



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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7/10/2018 3:18:22 PM

Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Secretary Of State TITLE-SERIES: 153-13
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 153-13 Early Voting In-Person Satellite Precincts

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 3-3-2a(c)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The Secretary of State shall propose legislative and emergency rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as may be necessary to implement the provisions of this section. The rules shall include establishment of criteria to assure neutrality and security in the selection of community voting locations.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 5/24/2018

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 6/25/2018

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

The rule amends the criteria for early voting satellite precincts. The old version did not take into consideration a statutory change in 2011 which provided greater flexibility in operating satellite voting sites. These technical fixes update for County Clerks the process for handling and securing election materials. It also incorporates changes necessary for ExpressVote systems which are in use in Kanawha County and 12 other counties. It also makes accommodations for older voting systems.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

The state code changed the year after the prior version of this rule was enacted. The rule has been out of compliance since 2011. It also did not incorporate necessary changes for ExpressVote machines.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2018 Increase/Decrease (use "-")	2019 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

D. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No economic impacy on the agency.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Stephen Robert Connolly -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 13
EARLY VOTING IN-PERSON SATELLITE PRECINCTS

§153-13-1. General.

1.1. Scope. -- This rule ~~establishes~~ amends criteria to assure neutrality and security in the selection process for early voting in person satellite precincts and establishes processes and deadlines for establishing such precincts.

1.2. Authority. -- W. Va. Code § 3-3-2a(c).

1.3. Filing Date. -- ~~May 2, 2010~~

1.4. Effective Date. -- ~~June 1, 2010~~

1.5. Sunset Provision. -- ~~This version reflects amendments made by the Legislative Rule-Making Review Committee on November 18, 2009. This Rule shall terminate and have no further force or effect 5 years from the effective date of this Rule~~

§153-13-2. Definitions.

2.1. For the purposes of this rule:

2.1.1. "Broadcast" means announced or advertised on over-the-air, cable, or satellite television or radio.

2.1.2. "Clerk" means the Clerk of the County Commission or other official charged with the administration of elections.

2.1.3. "Early voting" means early in-person absentee voting as provided for in W. Va. Code §3-3-3.

2.1.4. "Permanent structure" means a building or permanent fixture not erected solely for the purpose of serving as a satellite location and specifically excludes mall kiosks, mobile vehicles, motor homes, or recreational vehicles.

2.1.5. "Published" means a Class 11-0 legal advertisement as defined in W. Va. State Code §59-3-2. For counties having more than one qualified newspapers weekly, the notice must be published in each of the qualified newspapers.

2.1.6. "Satellite precinct" means locations for early voting in addition to the primary location as provided for in W. Va. Code §3-3-2a.

§153-13-3. Early Voting Satellite Precinct Selection.

3.1. No less than one hundred twenty (120) days prior to election day, the clerk shall submit a proposal for an early voting satellite precinct or precincts to the County Commission for approval or disapproval.

3.2. The proposal submitted by the clerk shall include:

3.2.1. The proposed location or locations for early voting satellite precincts;

3.2.1.4-a. The proposed location must be in a permanent structure, with preference given to public buildings, and capable of being secured during times when election officials are not present;

3.2.1.2-b. The proposed location must have secure access to the internet, or telephone access, for purposes of immediately crediting the voters vote.

3.2.2. Provisions for staffing the satellite precinct including a minimum of two persons as provided for in W. Va. Code §3-3-2a(d)(4): *Provided*, That the two (2) persons may not be registered with the same political party affiliation or two (2) persons registered with no political party affiliation. The persons may be full-time employees of the county or temporary employees hired for the period of early voting or volunteers; and

3.2.3. Any other procedures necessary for the proper conduct of an election according to provisions of W. Va. Code §§3-1-1 *et seq.*, 3-3-2a and 3-3-3, and section five (5) of this rule, at the early voting satellite location or locations.

3.3. In order to assure neutrality in the satellite precinct selection process:

3.3.1. The clerk shall also submit to the county commission with the proposal for an early voting satellite precinct or precincts a duly notarized written agreement from the chairperson of the county executive committee of each of the two major political parties.

3.3.2. The clerk shall submit to the county commission the basis for the neutrality of the proposal. Neutrality may be assured by taking into account all or part of the following factors:

3.3.2.4-a. Distance from the main early voting location;

3.3.2.2-b. Population centers of the county;

3.3.2.3-c. Historic voting turnout rates of the proposed location compared to the county as a whole;

3.3.2.4-d. Political party affiliation ratio of registered voters in the precinct of the proposed location balanced against the affiliation ratio of the county as a whole or balanced against the affiliation ratio of other proposed locations.

3.4. The county commission, shall approve or disapprove the proposal submitted by the clerk no less than 90 days prior to election day. An early voting satellite precinct proposal must be approved for each particular primary, general or special election and is only valid for the election for which it was approved.

