things that a ballot needs to be: The first being fairness to all candidates, the second is having an understandable

- ballot, and the last is allowing the ballot to be managed by the Secretary of State, with too many rotations and variations of the bill their job could become very difficult and the possibility of errors and recount would inevitably higher. Mr. Scanlan also stated that he believed that this bill should have a Fiscal Note attached to it. Mr. Scanlan referred to the fairness part of the bill, stating if a town like Bow or Dunbarton, that has 3 Representative seats, how are you going to rotate three names in two towns and have everyone be listed first, middle and last. Senator Carson asked how recounts would work if you have rotating columns and you have two different ballots. Mr. Scanlan stated that they do recounts by town so that would not be an issue. Mr. Scanlan spoke to the nickname issue, stated that you could not have your first, middle, nickname and last name on a ballot, as it can make for a crowded ballot and harder to read and fill out.
- Cordell Johnston, representing the New Hampshire Municipal Association, testified in support of SB 157. Mr. Johnston stated that for town elections, having the Secretary of State selecting what name appears first could work for state elections but that it would not work for town elections. Mr. Johnston asked what would happen if the town clerk decided they were going to do it one way and the Secretary of State they wanted it done a different way, who would have the final say.

Action:

[RIP]
[ELVA] [SB 157]
[March 3, 2009]

Date: March 3, 2009
Time: 8:46 a.m.
Room: LOB 101



The Senate Committee on Election Law and Veterans' Affairs held a hearing on the following:

SB 157 (New Title) relative to the procedure for listing candidates on election ballots and establishing a citizen-funded election task force.

Members of Committee present: Senator Lasky
Senator Houde
Senator Merrill
Senator Barnes
Senator Carson

The Chair, Senator Bette R. Lasky, opened the hearing on SB 157 and invited the prime sponsor, Senator Matthew Houde, to introduce the legislation.

Senator Matthew Houde, D. 5: Good morning, Madam Chair. How are you?

Senator Bette R. Lasky, D. 13: Welcome back.

Senator Matthew Houde, D. 5: Good morning, colleagues. For the record, my name is Matthew Houde, representing Senate District 5. And, I'm here today to introduce Senate Bill 157.

Senate Bill 157 concerns a matter that's quite important to all of us, I should think, which is that the New Hampshire Constitution requires an equal right to be elected into office. A case, a New Hampshire Supreme Court case, Aikens v. Secretary of State, has confirmed this right. But, unfortunately right now the setting up of the ballots and elections doesn't fully satisfy this requirement.

There are two ways that you can change a ballot, alter a ballot. One is by name rotation and one is by party column rotation. In state primary races right now, we do have name rotation. So, we know that you can fully rotate



names. But, in a presidential primary and in the general election, we have a current system is you draw a letter from the alphabet, as you're all familiar, I apologize for going into this, but just to lay the background. You draw a letter from the alphabet, that name corresponds with that letter goes first, and then all of the names follow alphabetically across races.

The party ballot rotation goes by Senate District. So, for example there's a lottery that's drawn and in Senate District 5 for example, a Democrat was chosen as the party, that would go first in that race. In other Senate Districts other parties would line up first. So, you have two variables that we're talking about here. Neither of them fully for example, for House of Representatives races create an equal opportunity for the candidates who are listed to be first on the ballot either by party or by name. And, the reason for that is because we don't do that by, we don't do the party rotation by Representative District, we do it by Senate District. So, you have many House races within that district that don't currently have any rotation of party.

What I'd like to do is, former Senator and current Commissioner Below is here to testify today and is probably better versed than I am on some of the particulars of the history of this. But, I'd like to walk through the bill to give you an idea...

Senator Bette R. Lasky, D. 13: Please.

Senator Matthew Houde, D. 5: ...of how this bill would address that.

So, if we're looking at the bill many of the initial references for example, in municipal elections and then in nominations for special state elections just make a reference to what I'm going to talk about in more detail about the proposed change on how election randomization should occur.

And, then if we get to the bulk of the party column, the first piece of this section 656:5, as you can see, the position of party column shall be rotated on the ballots used so that each party column shall appear thereon, to the extent practicable, an approximately equal number of times in the first, last and each intermediate column position across the state. And, that would be in Representative Districts.

So, you would not have a situation where you'd have in one town a need for more than one ballot. It would be each unique ballot per town, but not more than one town.

So, for example, when I was running for the House from Sullivan 1, there were three towns and there were three candidates and so in each of those three towns each of the candidate's names would appear first once, and then it would also rotate by party column. Excuse me, that's what we're talking about first is party column.

So, for example, in my former House district, we had three towns, each party Democrat, Republican, Independent, provided there was a candidate for Independent, would be listed first one time, one time second, one time in third one time.

And, again, each town's ballot is printed uniquely meaning on the top of each ballot it already says Plainfield, it already says Grantham, it already says whatever. And so, that this doesn't create an extra burden as far as printing, preparation or cost in that regard.

If we go down to 656:5-a which is a new section, which is the order of candidate names on a ballot, and this is whenever there are two or more candidates for the same office whose names appear within the same column, the names of such candidates shall be rotated on ballots used so that again using my...each candidate has a chance of being listed first at least part of the time. Again, if we used my former House experience, there were three Democratic candidates for two spots. Rather than having the same order throughout, it should alternate.

And, the reason it should alternate is there is something called the primacy effect. And, I'm not sure if you're familiar with that, but there's a benefit to being listed first on the ballot, obviously by anywhere between seven and ten percentage points, same as the party column. So, this is a substantial recognized by the New Hampshire Supreme Court effect that happens, and if we don't correct that effect, the risk is that we're violating the Constitutional requirement for equal right to be voted into office.

As far as how a name would be selected, we're not instructing necessarily the Secretary of State's Office how to do it. We're just saying, select a way that then is going to have a rotation implemented after. So, I would suggest that there are more than one way to do it. You could draw names of candidates out of a lot, out of a hat, for example, by lot. Each candidate would then have an equal chance of being listed first, on the first ballot and then it would all be rotated so to some extent it didn't matter. Again, I'm not suggesting a particular...that there's only one way. I'm suggesting one way.

Finally, the revision to section 655:14-b one through two refers to nicknames. And, to be honest, what this does is it just removes the burden that was



previously placed on a candidate who wanted to use a nickname on their ballot from going through and getting an affidavit that they used that nickname for five years. This by way of background is a historical reference 'cause this is how an amendment on a previous bill that was in the Senate and the change the nickname usage, so it's a vestige of a previous iteration on this bill.

So, I'm happy to field questions, but I would also say that there might be others who are going to testify shortly who are better versed in that process. So, thank you, Madam Chair.

Senator Bette R. Lasky, D. 13: Thank you, Senator Houde, for your testimony. Senator Barnes?

Senator John S. Barnes, Jr., D. 17: Thank you, Madam Chair. I've got a couple of questions I guess. I don't see anything in here maybe there is in the existing law if in the town talking about a town election now drawing the names or drawing the letters to see who goes on there first, who is supposed to be present when that happens? We had a cry of foul in our town because only one person did it. And, the person who lost thought that the person who drew it was in favor of the other candidate who went first. So, how do we protect that? Is there some provision that it has to be more than one person there?

Senator Matthew Houde, D. 5: I believe that there is a provision that there has to be more than one person there. But, I would defer to perhaps the representative from the Secretary of State's Office is here, perhaps they can answer that question.

Senator John S. Barnes, Jr., D. 17: That's fine, Senator. My second question is on the nickname, and here again you might want to defer.

Senator Matthew Houde, D. 5: Yup.

Senator John S. Barnes, Jr., D. 17: I've been on the ballot for twenty some years as John S. Jack Barnes, Jr., Jack isn't a nickname, Jack is just another name for John.

