

Senate Bill No. 450

(By Senators McCabe, Foster and Plymale)

[Introduced February 7, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

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10 A BILL to amend and reenact §3-3-2a and §3-3-3 of the Code of West
11 Virginia, 1931, as amended, all relating to permitting a
12 county commission to designate additional community voting
13 locations for early in-person voting; permitting the two major
14 political parties to appeal any additional community voting
15 locations only on the basis of neutrality; and decreasing the
16 early in-person voting period from twenty days to thirteen
17 days before an election.

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

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

21 **ARTICLE 3. VOTING BY ABSENTEES.**

22 **§3-3-2a. Early voting areas; prohibition against display of**
23 **campaign material.**

24 (a) The county commission shall designate the courthouse or
25 annex to the courthouse as the primary location for early voting

1 and in addition, the commission may designate other locations as
2 provided in subsection (b).

3 (b) The county commission may, with the approval of the county
4 clerk or other official charged with the administration of
5 elections, ~~and the written agreement of the chairpersons of the~~
6 ~~county executive committees of the two major political parties,~~
7 designate additional community voting locations for early voting
8 other than the county courthouse or courthouse annex. The
9 additional community voting locations shall comply with the
10 requirements of this article for early in-person voting and
11 criteria prescribed by the Secretary of State. Notwithstanding any
12 other early in-person voting requirements, the county clerk is
13 authorized to designate rotating community voting locations that
14 may be used for fewer days of early in-person voting permitted by
15 section three of this article. The two major political parties'
16 county executive committees may appeal a community voting location
17 only on the basis of neutrality. Any appeal must factually and
18 specifically state how the community voting location violates
19 neutrality. The appeal must be submitted to the county commission
20 and county clerk no later than sixty days prior to an election.
21 Community voting locations are valid unless changed or successfully
22 appealed.

23 (c) The Secretary of State is hereby directed to propose
24 legislative and emergency rules in accordance with the provisions
25 of article three, chapter twenty-nine-a of this code as may be

1 necessary to implement the provisions of this section. The rules
2 shall include establishment of criteria to assure neutrality and
3 security in the selection of additional locations.

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

7 (1) The official shall provide a sufficient number of voting
8 booths or devices appropriate to the voting system at which voters
9 may prepare their ballots. The booths or devices are to be in an
10 area separate from but within clear view of the public entrance
11 area of the official's office or other area designated by the
12 county commission for absentee voting and are to be arranged to
13 ensure the voter complete privacy in casting the ballot.

14 (2) The official shall make the voting area secure from
15 interference with the voter and shall ensure that voted and unvoted
16 ballots are at all times secure from tampering. No person, other
17 than a person lawfully assisting the voter according to the
18 provisions of this chapter, may be permitted to come within five
19 feet of the voting booth while the voter is voting. No person,
20 other than the officials or employees of the official designated to
21 supervise and conduct absentee voting or members of the board of
22 ballot commissioners assigned to conduct absentee voting, may enter
23 the area or room set aside for voting.

24 (3) The official designated to supervise and conduct absentee
25 voting shall request the county commission designate another area

1 within the county courthouse, any annex of the courthouse or any
2 other designated as early in-person voting locations within the
3 county, as a portion of the official's office, for the purpose of
4 absentee in-person voting in the following circumstances:

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

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

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

12 Any designated area is subject to the same requirements as
13 the regular absentee voting area.

14 (4) The official designated to supervise and conduct absentee
15 voting shall have at least two representatives to assist with
16 absentee voting: *Provided*, That the two representatives may not be
17 registered with the same political party affiliation or two persons
18 registered with no political party affiliation. The representatives
19 may be full-time employees, temporary employees hired for the
20 period of absentee voting in person or volunteers.

21 (5) No person may do any electioneering nor may any person
22 display or distribute in any manner, or authorize the display or
23 distribution of, any literature, posters or material of any kind
24 which tends to influence the voting for or against any candidate or
25 any public question on the property of the county courthouse, any

1 annex facilities, or any other designated early voting locations
2 within the county, during the entire period of regular in-person
3 absentee voting. The official designated to supervise and conduct
4 absentee voting is authorized to remove the material and to direct
5 the sheriff of the county to enforce the prohibition.

6 **§3-3-3. Early voting in person.**

7 (a) The voting period for early in-person voting is to be
8 conducted during regular business hours beginning on the ~~twentieth~~
9 thirteenth day before the election and continuing through the third
10 day before the election. For any election held on a Tuesday, the
11 early voting period for in-person voting is to be available from
12 9:00 a.m. to 5:00 p.m. on the two Saturdays prior to the election.

13 (b) Any person desiring to vote during the period of early in-
14 person voting shall, upon entering the election room, clearly state
15 his or her name and residence to the official or representative
16 designated to supervise and conduct absentee voting. If that
17 person is found to be duly registered as a voter in the precinct of
18 his or her residence, he or she shall be required to sign his or
19 her name in the space marked "signature of voter" on the pollbook.
20 If the voter is unable to sign his or her name due to illiteracy or
21 physical disability, the person assisting the voter and witnessing
22 the mark of the voter shall sign his or her name in the space
23 provided. No ballot may be given to the person until he or she
24 signs his or her name on the pollbook.

25 (c) When the voter's signature or mark is properly on the

1 pollbook, two qualified representatives of the official designated
2 to supervise and conduct absentee voting shall sign their names in
3 the places indicated on the back of the official ballot.

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

9 (e) The official designated to supervise and conduct absentee
10 voting shall provide each person voting an absentee ballot in
11 person the following items to be printed as prescribed by the
12 Secretary of State:

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

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

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

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

24 (f) The voter shall enter the voting booth alone and there
25 mark the ballot: *Provided*, That the voter may have assistance in

1 voting according to the provisions of section four of this article.
2 After the voter has voted the ballot or ballots, the absentee voter
3 shall: Place the ballot or ballots in the gray secrecy envelope
4 and return the ballot or ballots to the official designated to
5 supervise and conduct the absentee voting: *Provided, however, That*
6 *in direct recording election systems, once the voter has cast his*
7 *or her ballot, the voter shall exit the polling place.*

8 (g) Upon receipt of the voted ballot, representatives of the
9 official designated to supervise and conduct the absentee voting
10 shall:

11 (1) Remove the ballot stub;

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

15 (3) Place ballots for all voting systems into a ballot box
16 that is secured by two locks with a key to one lock kept by the
17 president of the county commission and a key to the other lock kept
18 by the county clerk.

19 ~~(4) Due to the reenactment of this section by the Legislature~~
20 ~~in the 2003 regular session removing authorization for early in-~~
21 ~~person voting on the Monday prior to a Tuesday election, to assure~~
22 ~~notice to all persons that voted on the Monday before the Tuesday~~
23 ~~election day of the 2002 general election are made aware of this~~
24 ~~change, the clerk of each county shall, for the primary election of~~
25 ~~the year 2004, include along with the sample ballots published in~~

~~1 local newspapers as required by this chapter a notice to voters~~
~~2 that Monday in person voting will no longer be available.~~

NOTE: The purpose of this bill is to permit a county commission to designate additional community voting locations for early in-person voting. The bill permits the two major political parties to appeal any additional community voting locations only on the basis of neutrality. The bill also decreases the early in-person voting period from twenty days to thirteen days before an election.

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