

**Senate Bill No. 391**

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

[Introduced February 2, 2011; referred to the Committee on the  
Judiciary; and then to the Committee on Finance.]

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 rotating community voting locations;  
requiring rotating community voting locations to be open a  
minimum of three days; requiring security of election  
equipment and materials; requiring the publication of rotating  
community voting locations; providing for appeal of rotating  
community voting locations to circuit court; and reducing the  
voting period for early in-person voting to thirteen days.

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

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

**ARTICLE 3. VOTING BY ABSENTEES.**

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

1                   **campaign material.**

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

6           (b) The county commission may, with the approval of the county  
7 clerk or other official charged with the administration of  
8 elections, ~~and the written agreement of the chairpersons of the~~  
9 ~~county executive committees of the two major political parties,~~  
10 designate additional community voting locations for early voting  
11 other than the county courthouse or courthouse annex. The  
12 additional community voting locations shall comply with the  
13 requirements of this article for early in-person voting and  
14 criteria prescribed by the Secretary of State.

15           (c) Notwithstanding the other requirements for early in-person  
16 voting, the county clerk may authorize rotating community voting  
17 locations, where a community location may be utilized for less than  
18 the full period of early in-person voting. All rotating community  
19 voting locations shall remain open for a minimum of three  
20 consecutive voting days. All measures required by this chapter to  
21 assure the security of the election equipment, ballots and other  
22 election materials shall be followed. No order designating  
23 additional community voting location for early voting other than  
24 the county courthouse or courthouse annex may be made by the county  
25 commission without giving notice at least one month before the

1 designation by publication of the notice as a Class II-0 legal  
2 advertisement in compliance with provisions of article three,  
3 chapter fifty-nine of this code. The publication area is the county  
4 in which the community voting locations may be designated. The  
5 county commission shall also, within fifteen days after the date of  
6 the order, publish the order in the manner required for publication  
7 of the notice. Any person claiming to be aggrieved by any order  
8 entered by the county commission in this section, may, at any time  
9 up to fifteen days after the entry of the order of the county  
10 commission, appeal the order to the circuit court of the county in  
11 which the order was entered. Community voting locations are valid  
12 until changed or appealed.

13       (c) The Secretary of State is hereby directed to propose  
14 legislative and emergency rules in accordance with the provisions  
15 of article three, chapter twenty-nine-a of this code as may be  
16 necessary to implement the provisions of this section. The rules  
17 shall include establishment of criteria to assure neutrality and  
18 security in the selection of additional locations.

19       (d) Throughout the period of early in-person voting, the  
20 official designated to supervise and conduct absentee voting shall  
21 make the following provisions for voting:

22       (1) The official shall provide a sufficient number of voting  
23 booths or devices appropriate to the voting system at which voters  
24 may prepare their ballots. The booths or devices are to be in an  
25 area separate from but within clear view of the public entrance

1 area of the official's office or other area designated by the  
2 county commission for absentee voting and are to be arranged to  
3 ensure the voter complete privacy in casting the ballot.

4 (2) The official shall make the voting area secure from  
5 interference with the voter and shall ensure that voted and unvoted  
6 ballots are at all times secure from tampering. No person, other  
7 than a person lawfully assisting the voter according to the  
8 provisions of this chapter, may be permitted to come within five  
9 feet of the voting booth while the voter is voting. No person,  
10 other than the officials or employees of the official designated to  
11 supervise and conduct absentee voting or members of the board of  
12 ballot commissioners assigned to conduct absentee voting, may enter  
13 the area or room set aside for voting.

14 (3) The official designated to supervise and conduct absentee  
15 voting shall request the county commission designate another area  
16 within the county courthouse, any annex of the courthouse or any  
17 other designated as early in-person voting locations within the  
18 county, as a portion of the official's office, for the purpose of  
19 absentee in-person voting in the following circumstances:

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

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

25 (C) If there is no suitable area for absentee in-person voting

1 within the office.

2 Any designated area is subject to the same requirements as  
3 the regular absentee voting area.

4 (4) The official designated to supervise and conduct absentee  
5 voting shall have at least two representatives to assist with  
6 absentee voting: *Provided*, That the two representatives may not be  
7 registered with the same political party affiliation or two persons  
8 registered with no political party affiliation. The  
9 representatives may be full-time employees, temporary employees  
10 hired for the period of absentee voting in person or volunteers.

