

**Senate Bill No. 496**

(By Senators Palumbo and Plymale)

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[Introduced February 11, 2011; referred to the Committee on  
Government Organization; and then to the Committee on the  
Judiciary.]

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A BILL to amend and reenact §3-1A-6 of the Code of West Virginia,  
1931, as amended, relating to emergency powers of the  
Secretary of State.

Be it enacted by the Legislature of West Virginia:

That §3-1A-6 of the Code of West Virginia, 1931, as amended,  
be amended and reenacted to read as follows:

**ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.**

**§3-1A-6. Powers and duties of Secretary of State; exercise of  
powers by appointees.**

(a) The Secretary of State shall be the chief election  
official of the state. Except for those rules required by the  
provisions of section five of this article to be promulgated by the  
commission, the Secretary of State ~~shall have the authority~~ may,  
after consultation with the State Election Commission, of which he  
or she is a member, to make, amend and rescind such orders and ~~to~~

1 promulgate legislative rules, in accordance with the provisions of  
2 chapter twenty-nine-a of this code, as may be necessary to  
3 standardize and make effective the provisions of this chapter. All  
4 election officials, county commissions, clerks of county  
5 commissions, clerks of circuit courts, boards of ballot  
6 commissioners, election commissioners and poll clerks shall abide  
7 by any orders that may be issued and any legislative rules that may  
8 be promulgated by the Secretary of State and the commission.

9 (b) The Secretary of State also ~~shall have authority to~~ may  
10 require collection and report of statistical information and ~~to~~  
11 require other reports by county commissions, clerks of county  
12 commissions and clerks of circuit courts.

13 (c) The Secretary of State shall also advise with election  
14 officials; furnish to the election officials a sufficient number of  
15 indexed copies of the current election laws of West Virginia and  
16 the administrative orders and rules issued or promulgated  
17 thereunder; investigate the administration of election laws, frauds  
18 and irregularities in any registration or election; report  
19 violations of election laws to the appropriate prosecuting  
20 officials; and prepare an annual report.

21 (d) The Secretary of State ~~shall also have the power to~~ may  
22 administer oaths and affirmations, issue subpoenas for the  
23 attendance of witnesses, issue subpoena duces tecum to compel the  
24 production of books, papers, records, registration records and

1 other evidence and fix the time and place for hearing any matters  
2 relating to the administration and enforcement of this chapter, or  
3 the rules promulgated by the State Election Commission or by the  
4 Secretary of State as the chief election official of the state. In  
5 case of disobedience to a subpoena or subpoena duces tecum, he or  
6 she may invoke the aid of any circuit court in requiring the  
7 attendance, evidence and testimony of witnesses and the production  
8 of papers, books, records, registration records and other evidence.

9 (e) (1) The Secretary of State ~~shall also have the power~~ may,  
10 after consultation with the Secretary of the Department of Military  
11 Affairs and Public Safety, ~~to~~ implement emergency procedures and  
12 rules to ensure that all eligible voters have the opportunity to  
13 cast a valid ballot and to uphold the integrity of an election in  
14 the ~~event~~ case of an international, national, state, local ,or  
15 general emergency, or ~~of~~ natural disaster as declared by the  
16 President or his or her designee, the Governor of this state or his  
17 or her designee, or a court of competent jurisdiction which renders  
18 it impossible or impracticable to follow standard voting procedures  
19 in all or part of the state, ~~terrorist attack, war or general~~  
20 ~~emergency,~~ if any of which occur during or immediately preceding an  
21 election.

22 (2) For purposes of this subsection, a "general emergency"  
23 means circumstances preventing the casting of ballots in one or  
24 more voting precincts. The chief judge of the circuit court of the

1 county where the casting of ballots is being prevented must declare  
2 by order that a general emergency exists.”

3 (3) The Secretary of State may designate alternative methods  
4 and procedures to handle absentee voting applications and ballots.  
5 The Secretary of State shall take reasonable steps to provide  
6 voters covered under the Uniformed and Overseas Voters Absentee  
7 Voting Act ( 42 U.S.C. Section 1973ff et seq.) timely notice of any  
8 special procedure or requirement under this section.

9 (f) All powers and duties vested in the Secretary of State  
10 pursuant to this article may be exercised by appointees of the  
11 Secretary of State at his or her discretion, but the Secretary of  
12 State shall be responsible for their acts.

NOTE: The purpose of this bill is to clarify the Secretary of State's authority for emergency procedures in elections in the case of a national emergency and provide notice of any modifications to absentee voters under the Uniformed Overseas Voters Absentee Voting Act.

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