

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 391**

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

6 \_\_\_\_\_  
7 [Originating in the Committee on the Judiciary;  
8 reported February 23, 2011.]  
9 \_\_\_\_\_

10  
11  
12 A BILL to amend and reenact §3-3-2a and §3-3-3 of the Code of West  
13 Virginia, 1931, as amended, all relating to early in-person  
14 voting; authorizing community voting locations; removing the  
15 requirement that chairpersons of executive committees approve  
16 community voting locations; requiring community voting  
17 locations to be open a minimum of five days; requiring  
18 community voting locations to be politically balanced or  
19 counter balanced by another location; requiring security of  
20 election equipment and materials; requiring the publication of  
21 community voting locations; providing for appeal of community  
22 voting locations to circuit court; reducing the voting period  
23 for early in-person voting to thirteen days; and eliminating  
24 the requirement that an election be on a Tuesday in order to  
25 have Saturday early voting.

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

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

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

4 **§3-3-2a. Early voting areas; prohibition against display of**  
5 **campaign material.**

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

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

22 (c) If the approval of the chairpersons of the county  
23 executive committees of the two major political parties is not  
24 obtained pursuant to subsection (b) of this section, the county  
25 commission and county clerk shall, by order, place community voting

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

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

22       (e) Any person claiming to be aggrieved by an order of a  
23 county commission designating a community voting location, may  
24 appeal on the grounds that the community voting location is not  
25 politically balanced as required by this section. An appeal to the  
26 circuit court in the county where the order was entered may be

1 filed up to fifteen days after the entry of the order of the county  
2 commission. All such cases shall be heard and determined as  
3 expeditiously as possible and shall be given priority over all  
4 other cases. Community voting locations are valid until changed by  
5 order of the commission pursuant to the requirements of this  
6 section, or if such order is overturned on appeal.

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

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

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

24 (1) The official shall provide a sufficient number of voting  
25 booths or devices appropriate to the voting system at which voters  
26 may prepare their ballots. The booths or devices are to be in an

1 area separate from but within clear view of the public entrance  
2 area of the official's office or other area designated by the  
3 county commission for absentee voting and are to be arranged to  
4 ensure the voter complete privacy in casting the ballot.

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

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

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

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

26 (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~~  
26 The early voting period for in-person voting is to be available

1 from 9:00 a.m. to 5:00 p.m. on the two Saturdays prior to the  
2 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  
26 person the following items to be printed as prescribed by the

1 Secretary of State:

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

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

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

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

13 (f) The voter shall enter the voting booth alone and there  
14 mark the ballot: *Provided*, That the voter may have assistance in  
15 voting according to the provisions of section four of this article.

16 After the voter has voted the ballot or ballots, the absentee voter  
17 shall: Place the ballot or ballots in the gray secrecy envelope  
18 and return the ballot or ballots to the official designated to  
19 supervise and conduct the absentee voting: *Provided, however*,  
20 That in direct recording election systems, once the voter has cast  
21 his or her ballot, the voter shall exit the polling place.

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

25 (1) Remove the ballot stub;

26 (2) Place punch card ballots and paper ballots into one



1 envelope which shall not have any marks except the precinct number  
2 and seal the envelope;

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

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

NOTE: The purpose of this bill is to authorize community voting locations; require publication of community voting locations; removing requirement for written approval of community voting locations; provide for publication of community voting locations; provide for community voting locations to be open a minimum of 5 days in each location; reduce the voting period for early in-person voting to thirteen days; and allow Saturday early voting for all elections.

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