11 (5) No person may do any electioneering nor may any person  
12 display or distribute in any manner, or authorize the display or  
13 distribution of, any literature, posters or material of any kind  
14 which tends to influence the voting for or against any candidate or  
15 any public question on the property of the county courthouse, any  
16 annex facilities, or any other designated early voting locations  
17 within the county, during the entire period of regular in-person  
18 absentee voting. The official designated to supervise and conduct  
19 absentee voting is authorized to remove the material and to direct  
20 the sheriff of the county to enforce the prohibition.

21 **§3-3-3. Early voting in person.**

22 (a) The voting period for early in-person voting is to be  
23 conducted during regular business hours beginning on the ~~twentieth~~  
24 thirteenth day before the election and continuing through the third  
25 day before the election. For any election held on a Tuesday, the

1 early voting period for in-person voting is to be available from  
2 9:00 a.m. to 5:00 p.m. on the two Saturdays prior to the election.

3 (b) Any person desiring to vote during the period of early in-  
4 person voting shall, upon entering the election room, clearly state  
5 his or her name and residence to the official or representative  
6 designated to supervise and conduct absentee voting. If that  
7 person is found to be duly registered as a voter in the precinct of  
8 his or her residence, he or she shall be required to sign his or  
9 her name in the space marked "signature of voter" on the pollbook.  
10 If the voter is unable to sign his or her name due to illiteracy or  
11 physical disability, the person assisting the voter and witnessing  
12 the mark of the voter shall sign his or her name in the space  
13 provided. No ballot may be given to the person until he or she  
14 signs his or her name on the pollbook.

15 (c) When the voter's signature or mark is properly on the  
16 pollbook, two qualified representatives of the official designated  
17 to supervise and conduct absentee voting shall sign their names in  
18 the places indicated on the back of the official ballot.

19 (d) If the official designated to supervise and conduct  
20 absentee voting determines that the voter is not properly  
21 registered in the precinct where he or she resides, the clerk or  
22 his or her representative shall challenge the voter's absentee  
23 ballot as provided in this article.

24 (e) The official designated to supervise and conduct absentee  
25 voting shall provide each person voting an absentee ballot in

1 person the following items to be printed as prescribed by the  
2 Secretary of State:

3 (1) In counties using paper ballots, one of each type of  
4 official absentee ballot the voter is eligible to vote, prepared  
5 according to law;

6 (2) In counties using punch card systems, one of each type of  
7 official absentee ballot the voter is eligible to vote, prepared  
8 according to law, and a gray secrecy envelope;

9 (3) In counties using optical scan systems, one of each type  
10 of official absentee ballot the voter is eligible to vote, prepared  
11 according to law, and a secrecy sleeve; or

12 (4) For direct recording election systems, access to the  
13 voting equipment in the voting booth.

14 (f) The voter shall enter the voting booth alone and there  
15 mark the ballot: *Provided*, That the voter may have assistance in  
16 voting according to the provisions of section four of this article.  
17 After the voter has voted the ballot or ballots, the absentee voter  
18 shall: Place the ballot or ballots in the gray secrecy envelope  
19 and return the ballot or ballots to the official designated to  
20 supervise and conduct the absentee voting: *Provided, however*,  
21 That in direct recording election systems, once the voter has cast  
22 his or her ballot, the voter shall exit the polling place.

23 (g) Upon receipt of the voted ballot, representatives of the  
24 official designated to supervise and conduct the absentee voting  
25 shall:

1 (1) Remove the ballot stub;

2 (2) Place punch card ballots and paper ballots into one  
3 envelope which shall not have any marks except the precinct number  
4 and seal the envelope;

5 (3) Place ballots for all voting systems into a ballot box  
6 that is secured by two locks with a key to one lock kept by the  
7 president of the county commission and a key to the other lock kept  
8 by the county clerk;

9 (4) Due to the reenactment of this section by the Legislature  
10 in the 2003 regular session removing authorization for early in-  
11 person voting on the Monday prior to a Tuesday election, to assure  
12 notice to all persons that voted on the Monday before the Tuesday  
13 election day of the 2002 general election are made aware of this  
14 change, the clerk of each county shall, for the primary election of  
15 the year 2004, include along with the sample ballots published in  
16 local newspapers as required by this chapter a notice to voters  
17 that Monday in-person voting will no longer be available.

NOTE: The purpose of this bill is to authorize rotating  
community voting locations; require publication of rotating  
community voting locations; provide for publication of rotating  
community voting locations; provide for rotating community voting  
locations to circuit court in county which located; and reduce the  
voting period for early in-person voting to thirteen days.

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