Senator Matthew Houde, D. 5: Uhum.

Senator John S. Barnes, Jr., D. 17: So, is Jack in my case considered a nickname? Or would that be something for the Secretary of State to deal with?



Senator Matthew Houde, D. 5: I would suggest, does your name appear in quotations on the ballot, Senator Barnes?

Senator John S. Barnes, Jr., D. 17: Yeah.

Senator Matthew Houde, D. 5: So, by definition of the statute it might be a nickname. But, I don't know that this would affect in any way, shape or form that Jack could appear on the ballot. This wouldn't change that at all.

Senator John S. Barnes, Jr., D. 17: Well, see I'm a junior, and my mother, when she used to call Jack, we'd both come running as fast as we could and we meet in the room, one of us would breathe a sigh of relief when it wasn't us that was being called and summoned.

Senator Matthew Houde, D. 5: Right, I'd be more than happy to amend the language of that provision in a way that was satisfactory to your concerns, Senator Barnes.

Senator John S. Barnes, Jr., D. 17: I'm just bringing that up, not for myself, but to say that other people might have that same type of situation.

Senator Matthew Houde, D. 5: Yeah. No, and it's not meant at all to be exclusionary in any way. In fact, this would make it easier to get a nickname on there.

Senator John S. Barnes, Jr., D. 17: I can see if Butch was on there or General Manager of the Red Sox or something was on there, but...

Senator Bette R. Lasky, D. 13: And, Senator Barnes, you're allowed one mother joke per bill, so that's it.

Senator John S. Barnes, Jr., D. 17: That wasn't a joke. That was serious stuff.

Senator Bette R. Lasky, D. 13: Oh, okay, I'm sorry. Any other questions for Senator Houde? Okay, thank you.

Senator Matthew Houde, D. 5: Thank you, Madam Chair.

Senator Bette R. Lasky, D. 13: Senator Fuller Clark is down as supporting the bill and is not here to speak. Senator Cilley, who would like to speak, please come forward. Thank you.

Senator Jacalyn L. Cilley, D. 6: And, I think I'm signed in, in support.



Senator Bette R. Lasky, D. 13: Yes you are.

Senator Jacalyn L. Cilley, D. 6: Okay, thank you for the indulgence.

Senator Bette R. Lasky, D. 13: Oh, and it does say you don't want to speak but you do want to speak.

Senator Jacalyn L. Cilley, D. 6: Well, I had time; I've got a bill that I got to introduce on the other side. This is..

Senator Bette R. Lasky, D. 13: Thank you. I'm glad you're here.

Senator Jacalyn L. Cilley, D. 6: Thank you, and thank you, Madam Chair and honorable members of the Committee. For the record, my name is Jackie Cilley. That is a nickname Jackie Cilley. And, I represent the marvelous District of 6, comprising the communities of Rochester, Somersworth, Barrington, Madbury and Nottingham.

Serving on the Election Law in the last term, this was a bill that came before us. It's one that I was very supportive of. In fact, there were a couple of approaches to this. And, I just want to speak a little bit about the primacy effect and then I will explain how the nickname portion of that bill came into effect.

Many of you, who know me, know that I was in business for years and years and years, and I specifically was in marketing. And, in marketing we know well the issue of the primacy effect. In fact, we, you know, encourage clients to name their business Aardvark, you know, Services, because when names appear in a list it is sort of human nature to pick those near the top of the list, and especially if that list is quite lengthy.

In my District, when I ran for the House, there were 16 candidates. And, there was, you know, one party was at the top, one party was at the bottom and it spoke clearly to what the Supreme Court found in terms of the primacy effect and the advantage that it provided to people, you know, near the top of that list.

So, I think that there was wide acceptance of, you know, the Court ruling in this case. And, I think the Secretary of State did what was in their power to do at the time or what they felt was most appropriate and they opted for an alternative approach. That alternative approach, unfortunately, is as bad as the original. When you pick a letter like "K" and you go from "K" on down and that's consistent throughout your communities, you have simply transferred



another way of creating a primacy effect, so, it's not on "A" it becomes on "K M N" and so on.

So, we need to find an approach that truly addresses the Court opinion on this, in my mind. There are very sophisticated techniques in marketing. We use them all the time. When I would do market research and we wanted to ensure that we picked a random sample of respondents so that we got, you know, a very good representation of the universe that we were studying, there are all kinds of procedures that I won't bore you with today, that we could utilize.

In fact, Representative Joel Winters is here, and he and I were on the absolute same page with how this should be done to address the Court's opinion, the Court's ruling. However, sometimes you have to trade off a little bit because of practical realities and costs. You may not get the optimum approach, but you get something that does address the problem and keeps things reasonable without creating a danger of additional mistakes being made and increasing the costs exponentially.

So, what you see before you is just such a compromise. It does address the problem. It's a simple technique. It doesn't give anybody any formulas to follow or random number tables where they have to throw a dart against the wall or we've moved on from that with computerization, but nonetheless, it is simple, it's straightforward, it should be quite cost-effective, and it should address the problem. So, you know, I fully support this.

I also want to speak for a moment to the, you know, to the issue of nicknames. I think, and I will let, I believe the Deputy Secretary of State is here to testify on this bill, and I'll let him speak more to it, but my understanding is that if it isn't your, if it isn't the name on your birth certificate, then it's considered a nickname. So, Senator Barnes, and I think everybody knows you as Jack Barnes. I get a little confused when I see John Barnes. I say is that his father? So, you're right, that is a nickname. I go by Jackie Cilley all the time, except when I'm signing a legal document. And so, this time, I ran simply on the basis of Jackie Cilley on the ballot. So, that was the purpose of that. So that people would recognize who you are, and you know, understand, you know, their voting.

So, with that, you know, I'll be happy to answer any questions about this.

Senator Bette R. Lasky, D. 13: Thank you, Senator Cilley. Senator Merrill? Good morning.

Senator Amanda Merrill, D. 21: Thank you, Madam Chair. Senator Cilley.



Senator Jacalyn L. Cilley, D. 6: Good morning.

Senator Amanda Merrill, D. 21: Do we do “do you believe questions” in the Senate?

Senator Bette R. Lasky, D. 13: You have just started one, so go ahead.

Senator Amanda Merrill, D. 21: Would you believe, Senator that also in the body of research on human cognition on how we remember and store information that there is a consistently demonstrated primacy effect of the kind that you’re describing dealing with in the business world or marketing world too?

Senator Jacalyn L. Cilley, D. 6: We know that well. I mean, the marketing research and consumer behavior and human research intersect very, very I mean they are all sort of rely on the same, you know, the same information sources and principles, you know, when doing that. So, yes, I would definitely believe it, and that’s one of the reasons why I support this approach.

Senator Bette R. Lasky, D. 13: Any further questions? Thank you, Senator Cilley. Senator Barnes?

Senator John S. Barnes, Jr., D. 17: No.

Senator Bette R. Lasky, D. 13: Okay.

Senator John S. Barnes, Jr., D. 17: Thank you.

Senator Jacalyn L. Cilley, D. 6: Thank you.

Senator Bette R. Lasky, D. 13: Thank you. I now call on Representative Joel Winters.

Representative Joel Winters: Thank you, Madam Chair. I’ll be brief, I know you want...

Senator Bette R. Lasky, D. 13: Good morning, Representative.

Representative Winters: For the record, my name is Joel Winters. I represent Hillsborough District 17, which is Manchester’s Wards 10, 11 and 12, and, I’m here today in support of the bill. The Constitution is very clear that we should all have an equal right to be elected to office and the primacy



effect is a very real effect. And, this bill goes a long way towards making things fair and equal for everyone to take advantage of that.

