

COMMITTEE SUBSTITUTE

FOR

H. B. 3032

(BY DELEGATES MILEY AND FERRO)
[BY REQUEST OF THE SECRETARY OF STATE]

(Originating in the Committee on the Judiciary)
[February 18, 2011]

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.

1 (a) The Secretary of State shall be the chief election
2 official of the state. Except for those rules required by the
3 provisions of section five of this article to be promulgated by
4 the commission, the Secretary of State ~~shall have the~~
5 authority may, after consultation with the State Election
6 Commission, of which he or she is a member, to make,
7 amend and rescind such orders and ~~to~~ promulgate legislative
8 rules, in accordance with the provisions of chapter twenty-
9 nine-a of this code, as may be necessary to standardize and
10 make effective the provisions of this chapter. All election
11 officials, county commissions, clerks of county commissions,
12 clerks of circuit courts, boards of ballot commissioners,
13 election commissioners and poll clerks shall abide by any
14 orders that may be issued and any legislative rules that may
15 be promulgated by the Secretary of State and the
16 commission.

17 (b) The Secretary of State also ~~shall have authority to~~
18 may require collection and report of statistical information

19 and to require other reports by county commissions, clerks of
20 county commissions and clerks of circuit courts.

21 (c) The Secretary of State shall also advise with election
22 officials; furnish to the election officials a sufficient number
23 of indexed copies of the current election laws of West
24 Virginia and the administrative orders and rules issued or
25 promulgated thereunder; investigate the administration of
26 election laws, frauds and irregularities in any registration or
27 election; report violations of election laws to the appropriate
28 prosecuting officials; and prepare an annual report.

29 (d) The Secretary of State ~~shall also have the power to~~
30 may administer oaths and affirmations, issue subpoenas for
31 the attendance of witnesses, issue subpoena duces tecum to
32 compel the production of books, papers, records, registration
33 records and other evidence and fix the time and place for
34 hearing any matters relating to the administration and
35 enforcement of this chapter, or the rules promulgated by the
36 State Election Commission or by the Secretary of State as the
37 chief election official of the state. In case of disobedience to

38 a subpoena or subpoena duces tecum, he or she may invoke
39 the aid of any circuit court in requiring the attendance,
40 evidence and testimony of witnesses and the production of
41 papers, books, records, registration records and other
42 evidence.

43 (e) (1) The Secretary of State ~~shall also have the power~~
44 may, after consultation with the Secretary of the Department
45 of Military Affairs and Public Safety, ~~to~~ implement
46 emergency procedures and rules to ensure that all eligible
47 voters have the opportunity to cast a valid ballot and to
48 uphold the integrity of an election in the ~~event~~ case of an
49 international, national, state, local, or general emergency or
50 of natural disaster as declared by the President or his or her
51 designee, the Governor of this state or his or her designee, or
52 a court of competent jurisdiction which renders it impossible
53 or impracticable to follow standard voting procedures in all
54 or part of the state, terrorist attack, war or general
55 emergency, if any of which occur during or immediately
56 preceding an election.

57 (2) For purposes of this subsection, a “general
58 emergency” means circumstances preventing the casting of
59 ballots in one or more voting precincts. The chief judge of
60 the circuit court of the county where the casting of ballots is
61 being prevented must declare by order that a general
62 emergency exists.

63 (3) The Secretary of State may designate alternative
64 methods and procedures to handle absentee voting
65 applications and ballots in the event of an emergency as
66 provided for in this subsection. The Secretary of State shall
67 take reasonable steps to provide voters covered under the
68 Uniformed and Overseas Voters Absentee Voting Act (42
69 U.S.C. Section 1973ff et seq.) timely notice of any special
70 procedure or requirement under this section.

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