

ENGROSSED
COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 391

(By Senators Palumbo, Snyder, Foster, McCabe,
Beach, Minard and Wells)

[Originating in the Committee on the Judiciary;
reported February 23, 2011.]

A BILL to amend and reenact §3-3-2a and §3-3-3 of the Code of West Virginia, 1931, as amended, all relating to early in-person voting; authorizing community voting locations; removing the requirement that chairpersons of executive committees approve community voting locations; requiring community voting locations to be open a minimum of five days; requiring community voting locations to be politically balanced or counter balanced by another location; requiring security of election equipment and materials; requiring the publication of community voting locations; providing for appeal of commu-

nity voting locations to circuit court; reducing the voting period for early in-person voting to thirteen days; and eliminating the requirement that an election be on a Tuesday in order to have Saturday early voting.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2a. Early voting areas; prohibition against display of campaign material.

1 (a) The county commission shall designate the courthouse
2 or annex to the courthouse as the primary location for early
3 voting and in addition, the commission may designate other
4 locations as provided in subsection (b) of this section.

5 (b) The county commission may, with the approval of the
6 county clerk or other official charged with the administra-
7 tion of elections, ~~and the written agreement of the chairper-~~
8 ~~sons of the county executive committees of the two major~~
9 ~~political parties, designate additional~~ choose to utilize
10 community voting locations for early voting other than the
11 county courthouse or courthouse annex. The ~~additional~~
12 community voting locations shall comply with the require-

13 ments of this article for early in-person voting and criteria
14 prescribed by the Secretary of State. The county commission
15 and county clerk shall, by order, set the community voting
16 locations with the written approval of the chairpersons of
17 the county executive committees of the two major political
18 parties.

19 (c) If the approval of the chairpersons of the county
20 executive committees of the two major political parties is not
21 obtained pursuant to subsection (b) of this section, the
22 county commission and county clerk shall, by order, place
23 community voting locations in precincts, which have, as
24 nearly as practicable, political party affiliation ratios of
25 registered voters equal to the political party affiliation ratio
26 of registered voters in the entire county. If a community
27 voting location is placed in a precinct with a political party
28 affiliation ratio that is not equal, as nearly as practicable, to
29 the political party affiliation ratio of the county, then it shall
30 be counter-balanced with another location or locations
31 placed in another precinct or precincts. Multiple community
32 voting locations in a county, when considered together shall,
33 as nearly as practicable, have political party affiliation ratios

34 of registered voters equal to the political party affiliation
35 ratio of registered voters in the entire county.

36 (d) No order designating community voting locations may
37 be made by the county commission without giving notice at
38 least one month before the designation by publication of the
39 notice as a Class II-0 legal advertisement in compliance with
40 provisions of article three, chapter fifty-nine of this code.
41 The publication area is the county in which the community
42 voting locations are designated. The county commission shall
43 also, within fifteen days after the date of the order, publish
44 the order in the manner required for publication of the
45 notice.

46 (e) Any person claiming to be aggrieved by an order of a
47 county commission designating a community voting location,
48 may appeal on the grounds that the community voting
49 location is not politically balanced as required by this
50 section. An appeal to the circuit court in the county where
51 the order was entered may be filed up to fifteen days after
52 the entry of the order of the county commission. All such
53 cases shall be heard and determined as expeditiously as
54 possible and shall be given priority over all other cases.
55 Community voting locations are valid until changed by order

56 of the commission pursuant to the requirements of this
57 section, or if such order is overturned on appeal.

58 (f) Community voting locations may be utilized for less
59 than the full period of early in-person voting but shall
60 remain open for a minimum of five consecutive voting days.
61 If more than one community voting location is utilized in a
62 county, each community voting location in that county shall
63 remain open for the same number of days and same number
64 of hours per day. All measures required by this chapter to
65 assure the security of the election equipment, ballots and
66 other election materials shall be followed.

67 ~~(e)~~ (g) The Secretary of State is hereby directed to propose
68 legislative and emergency rules in accordance with the
69 provisions of article three, chapter twenty-nine-a of this
70 code as may be necessary to implement the provisions of this
71 section. The rules shall include establishment of criteria to
72 assure neutrality and security in the selection of ~~additional~~
73 community voting locations.

74 ~~(d)~~ (h) Throughout the period of early in-person voting, the
75 official designated to supervise and conduct absentee voting
76 shall make the following provisions for voting:

77 (1) The official shall provide a sufficient number of voting
78 booths or devices appropriate to the voting system at which
79 voters may prepare their ballots. The booths or devices are
80 to be in an area separate from but within clear view of the
81 public entrance area of the official's office or other area
82 designated by the county commission for absentee voting and
83 are to be arranged to ensure the voter complete privacy in
84 casting the ballot.

85 (2) The official shall make the voting area secure from
86 interference with the voter and shall ensure that voted and
87 unvoted ballots are at all times secure from tampering. No
88 person, other than a person lawfully assisting the voter
89 according to the provisions of this chapter, may be permitted
90 to come within five feet of the voting booth while the voter
91 is voting. No person, other than the officials or employees of
92 the official designated to supervise and conduct absentee
93 voting or members of the board of ballot commissioners
94 assigned to conduct absentee voting, may enter the area or
95 room set aside for voting.

96 (3) The official designated to supervise and conduct
97 absentee voting shall request the county commission desig-
98 nate another area within the county courthouse, any annex

99 of the courthouse or any other designated as early in-person
100 voting locations within the county, as a portion of the
101 official's office, for the purpose of absentee in-person voting
102 in the following circumstances:

103 (A) If the voting area is not accessible to voters with
104 physical disabilities;

105 (B) If the voting area is not within clear view of the public
106 entrance of the office of the official designated to supervise
107 and conduct absentee voting; or

108 (C) If there is no suitable area for absentee in-person
109 voting within the office.

110 Any designated area is subject to the same requirements
111 as the regular absentee voting area.

112 (4) The official designated to supervise and conduct
113 absentee voting shall have at least two representatives to
114 assist with absentee voting: *Provided*, That the two represen-
115 tatives may not be registered with the same political party
116 affiliation or two persons registered with no political party
117 affiliation. The representatives may be full-time employees,
118 temporary employees hired for the period of absentee voting
119 in person or volunteers.

120 (5) No person may do any electioneering nor may any
121 person display or distribute in any manner, or authorize the
122 display or distribution of, any literature, posters or material
123 of any kind which tends to influence the voting for or against
124 any candidate or any public question on the property of the
125 county courthouse, any annex facilities, or any other desig-
126 nated early voting locations within the county, during the
127 entire period of regular in-person absentee voting. The
128 official designated to supervise and conduct absentee voting
129 is authorized to remove the material and to direct the sheriff
130 of the county to enforce the prohibition.