There are just two things in this bill that I'd like to see the Committee clarify. One of them is on page two in lines 16 through 19, where it says the Secretary of State shall randomly select one candidate's name. I'd just like to see it clarified that random means it's to select someone's name in a way that all candidates have an equal chance of being selected. For example, if I just picked a letter out of a hat right now, we don't have any duplicates on the Committee. But, if you have two candidates that have the same last name like Washington and Webster and all you're doing is picking a letter out of a hat, Webster wouldn't have a chance of being first on the ballot because Washington would come before him. If so, I'd just like to see that clarified that whatever method the Secretary of State uses, it's done in a way that all candidates have an equal chance of being selected.

And, the other thing that I hope the Committee would consider to avoid gaming the system. Right now, what we've done is we've selected letter "K" again in 2008 to choose who's going to be first on the ballot. And, that was selected back, I think, in the first week of January. So, before the filing period everyone knows ahead of time who's going to have the advantage of going first on the ballot.

In my district we had a Representative who last year missed 97% of the roll call votes. But, he signed up to run again. His last name starts with "K", he was first on the ballot and he managed to get reelected. So, to prevent people from gaming the system and saying look I might as well take advantage of this, I'd like to see the Secretary of State choose whatever random element that he chooses after the filing period, after people have filed, after parties have filled any vacancies on the ballot. I think it's only fair to make it completely random afterwards. So, those are the two things I hope the Committee will consider. I know Senator Below will go into more detail about the bill.

Senator Bette R. Lasky, D. 13: Thank you, Representative Winters. Any questions? And, I thought it was my charming personality and everything that got me elected. It was my last name "L", so thank you, oh well.

Representative Winters: Thank you.

Senator Bette R. Lasky, D. 13: Deputy Scanlan, did you wish to testify? I know the sponsor...



Deputy Scanlan: I think I do at some point, but I'd like to listen some more so I understand the bill a little bit more. So if you have somebody else that...

Senator Bette R. Lasky, D. 13: Alright. I'm going to call on Senator Below. Former State Senator Below, it's a pleasure to see you. Good morning.

Senator Clifton Below: Good morning. I am, of course, a former and am here in my personal capacity as a private citizen. On my way out of the Senate...

Senator Bette R. Lasky, D. 13: Your name and address for the record?

Senator Below: Oh, oh. I live at 25 Perley Avenue in Lebanon, New Hampshire. And, on my way out of the Senate five years ago or four and a half years ago, I was aware of the law that said essentially the party that got the most votes in the last elections goes first on the ballot. And, also the practice that we had some systematic rotation of names alphabetically in primaries but, not with State Rep races. And, some issues came to my attention that made me think that this was perhaps very important. And, as I researched it, I concluded that I thought it was very important to challenge this law, so I helped bring about a lawsuit that was filed four and a half years ago, challenging the constitutionality of the current statutes which are still the statutes on the books.

And, two and a half years ago, that case was decided by the Supreme Court which found that the equal right to be elected into office was a fundamental right and one that the current laws conflicted with. And specifically they noted that the practice, the Secretary of State's practice of alphabetizing candidates to as it was argued at the time was necessary to achieve a manageable ballot, they held that that restriction did not survive strict scrutiny and that it was unconstitutional as well as the law on the party position.

And, the Court noted that the Legislature has already shown that it's able to create a manageable ballot using a different method of organization that minimizes the primacy effect and it cited, the court cited RSA 656:24 that provides that in primary elections candidates running for the same office shall be alternated on the ballot "so that each name shall appear thereupon as nearly as may be an equal number of times at the top, at the bottom and in each intermediate place" so, I think that what this bill does is it simply applies that principle that's been in law for many decades in New Hampshire for primary elections and applies it for State Rep races in the general election where there are multi-candidates listed and it applies that same principle



again to the presidential primary which was the law for many decades in New Hampshire until the budget in 2003. In the House Bill 2 in the Senate, without public hearing, there was this suggestion that there might be a modest savings by eliminating name order rotation in the presidential primary and that was eliminated. So the last two presidential primaries have not had rotation. And, this bill would restore that to what the law was before.

And, I would like to provide a handout that and just call your attention to a couple things in this handout. **Please see Attachment # 1 – handout provided by Senator Below.**

One of the things I did when I was working on the lawsuit was look at some close elections in New Hampshire history as well as a few national cases and found that in fact there's a lot of races that are decided by very small margins. We had a U.S. Senate race, Wyman v. Durkin decided by two votes. We've had Senate races decided by five votes. House races decided by two votes or four votes. And, arguably the presidential election in 2000 was perhaps decided within the margin of the primacy effect in two states in New Hampshire and Florida where, if that had been rotation, it's almost statistical certainty that there would have been a different outcome in that election.

So, the point is, these kind of things on the margin can make profound differences perhaps in the course of history. And so, I think that though there is some modest costs that the Secretary of State maybe will speak to. There's some modest costs involved in rotating names in the presidential primary, there's some modest costs involved in rotating House races 'cause it's a little complicated 'cause the numbers don't always divide equally...evenly. But, there's a simple principle which is, if you've got, you do, and the bill reflects this, you rotate by towns and city wards, so you only have one unique ballot per town or city ward, which is the current practice. You have one unique ballot and you rotate so that, where there are multiple voting precincts to rotate in, if you have a House race that say seven candidates and there are two places to rotate, obviously, you can only do two rotations. So, you divide that seven in half which is not precise so, it's a little, you're going to go down three or four you have some standard rounding procedure and half the list as nearly as possible, be first on one ballot and the second half would be first on the other ballot. So, it's a simple principle.

The bill doesn't, I think, try to prescribe the details. But, that principle that Representative Winters referred to I think could be clarified, but I think that on page two, line 16 of the bill where it says the Secretary of State shall randomly select one candidate's name by lot or otherwise, to appear at the top of each such list for the first name order rotation. And, then you have

C

additional rotations based on the number of towns or wards that there are for that district.

The choice of the word randomly is intended to be meant as it is defined in the dictionary with regards to statistics and I'll just read one of the, a couple of those definitions; of or characterized in the process of selection in which each item of a set has an equal probability of being chosen. That's the concept. Or, another definition, being or related to a set or to an element of a set, each of whose elements has equal probability of occurrence, characterized by procedures designed to obtain such sets or elements random sampling. So, the concept is that each candidate has an equal chance to be chosen to go first, but, then you minimize the effect of the primacy by rotating.

In the handout, the second page just sort of there's a simple illustration. this was prepared a year ago when this bill was in the Senate Committee, so, it's based on the last Senate. But, if you look in the upper right corner, you'll see if you choose candidates simply by picking a letter of the alphabet which is what the Secretary of State has been doing in the absence of a statutory clarification of the unconstitutional law. The chance of Senator Barnes going first, if there were a race in which all the Senators were listed is 34.6%. The chance of Senator Clark going first would be zero, because if you drew the letter C, Cilley would go ahead of Clark, Clark would never be chosen. So that, you know, the current practice I don't think withstands constitutional scrutiny.

Just an observation that's noted in the lower right corner, over time the alphabet has skewed to the front. Surnames have moved to the front of the alphabet that was part of the expert witness that we had Dr. John Krosnick in the trial in New Hampshire actually cited a scholarly study that showed that over centuries in the English language, surnames have moved to fairly even distribution to the front of the alphabet. Almost two-thirds of the last names are in the front of the alphabet. Presumably, because, of the advantage of being first in various situations.

The rest of the handout is just a couple articles on the topic. The last two articles I want to call your attention to. Because, if you recall, in the presidential primary there was, the polling that was being done was showing Barack Obama as having an advantage. It looked like he was going to win the New Hampshire primary, and in the end, Senator Clinton won the New Hampshire primary. And, there was a lot of sort of news about that.

