

1 ENGROSSED

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 391**

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

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February 23, 2011.]
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13 A BILL to amend and reenact §3-3-2a of the Code of West Virginia,
14 1931, as amended, relating to authorizing community voting
15 locations; removing the requirement that chairpersons of
16 executive committees approve community voting locations;
17 requiring community voting locations to be open a minimum of
18 five days; requiring community voting locations to be
19 politically balanced or counter balanced by another location;
20 requiring security of election equipment and materials;
21 requiring the publication of community voting locations; and
22 providing for appeal of community voting locations to circuit
23 court.

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

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

1 **ARTICLE 3. VOTING BY ABSENTEES.**

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

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

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

20 (c) If the approval of the chairpersons of the county
21 executive committees of the two major political parties is not
22 obtained pursuant to subsection (b) of this section, the county
23 commission and county clerk shall, by order, place community voting
24 locations in precincts, which have, as nearly as practicable,
25 political party affiliation ratios of registered voters equal to

1 the political party affiliation ratio of registered voters in the
2 entire county. If a community voting location is placed in a
3 precinct with a political party affiliation ratio that is not
4 equal, as nearly as practicable, to the political party affiliation
5 ratio of the county, then it shall be counter-balanced with another
6 location or locations placed in another precinct or precincts.
7 Multiple community voting locations in a county, when considered
8 together shall, as nearly as practicable, have political party
9 affiliation ratios of registered voters equal to the political
10 party affiliation ratio of registered voters in the entire county.

11 (d) No order designating community voting locations may be
12 made by the county commission without giving notice at least one
13 month before the designation by publication of the notice as a
14 Class II-0 legal advertisement in compliance with provisions of
15 article three, chapter fifty-nine of this code. The publication
16 area is the county in which the community voting locations are
17 designated. The county commission shall also, within fifteen days
18 after the date of the order, publish the order in the manner
19 required for publication of the notice.

20 (e) Any person claiming to be aggrieved by an order of a
21 county commission designating a community voting location, may
22 appeal on the grounds that the community voting location is not
23 politically balanced as required by this section. An appeal to the
24 circuit court in the county where the order was entered may be
25 filed up to fifteen days after the entry of the order of the county
26 commission. All such cases shall be heard and determined as

1 expeditiously as possible and shall be given priority over all
2 other cases. Community voting locations are valid until changed by
3 order of the commission pursuant to the requirements of this
4 section, or if such order is overturned on appeal.

5 (f) Community voting locations may be utilized for less than
6 the full period of early in-person voting but shall remain open for
7 a minimum of five consecutive voting days. If more than one
8 community voting location is utilized in a county, each community
9 voting location in that county shall remain open for the same
10 number of days and same number of hours per day. All measures
11 required by this chapter to assure the security of the election
12 equipment, ballots and other election materials shall be followed.

13 ~~(c)~~ (g) 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~~ community voting locations.

19 ~~(d)~~ (h) 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
26 area of the official's office or other area designated by the

1 county commission for absentee voting and are to be arranged to
2 ensure the voter complete privacy in casting the ballot.

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

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

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

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

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

26 Any designated area is subject to the same requirements as

1 the regular absentee voting area.

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

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