John Krosnick, who is perhaps the preeminent scholar on this issue, published this brief opinion piece on ABC News website, which is still there, in which he felt that if you looked at that ballot had a large number of names,



Obama was sort of buried at the bottom, because even though it was sorted by surname, it was first name first and my wife actually had a panic, she wanted to vote for Obama, she went in and couldn't find his name on the ballot.

The way the primacy effect works, it seems as though it's when people lack information or are ambivalent. There's two acceptable choices, and there's a tendency for small percentage of the population, just a few percent that given candidates that are both acceptable choices they'll tend to choose the first one that satisfies their need to make a choice, and that's where there might be a very a fraction of a percent or as much as five or ten percent advantage to going first. And, Krosnick's point was that the margin that Clinton won by was within the margin that the primacy effect could have been at work. That's been statistically shown to be work. The last article in the packet is actually on the Stanford University website that discusses this issue.

If you Google, New Hampshire presidential primary name order, you find scores of hits where this has been cross referenced in different blogs. My point is simply this, is I think that we need to apply to our New Hampshire primary what we already know we need to apply with party column rotation, that we apply in our own primary that our Constitution requires and diffuse any potential attacks on our primary as not being as fair as it might be.

There might be a small cost in rotating names on the primary, but it will neutralize this issue that is out there among some people and remove any ammunition that some people might use to argue against the New Hampshire primary, 'cause obviously the value to that is tremendous. So, I'll stop there. I'd be happy answer any questions.

Senator Bette R. Lasky, D. 13: Thank you very much. Any questions for Senator Below? Seeing none, thank you very much, and thank you for your work on this issue.

Senator Below: Thank you.

Senator Bette R. Lasky, D. 13: Deputy Scanlan?

Deputy Secretary of State David Scanlan: Thank you, Madam Chair, members of the Committee.

Senator Bette R. Lasky, D. 13: Good morning.



Deputy Scanlan: I'm David Scanlan, Deputy Secretary of State. I just want to make a few comments on the bill. I didn't come prepared to give testimony. I wanted to understand exactly what it said before I did.

Whenever there are hearings about order of names on a ballots or party column rotations, I always start off by saying that there are three things you need to keep in mind when you're considering this legislation. First is fairness to the candidates, which these bills deal with. Second is, there has to be a ballot that is understandable to the voter when they go to the polling place. And, third is, that we have to have the statutes drafted in a way that allow the ballot to be managed by the Secretary of State's Office, in other words, has to be not too complicated for us to put together the names, print them and get them distributed in the appropriate amount of time.

In the last election, we had about a thousand candidates on all of the ballots throughout the state. And, I can tell you that, in the course of putting those ballots together, having them printed and distributed, we came across a number of errors that we caught before the election took place, but it requires a tremendous amount of vigilance on our part, the printer. There are a lot of moving parts and so sometimes when a proof is set, when the ballot comes out the other end of the process, it may not be the same as going in. So, we constantly have to be aware of that.

This bill should have a fiscal note. And, I think it was referred to by previous speakers. But, first there's the issue of the presidential primary ballot. Whenever the change was made in 2003, as Mr. Below mentioned, that was done to save the State some money. They were looking for some savings. Secretary of State said that we could save somewhere around \$30,000.00 if we just listed the names alphabetically. The Legislature thought that was a good idea and so that bill passed. So, at a minimum, if this were to be restored where we rotate the names on the presidential primary ballot, then we also need to restore the money to make sure we can cover printing costs of doing that. And, I'm sure that, with inflation, is something more than \$30,000.00 today.

The second thing on the presidential primary ballot is that, as we witnessed in the last election, New Hampshire was playing a game of chicken. And, we went right down to the wire on when we announced the date of that primary and when we conducted it. Time is of the essence when we are in that type of a mode where we're in a major defense situation. Other states were trying to encroach on our first in the nation status and having a simple alphabetically organized ballot allows us to print ballots very, very quickly. If we have to do a rotation, then there are other steps in the process that could delay it. Can we make up for that? The answer is probably yes, but there would be an

C

additional expense involved in that as well. More eyes in the process, maybe a second printer involved. Things like that.

On the issue of the state ballots, as it applies to State Representative, Senator Houde was correct that it would not increase the number of ballots that we have to print, and from that standpoint, there would be no change. However, because we would have rotating names on those ballots within State Representative Districts and we would have column rotations in towns and wards within the State Representative Districts, that there would be an additional cost in making sure that we have the manpower to put that together and also make sure that we do the proper proofing that needs to be done so that we have a ballot that is correct when it goes to the voter on election day. We are trying to figure out now what that cost would be. But, there will be an additional cost involved with doing that.

And, then getting to the part of rotation within Representative Districts and how fair that is. A couple quick questions that come to mind is, I'll use the district that I live in now as an example - Bow and Dunbarton. Bow is the much larger town in the district, Dunbarton is the smaller town. There are three State Reps that represent that district, and so the question is, how do we rotate the names on the ballots in two towns with three Representatives and be fair on that basis to the candidates in the district? I mean, you can make the argument that it's as fair as the current situation or you could make the argument that it might be less fair than it currently is.

I think that's all the comments I want to make at the present time on that bill. I'd be happy to try and answer questions.

Senator Bette R. Lasky, D. 13: Thank you. Senator Carson?

Senator Sharon M. Carson, D. 14: Thank you, Madam Chair. Good morning.

Deputy Scanlan: Good morning.

Senator Sharon M. Carson, D. 14: The question that comes to mind for me is recounts. And, if you're talking about a State Rep District, I come from a two-town district similar to what you described with one very large town and one very small town. And, if you have these rotating columns where you're going to have one ballot in say the Town of Londonderry and a different ballot in the Town of Auburn, if there should be a situation where there needs to be a recount, how is that going to happen when you're looking at two different ballots?



Deputy Scanlan: Yeah, but, Madam Chair, I don't think the issue of recounts is going to be a big deal. Because...

Senator Sharon M. Carson, D. 14: Okay.

Deputy Scanlan: ...we usually count them by towns...

Senator Sharon M. Carson, D. 14: Okay.

Deputy Scanlan: ...anyway. And we don't you know we don't separate, I don't think that's going to be an issue. That reminds me of a couple of other points that I wanted to make.

First the issue of the nickname, I think is a big improvement to the current situation. Senator Barnes, you asked the question if your name would be different. I think that it might be, in that I think the language in here implies that it is either your given name or it is your nickname with a surname, but I don't think you can have like your first name and a nickname and your last name. The reason we like that is because of the columns on the ballot. We had, in the last general election, we had four with the two parties, a third party column and a write-in column and space gets tight. So, if we have people that have really long names on the ballot, it's problematic for us in trying to adjust the columns to make everything fit.

The other thing that I wanted to mention was that the item in here that deals with the town picking, you know, their candidate rotations. I can tell you that that will generate a lot of questions from the towns to our office on how that process is to be done, because it can be confusing to them. But, more importantly, a lot of them now prefer the state drawing at the beginning of the year which their letter to start the alphabet is determined, because it takes away the local politics, you know, the situation where apparently one person picks the name and there were no witnesses. That leads to real perception issues in a town.

Many times when it is done properly, it still leads to issues in the town. And, the clerks would just assume not have to deal with the politics, the local politics that are involved with, being put on the spot with them picking the names. So, the way it is, is probably fine, but you might want to add another option and that is let the state use essentially selected name to start the ballot, somehow. And, Representative Winter (sic) testified earlier, he has a method which seems to be pretty reasonable and it's something that we would certainly consider in the formula that we would use in selecting names in the future.



Senator Bette R. Lasky, D. 13: Anything further?

Deputy Scanlan: I'd be happy, no, that's it. That's it for me.

Senator Bette R. Lasky, D. 13: Any other questions?

Senator Bette R. Lasky, D. 13: I did want if you had any opinion on Representative Winters' suggestion about choosing after the filing period, whether logistically that would create problems or not?

Deputy Scanlan: I think his idea is an interesting one. I think, if the method that he suggested was used, it would negate the need to do that after the filing period. Because, his is based on a formula. If you have five candidates, there would be a formula that would have you end up picking one number on that list of five and that really couldn't be predetermined by the filing period if that were the option. So, I don't know that that would actually be necessary if his method was used.

Senator Bette R. Lasky, D. 13: Okay. Thank you. Any further questions?

Deputy Scanlan: Thank you.

Senator Bette R. Lasky, D. 13: Thank you. Is there anyone else that would like to testify who did not sign up for Senate Bill 157? Please come forward, state your name and address for the record. Good morning.

Attorney Cordell Johnston: And, I'm sorry I didn't sign up and I'll make it very brief. My name's Cordell Johnston. I represent the New Hampshire Municipal Association.

And, sort of like Dave Scanlan, I was listening to try to understand the bill. And, my only concern is, as I was listening to it, I think I understand that the idea is that, in state elections, you will have a number of different ballots, but you would only have one ballot per town. You wouldn't have different forms of ballots within any one town or any city ward.

But, my concern arises and it's on page three. It's the section having to do with town elections. Starting on line 15, lines 15 through 18, which Dave Scanlan referred to, that the town clerk would select an alphabetization and rotation procedure in the same manner that the Secretary of State does. And, when I first saw that, I didn't see any problem with it. I figured okay you put the names in and you pull out Barnes and then you just go from there and wrap around once you get to Z. I think that's fine, but as I thought about it more, it says alphabetization and rotation procedure. That suggests to me



that somehow, within a town, and you're talking about the town elections now for selectmen or town clerk or moderator or whatever, you would end up with potentially a number of different ballots with Barnes going first on one ballot and Carson first on the next ballot and Houde first on the next ballot and I don't know whether that's intended. If it is, I think that could be a real problem. One, a problem of costs, and two, a problem of figuring out exactly how it works. I understand at the state level you can do it by town, but at the town level, I don't know how you would do that. So, I think that just needs to be understood a little better.

My other question on that language is it says the town clerk will do it, in the alternative the governing body may do it. I'm not sure what happens if the town clerk says I'll do it, and the governing body says no, we'll do it. I think it ought to be clear. The town clerk does it, but if the town clerk fails to, then the governing body shall or something like that so it's clear who has...who's in charge. Thank you.

Senator Bette R. Lasky, D. 13: Thank you. Any questions for Mr. Johnston? Oh, Senator Merrill?

Senator Amanda Merrill, D. 21: Thank you, Madam Chair. You brought up the issue of the second sentence about the governing body may provide the randomization. And, perhaps this was answered earlier, I apologize for missing Senator Houde's testimony. But, I wasn't sure whether this meant that the governing body can carry out that same process or they can come up with some other one, so, if anybody can help out with that, I would...not necessarily ...you jogged my memory.

Attorney Johnston: Yeah, that's sort of my question.

Senator Amanda Merrill, D. 21: Yeah. What does that mean?

Attorney Johnston: Yeah.

Senator Bette R. Lasky, D. 13: So, we're saying line seventeen, eighteen, right?

Senator Amanda Merrill, D. 21: Yeah.

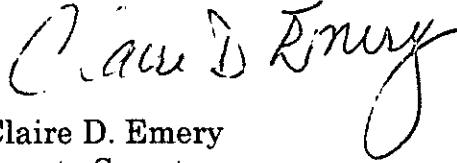
Senator Bette R. Lasky, D. 13: Thank you.

Attorney Johnson: Thank you.

Senator Bette R. Lasky, D. 13: Alright. Thank you. No one else is signed up. Is there anyone else who would like to speak to Senate Bill 157? If not I'm going to close the hearing on Senate Bill 157.

Hearing concluded at 9:30 a.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Claire D. Emery". The signature is written in black ink and is positioned to the right of the typed name.

Claire D. Emery
Senate Secretary
4/9/2009

1 Attachment

Attachment # 1

ELECTIONS RESULTS IN SOME VERY CLOSE OR IMPORTANT RACES

Attachment # 1

1	2	A	B	C	D	E	F	G	H	I	J
		Election Year	Office/Contest (Candidate listed first on ballots is listed first. Winner is in bold. Election is NH General and for State Representative if not otherwise indicated.)	Votes for Winning Candidate	Votes for Losing Candidate	Other Votes (if indicated at source)	Total Votes Cast in Contest	Difference Between Winner & Closest Loser		Percent Swing to Change Outcome	
								Votes	Percent		
3	1974	US Senate, Wyman (r) v. Durkin (d), original results		110,716	110,361	1,327	222,404	355	0.16%	0.08%	Most of the data above is from the applicable "Red Books" or NH Manual for the General Court, or NH Secretary of State website. If other votes, such as write-ins are reported at that source, they are usually shown here. Florida results are from http://election.dos.state.fl.us/elections/resultsarchive . New Mexico results are from http://www.fec.gov/pubref/2000/2000presge.htm . Absolute differences in Wyman-Durkin Ballot Commission total is correct. Actual vote for each candidate in line 5 is approximate.
4	1974	US Senate, Wyman v. Durkin, recount		110,924	110,914	1,513	223,351	10	0.004%	0.003%	
5	1974	US Senate, Wyman v. Durkin, Ballot Comm. (not exact)		110,922	110,920	1,513	223,355	2	0.001%	0.001%	
6	1975	US Senate, Wyman v. Durkin, special election		140,778	113,007		253,785	27,771	10.94%	5.47%	
7	1992	President, Bush (r) v. Clinton (d) v. Perot		209,040	202,484	125,691	537,215	6,556	1.22%	0.61%	
8	1998	State Sen. 16, Krueger (r) v. DeStefano (d)		7,867	7,862	50	15,779	5	0.03%	0.02%	
9	1998	State Rep. Hillsborough 2, Hansen (r) v. Shattuck (d)		588	581		1,169	7	0.60%	0.38%	
10	2000	State Senate 7, Flanders (r) v. Trombley (d)		10,609	10,520	11	21,140	89	0.42%	0.22%	
11	2000	Hillsborough Dist. 30, Allan (r) v. Kopka (d)		1,624	1,597		3,221	27	0.84%	0.45%	
12	2000	Hillsborough Dist. 38, Golding (r) v. Ahern (d)		1,439	1,437		2,876	2	0.07%	0.07%	
13	2000	Rockingham Dist. 13, Rausch (r) v. Ferguson (d)		4,995	4,970		9,965	25	0.25%	0.14%	
14	2000	Rockingham Dist. 35, Bowles (r) v. Smith (d)		982	972		1,954	10	0.51%	0.31%	
15	2000	Strafford Dist. 17, Albert (r) v. Brown (d)		1,137	1,127		2,264	10	0.44%	0.27%	
16	2000	Sullivan Dist. 4, Franklin (d) v. Wiggins (d)		1,489	1,485		2,974	4	0.13%	0.10%	
17	2000	President, Bush (r) v. Gore (d), New Hampshire		273,559	266,348	29,174	569,081	7,211	1.27%	0.63%	
18	2000	President, Gore (d) v. Bush (r), New Mexico		286,783	286,417	25,405	598,605	366	0.06%	0.03%	
19	2000	President, Bush (r) v. Gore (d), Florida, recount		2,912,790	2,912,253	138,067	5,963,110	537	0.009%	0.0045%	
20	2002	Cheshire Dist. 25, Fish (r) v. Brisson (d)		3,175	3,166		6,341	9	0.14%	0.09%	
21	2002	Merrimack Dist. 34, Kennedy (r) v. Rodd (d)		3,831	3,822		7,653	9	0.12%	0.07%	
22	2002	Merrimack Dist. 38, Daniels (r) v. Riley (d)		1,741	1,727		3,468	14	0.40%	0.23%	
23	2002	Strafford Dist. 67, Bemis (r) v. Downs (r)		5,244	5,237		10,481	7	0.07%	0.04%	
24	2002	Sullivan Dist. 19, Jones (r) v. Prichard (d)		1,359	1,345		2,704	14	0.52%	0.30%	
25	2002	Hillsborough Cty Atty., Coughlin (r) v. McDonough (d), after recount & Ballot Commission		59,270	59,148		118,418	122	0.10%	0.05%	
26	2004	President, Bush (r) v. Kerry (d)		340,511	331,237	5,990	677,738	9,274	1.37%	0.68%	
27	2004	Governor, Benson (r) v. Lynch (d)		340,299	325,891	740	666,930	14,408	2.16%	1.08%	
28	2004	Executive Council 1, Democratic Primary, Write-ins, Burton (r) v. Below (d). After recount & Ballot Comm.		655	653		1,308	2	0.15%	0.15%	
29	2004	State Sen. 11, Bragdon (r) v. Fernald (d)		14,970	14,523	24	29,517	447	1.51%	0.76%	
30	2004	State Sen. 18, Martel (r) v. Gelinis, recount		11,095	10,929		22,024	166	0.75%	0.38%	
31	2004	Cheshire Dist. 2, Sawyer (r) v. Englund (d), recount		2,293	2,255		4,548	38	0.84%	0.44%	
32	2004	Cheshire Dist. 6, Dexter (r) v. Thackston (d)		2,639	2,626		5,265	13	0.25%	0.14%	
33	2004	Hillsborough Dist 3, Ross (r) v. Freide (d)		3,003	2,963		5,966	40	0.67%	0.35%	
34	2004	Rockingham Dist. 14, Morris (r) v. O'Keefe (d)		3,099	3,069		6,168	30	0.49%	0.26%	
35	NH State Senate Partisan Balance by Session Year:			1995-'96	1997-'98	1999	2000	2001-'02	2003-'04	2005	
36	Number of Republicans:			18	15	11	12	13	18	16	
37	Number of Democrats:			6	9	13	12	11	6	8	

Illustration of how initiating lists of candidate names by randomly picking one or more letters of the alphabet to determine which surname goes first DOES NOT TREAT ALL CANDIDATES EQUALLY. That is, the same candidate that would disproportionately (and unconstitutionally) benefit from the primacy effect in a regular alphabetical listing is also most likely to get the prime ballot position when the list is initiated by one or more random letter drawings. The first list is a made up hypothetical. The next four hypothetical lists consist of the names of members of the 4 Senate standing committees that are listed first alphabetically. The final list is the names of the current 24 NH State Senators. 5/14/08, CCB, HB 358.

LISTS	Random Single Letter Draw		Random Multiple Letter Draw to break ties		All Senators	Rank in alphabet	Random Single Letter Draw Chance of First Position	
	Chance of First Position	Chance of First Position	Odds in 26				Odds in 26	%
	Odds in 26	%	Odds in 26	%				
	25	96.2%	24.908	95.8%	Barnes	2	9	34.6%
Below	0	0.0%	0.520	2.0%	Bragdon	2	0	0.0%
Burling	0	0.0%	0.003	0.01%	Burling	2	0	0.0%
Burton	1	3.8%	0.569	2.2%	Cilley	3	1	3.8%
Cilley	26		26		Clark	3	0	0.0%
					Clegg	3	0	0.0%
Capital					D'Allesandro	4	1	3.8%
Clegg	18	69.2%	18	69.2%	DeVries	4	0	0.0%
D'Allesandro	1	3.8%	1	3.8%	Downing	4	0	0.0%
Foster	2	7.7%	2	7.7%	Estabrook	5	1	3.8%
Gatsas	1	3.8%	1	3.8%	Foster	6	1	3.8%
Hassan	1	3.8%	1	3.8%	Gallus	7	1	3.8%
Kelly	3	11.5%	3	11.5%	Gatsas	7	0	0.0%
	26		26		Gottesman	7	0	0.0%
					Hassan	8	1	3.8%
Commerce					Janeway	10	2	7.7%
Barnes	10	38.5%	10.35	39.8%	Kelly	11	1	3.8%
Cilley	1	3.8%	1	3.8%	Kenney	11	0	0.0%
DeVries	1	3.8%	1	3.8%	Larsen	12	1	3.8%
Gottesman	3	11.5%	3	11.5%	Letourneau	12	0	0.0%
Reynolds	11	42.3%	10.23	39.3%	Odell	15	3	11.5%
Roberge	0	0.0%	0.42	1.6%	Reynolds	18	3	11.5%
	26		26		Roberge	18	0	0.0%
					Sgambati	19	1	3.8%
Education							26	
Bragdon	16	61.5%	16	61.5%	Alphabetical position of		Normal Distribution	Actual
Clark	1	3.8%	1	3.8%	24 Senator Names		of alphabet letters	%
Estabrook	2	7.7%	2	7.7%	Median Rank	7	13.5	
Foster	1	3.8%	1	3.8%	# in first 1/4	11	6	46%
Kelly	5	19.2%	5	19.2%	# in first half	20	12	83%
Letourneau	1	3.8%	1	3.8%	# in 2nd half	4	12	17%
	26		26		# in last 1/4	1	6	4%
Election Law								
Burling	16	61.5%	16	61.5%	U.V. phone book (Your Local Directory, 07-08):			
Cilley	1	3.8%	1	3.8%	A-M, 1st half, was 63% of white pages, while			
DeVries	1	3.8%	1	3.8%	N-Z, 2nd half of alphabet, was 37% of white pages.			
Gallus	3	11.5%	3	11.5%	NH HOUSE, 5/08, Distribution of Member Names:			
Letourneau	5	19.2%	5	19.2%	67% of surnames start in 1st half of alphabet, A-M			
	26		26		only 33% of names start in 2nd half of alphabet, N-Z.			

Note: Odds for multiple letter draws to break ties when 2 candidates have surnames beginning with the same letter of the alphabet are approximate and may be slightly in error as they are somewhat difficult to figure.

The New York Times
Op-Ed Contributor

In the Voting Booth, Bias Starts at the Top

By JON A. KROSNICK
Published: November 4, 2006

Stanford, Calif.

PEOPLE who are first in line at a movie know they have the best chance of getting the seats they want. When students answer multiple-choice questions incorrectly, they usually choose one of the first options offered. When people taste-test four brands of beer, they tend to prefer the one they try first.

And so it is with voting. Candidates listed first on the ballot get about two percentage points more votes on average than they would have if they had been listed later (flipping a 49 to 51 defeat into a 51 to 49 victory). In fact, in about half the races I have studied, the advantage of first place is even bigger — certainly big enough to win some elections these days.

When do voters gravitate to the first name they see? Based on the more than 100 elections in Ohio that a colleague and I studied, it's when voters know little or nothing about the candidates, or when the candidates' party affiliations are not listed on the ballot, or when the incumbent (whom voters typically know at least somewhat) is not running for re-election. Thus, some voters apparently feel an obligation or desire to vote even when they have no basis for choosing a candidate and are drawn to the first name they read.

But even in well-publicized major national races, being listed first can help. Some people walk into the voting booth feeling ambivalent, and in the end just grab the name on top so they can get out of the booth.

How do we know this? Well, consider this: In California's 80 Assembly districts, candidate name order is randomly assigned. In 1996, Bill Clinton's vote tally was 4 percentage points higher in the Assembly districts where he was listed first than in the ones where he was listed last — a difference that persisted even after we took into account pre-existing Democratic registration levels in the districts.

In 2000, George W. Bush's vote tally was 9 percentage points higher in the districts where he was listed first than in the districts where he was listed last — again, persisting with registration taken into account.

Of course, these issues are not confined to California. My research team spent a year reading statutes and contacting secretaries of state and county boards of elections to learn about their naming procedures. We found an array of idiosyncratic — and disturbing — rules governing the placement of names on the ballot.



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Saturday, November 18, 2006

Being listed first on ballot has advantages

By Jim Adams
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The Courier-Journal

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The Courier-Journal

For decades in Kentucky, the decision about which candidate's name goes first on ballots in most general election partisan races has come down to one question: Which party carried the state in the previous presidential election?

After Bill Clinton won Kentucky in 1992, for example, Democratic candidates got the top line in most of the races, until 2000, when George W. Bush won the state, and Republicans took the honors.

In the most recent election this month — as a result of Bush's 2004 win in Kentucky — Republicans were first and Democrats second on ballots in all 120 Kentucky counties.

Kentucky is one of at least 18 states that decide "ballot order" based on past election results, but some experts — and some candidates — say it may be unfair and should be changed.

Democrat Scott Alexander of Hazard, for example, believes ballot position may have been an unfair deciding factor in his razor-thin loss Nov. 7 in a battle for a seat in the state House.

Having ended up just 40 votes behind incumbent Republican Brandon Smith, out of 13,918 votes cast, Alexander pointed out that he would have won if just 21 Smith voters had voted for him instead.

"I definitely think it (ballot position) made 21 votes of difference," he said.

Smith disagreed, arguing that name recognition and personal contact with voters are far bigger factors. "You don't order the first thing off the menu," he said.

But Jon A. Krosnick, a professor of communication, political science and psychology at Stanford University in Palo Alto, Calif., thinks Alexander has a strong argument.

"He should absolutely go to court," said Krosnick, who has emerged nationally as a critic of election systems like those in Kentucky. "As far as I'm concerned, it's the only way these laws are going to get changed — through legal efforts."

Across the country, politicians, social scientists and others are debating the role of ballot order and the "primacy effect" — the idea that someone faced with a choice from among a group of items is inclined, even if only slightly, to select the first one offered.

Three months ago, for example, the New Hampshire Supreme Court considered the primacy effect and concluded that a state statute giving first ballot position to candidates of the party that earned the most votes in the last election violated a section of the state's constitution that gives every resident "an equal right to be elected into office."

Kentucky's constitution has a similar section that declares, "All elections shall be free and equal."

In the New Hampshire case, the state's secretary of state, William Gardner, testified that "studies showed that the primacy effect can confer as much as a six to ten percent advantage upon candidates whose names appear on lists as long as twelve candidates."

In a Nov. 4 New York Times piece, Krosnick wrote that "candidates listed first on the ballot get about two percentage points more votes on average than they would have if they had been listed later (flipping a 49 to 51 defeat into a 51 to 49 victory)."

In one study of Ohio elections, Krosnick found a ballot order effect in about half the races studied.

And a study that Krosnick and two colleagues published in 2004 even suggested that ballot order may have decided the 2000 presidential election.

Examining results in three states that rotate candidates' names on ballots — California, North Dakota and Ohio — they found President Bush won more votes in all three states when he was listed first on the ballot than when he was listed last.

If that same "primacy effect" carried over to Florida — where Bush was first on all ballots under a state law tied to previous election results — the margin probably was sufficient to have given him the win there and, as a result, the presidency, the academics concluded.

"In that light, it seems all the more important for states to remove the bias in name ordering prevalent around the country so that Americans can have full confidence in the outcomes of its electoral contests," Krosnick and his colleagues wrote.

A different group of academics has argued that evidence of the frequency and the extent of the primacy effect is "muddled."

But even those skeptics — including Richard L. Hasen, a professor at Loyola Law School in Los Angeles who specializes in election law — do not dispute that the effect exists to some degree.

Asked last week what he thinks of Kentucky's procedure tying ballot order to the last presidential election, Hasen said: "If I were sitting in the Kentucky legislature, I would not vote for that rule. But if I were sitting as a judge and was asked to strike it down, I'm not sure what I would do."

But Hasen and two other professors who have studied ballot order — Krosnick and R. Michael Alvarez, a professor of political science at California Institute of Technology in Pasadena, Calif. — said in recent interviews that they believe the best ballot-ordering systems are those that select candidates at random, and rotate their names on ballots.

Krosnick said he believes the optimum system is in Ohio, which rotates candidates' names from

precinct to precinct, so that all candidates will be listed first in roughly an equal number of precincts. Seven states currently rotate candidates' names in some fashion.

Election review

To examine whether ballot order may have played a part in the recent election in Kentucky, The Courier-Journal reviewed the Nov. 7 returns in the state's 50 contested judicial races for seats at the Circuit Court level or higher — nonpartisan races in which ballot placement is decided at random, under a different state statute.

The newspaper found that:

- Candidates in the first ballot position won at a higher rate than those in the second position. Thirty-four candidates who held the first position won. Only 15 candidates who held the second position won, and one who held a fourth position won. That's a "win" rate of 68 percent among those listed first on the judicial ballots, compared with 32 percent for the "down-ballot" candidates.
- Incumbents who had first-place ballot positions fared even better. Of the 18 incumbents who drew first-place positions, 15 won and only three lost, a "win" rate of 83 percent. Of the 12 incumbents who drew second spots on the ballot, five won and seven lost, a "win" rate of 42 percent, nearly half that of the candidates who were first on the ballot.

The newspaper presented those results to Krosnick, who concluded that they were statistically significant. "... Most likely, you have identified a real difference that is due to the effect of name order," he said.

Hopkins Circuit Judge Susan Wesley McClure may have felt some of the effect.

She drew the second ballot position in the race to retain her seat in Madisonville in Western Kentucky — a draw she said concerned her the minute she learned of it. She said she even tried to lead voters to her name on the ballot by circulating literature that said, "Vote '2' keep Judge McClure."

But, she said, "No one really understood what that meant. 'Why are you using the number 2?' "

She lost by less than 5 percentage points to James C. Brantley.

"You can never get inside the mind of the voter and find out what is their basis for voting for someone, the real basis for it," McClure said. But, "I would think rotation (of candidates' names on ballots) ... would give you a better equalization of any benefit that ballot placement would have."

Hasen and Alvarez said they believe ballot order is less of a factor when voters are given other "cues" on which to base their decision — such as party affiliation or incumbency.

"I'm skeptical that ballot order matters in certain kinds of elections, especially general elections where there are party labels," Hasen said.

But in nonpartisan races about which there has been little media coverage and the voter is unlikely to know much about the candidates, ballot order might become more important, the professors said.

"In those kinds of races, the research has shown ... that these kinds of primacy effects can actually be operative and sometimes can be profound," Alvarez said.

Reporter Jim Adams can be reached at (502) 582-4199.

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Ballot Changes Cited in Vote's Discrepancy With Polls

Clinton's Favorable Placement on Ballots May Account for Part of Poll Mistakes

OPINION By JON A. KROSNICK, Professor, Stanford University

Jan. 9, 2008 —

Without a doubt, a big source of the discrepancy between the pre-election surveys and the election outcome in New Hampshire is the order of candidates' names on the ballot and in the surveys.

Our analysis of all recent primaries in New Hampshire showed that there was always a big primacy effect  big-name, big-vote-getting candidates got 3 percent or more votes more when listed first on the ballot than when listed last.

Until this year, New Hampshire rotated candidate name order from precinct to precinct, which allowed us to do that analysis.

This year, the secretary of state changed the procedure so the names were alphabetical starting with a randomly selected letter, in all precincts.

The randomly selected letter this year was Z.

As a result, Joe Biden was first on every ballot, Hillary Clinton was near the top of the list (and the first serious contender listed) and Barack Obama was close to last of the 21 candidates listed.

Thus, I'll bet that Clinton got at least 3 percent more votes than Obama simply because she was listed close to the top.

Most, if not all, of the pre-election telephone polls rotated name order from respondent to respondent, which meant name order did not distort their overall results. Failing to incorporate the name order effect that probably happened in the voting booth is therefore probably partly responsible for the polls' inaccuracy.

More importantly, if New Hampshire had rotated name order in the voting booth as it has always done in the past, the race would probably have been too close to call without a recount and might even have been an Obama victory.

Jon A. Krosnick is the Frederic O. Glover professor in humanities and social sciences at Stanford University. He got his Ph.D. from the University of Michigan.

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Can an election hinge on whose name comes first on the ballot?

Click on photo(s) to enlarge.



Jon Krosnick, The Frederic O. Glover Professor in Humanities and Associate Director of IRiSS, with his research team

Mark Tuschman

Why were the polls so wrong in the January 2008 New Hampshire Democratic primary? Jon Krosnick, professor of communication, helped solve the mystery.

In the past, New Hampshire primary ballots had a different candidate order in each precinct. But in 2008, the candidates were listed alphabetically on every ballot. According to Krosnick's research, that gave Hillary Clinton at least a 2 percent advantage. Pollsters negated this advantage by randomly changing the order of the candidates for each person they interviewed, and said Obama would win easily.

States should rotate the order of names on ballots so that an equal number of voters see each candidate's name listed first, concluded Krosnick, the Frederic O.

Glover Professor in Humanities and Social Sciences. He hopes that publicizing his research findings will encourage states to reform their ballot process.

In an era where America's political races have become closely contested, Krosnick's work has important implications for the validity of election results. His study of name order effects in elections in Ohio, California, North Dakota, and elsewhere was done with a team of Stanford undergraduate and graduate students who conducted the most precise research to-date. Various statistical methods had been used to test name-order effects in past elections, but no studies had directly compared methods to one another to see whether they yielded different results, which Krosnick's team did.

"My research with Jon has been exciting because it made me realize how statistical tools can be used to spot policy problems like ballot design," said undergraduate Daniel Blocksom'08. The team analyzed election returns from the 2004 presidential race in all precincts in Ohio, where name order is rotated across precincts. Having data on more than ten thousand precincts provided them with great statistical power, which they used to determine that all presidential candidates received significantly more votes when listed first. They also discovered name-order effects were most pronounced in precincts with the least educated voters and in precincts that voted on touch screen machines.

Krosnick's innovative methods were supported by The Institute for Research in the Social Sciences (IRiSS), which facilitates the formation of multidisciplinary research teams and provides them with the resources to tackle major social issues. Working closely with faculty mentors, students at the Institute work on problems of democratic stability, poverty, population and disease transmission, and the impact of philanthropy and entrepreneurship. Through its efforts, IRiSS strives to increase the impact of social science research on public policy, business innovation, and social entrepreneurship.

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(0 votes)

Speakers

Voting Sheets

Senate Election Law & Veterans' Affairs Committee

EXECUTIVE SESSION

Bill # SB157

Hearing date: 3/3/09

Executive session date: ~~3/17/09~~ 3/24/09

Motion of: OTP/A

VOTE: _____

Made by
Senator: Lasky
 Houde
 Merrill
 Carson
 Barnes

Seconded
by Senator: Lasky
 Houde
 Merrill
 Carson
 Barnes

Reported
by Senator: Lasky
 Houde
 Merrill
 Carson
 Barnes

Amendment

Motion of: OTP/A

4-1 Barnes opposed

VOTE: 3-2 *Barnes a Carson*

Made by
Senator: Lasky
 Houde
 Merrill
 Carson
 Barnes

Seconded
by Senator: Lasky
 Houde
 Merrill
 Carson
 Barnes

Reported
by Senator: Lasky
 Houde
 Merrill
 Carson
 Barnes

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Lasky, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Houde, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Merrill	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Carson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Barnes	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

*Amendments: OTPs with additional drafting of language
re: Nicknames
Cost acknowledge, New section of amendment deals with
take force on campaign finance law

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: March 24, 2009

THE COMMITTEE ON Election Law and Veterans' Affairs
to which was referred Senate Bill 157

AN ACT relative to the procedure for listing candidates on election
 ballots.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 3 - 2

AMENDMENT # 1002s

Senator Matthew Houde
For the Committee

Claire Emery 271-1403

New Hampshire General Court - Bill Status System

Docket of SB157

Docket Abbreviations

Bill Title: (New Title) relative to the procedure for listing candidates on election ballots and establishing a citizen-funded election task force.

Official Docket of SB157:

Date	Body	Description
01/08/2009	S	Introduced and Referred to Election Law and Veterans' Affairs; SJ 2 , Pg.30
02/05/2009	S	Hearing; March 3, 2009, Room 101, LOB, 8:45 a.m.; SC10
03/24/2009	S	Committee Report; Ought to Pass with Amendment{1002s} (New Title) [03/25/09]; SC16A
03/25/2009	S	Committee Amendment {1002s} (New Title), RC 21Y - 2N, AA; SJ 9 , pgs.138-141
03/25/2009	S	Ought to Pass with Amendment {1002s} (New Title), RC 14Y - 9N, MA; OT3rdg; SJ 9 , pg.141
03/25/2009	S	Passed by Third Reading Resolution; SJ 9 , pg.156
03/26/2009	H	Introduced and Referred to Election Law; HJ 29 , PG.1196
04/01/2009	H	==CANCELLED== Executive Session: 4/15/2009 9:30 AM LOB 308
04/08/2009	H	===CANCELLED=== Public Hearing: 4/14/2009 10:30 AM LOB 304
04/08/2009	H	Public Hearing: 4/21/2009 10:30 AM LOB 308
04/09/2009	H	Executive Session: 4/22/2009 9:30 AM LOB 308 ==RECESSED==
04/22/2009	H	==CONTINUED== Executive Session: 4/29/2009 11:00 AM LOB 308
04/29/2009	H	Retained in Committee

NH House

NH Senate

Contact Us

New Hampshire General Court Information Systems
 107 North Main Street - State House Room 31, Concord NH 03301

Other Referrals

COMMITTEE REPORT FILE INVENTORY

SB157 ORIGINAL REFERRAL

RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE SECRETARY AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

DOCKET (Submit only the latest docket found in Bill Status)

COMMITTEE REPORT

CALENDAR NOTICE on which you have taken attendance

HEARING REPORT (written summary of hearing testimony)

HEARING TRANSCRIPT (verbatim transcript of hearing)

List attachments (testimony and submissions which are part of the transcript) by number [1 thru 4 or 1, 2, 3, 4] here: _____

SIGN-UP SHEET

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

- AMENDMENT # 1002s _____ - AMENDMENT # _____
 - AMENDMENT # 0821s _____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED _____ AS AMENDED BY THE HOUSE
_____ FINAL VERSION AS AMENDED BY THE SENATE

_____ PREPARED TESTIMONY AND OTHER SUBMISSIONS (Which are not part of the transcript)

List by letter [a thru g or a, b, c, d] here: _____

EXECUTIVE SESSION REPORT

OTHER (Anything else deemed important but not listed above, such as amended fiscal notes):

Amended fiscal note 4-8-09

IF YOU HAVE A RE-REFERRED BILL, YOU ARE GOING TO MAKE UP A DUPLICATE FILE FOLDER

DATE DELIVERED TO SENATE CLERK 4/20/09

Clare D. Emery
COMMITTEE SECRETARY