3.5. If agreement cannot be reached among the county commission, county clerk and the chairperson of the county executive committee of each of the two major political parties, the proposal shall be considered void and early voting satellite precincts may not be authorized in the county for the election cycle. Any of the four entities — clerk, county commission, first party chair, or second party chair - has the right to veto any proposal.

§153-13-4. Crediting of Voter Record.

4.1. Any voter who votes at an early voting satellite precinct shall immediately be given credit in the uniform voter registration system, and the clerk shall take all necessary steps to prevent a voter from

voting more than once. In satellite precincts that do not have secure internet access available, the poll workers shall call the County Clerk's office, before allowing the voter to vote, to determine if the voter has already voted at another location, and to give immediate credit in the uniform voter registration system.

4.2. If internet access to the uniform voter registration system is temporarily interrupted, the voter may:

4.2.1. Wait until access has been reestablished; or

4.2.2. Go to another location to vote early; or

4.2.3. Vote a provisional ballot. The provisional ballot will not be counted unless it is confirmed at canvassing that the voter did not vote a second ballot.

4.3. W.Va. Code §3-9-17 makes it a misdemeanor for any person to vote more than once in the same election.

§153-13-5. Procedures for Conducting Early Voting at Satellite Precincts.

5.1. All election material and equipment used at any satellite precinct shall be prepared in the same manner as the equipment used during early voting at the primary location including, but not limited to:

5.1.1. Provisions for the security of ballots and other election material; and

5.1.2. Logistics and accuracy testing of voting equipment.

5.2. Counties using paper ballots or optical scan ballots must have copies of each ballot style at the early voting satellite precinct in numbers sufficient for the efficient conduct of early voting.

5.3. Each early voting satellite precinct must be open and operational in the same manner as the primary location for early voting.

5.4. Early voting at a satellite precinct must be available ~~open the same hours as the main early voting location~~ for a minimum of five (5) consecutive days during early in-person voting, but need not be available for the entire period of early in-person voting, beginning on the ~~twentieth (20th)~~ thirteenth (13th) day before the election and continuing through the third (3rd) day before the election. ~~For any election held on a Tuesday, the satellite location is to be open from 9:00 a.m. until 5:00 p.m. on the two Saturdays prior to the election. A satellite precinct is not required to be open on Saturdays, so long as it is open for at least five (5) consecutive days.~~

5.5. If more than one satellite precinct locations are authorized under W. Va. Code § 3-3-2a(b), each precinct may be open on a rotating basis for a period of five (5) consecutive days or more. Each precinct must be open for an equal number of voting days and the same number of hours per day, except for satellite precincts open on Saturdays which hours shall be 9:00 a.m. to 5:00 p.m. For purposes of calculating the total number of days, Sundays are not counted.

§153-13-6. Security.

6.1. Security of both used and unused ballots, any voting equipment and supplies and all poll books must be maintained in the same manner as at the primary early voting location according to provisions of W. Va. Code §§3-1-1 *et seq.*, 3-3-2a(d)(2) and 3-3-3.

6.2. The official in charge of conducting early voting must provide a means by which the ballot boxes, supplies and voting equipment are secured from tampering. Ballot boxes, supplies and machines, during periods when voting is not taking place, must be locked and secured in such a way so that no person other than the officials or employees of the official designated to conduct early voting or members of the board of ballot commissioners may enter the area or room set aside for voting or access the voting equipment.

6.3. At the end of voting hours each day during early voting, the two (2) satellite employees will record the number of the last ballot used and will record the number of votes recorded on voting equipment. ~~In counties using Direct Recording Electronic (DRE) voting system, the Personalized Electronic Ballots (PEB) shall be secured in a receptacle and sealed with a numbered seal. The seal number is to be recorded with the record of the public count from the machine.~~

6.3.1. In counties using Direct Recording Electronic (DRE) voting system, the Personalized Electronic Ballots (PEB) shall be secured in a receptacle and sealed with a numbered seal. The seal number is to be recorded with the record of the public count from the machine.

6.3.2. In counties using ExpressVote voting system, the unused ballots shall be secured in a receptacle and sealed with two (2) locks with different keys, a numbered seal or security tape.

6.3.2.a. If locks are used, each satellite employee shall keep one (1) key for one (1) lock so that the box cannot be open without both employees present.

6.3.2.b. If a numbered seal is used, the seal number is to be recorded with the record of the public count from the precinct scanner. If security tape is used, two (2) satellite employees shall sign their names across the tape.

6.4. At the beginning of voting hours the next day, the two satellite employees will record the number of the next ballot available and will check the number of votes recorded on the voting equipment. ~~The seal(s) or security tape on the PEB container shall be compared inspected to assure there has been no tampering. Then the seal(s) shall be broken and the Personalized Electronic Ballots materials removed for voting. Any discrepancy must be immediately reported to the Clerk and no voting may take place at the satellite location until the discrepancy is resolved.~~

6.5. Ballot boxes and machines may not be removed from the satellite voting location except under the supervision of the officials or employees of the official designated to conduct early voting.

§153-13-7. Ballot disposition and counting.

7.1. Ballots shall be counted in the manner prescribed by W. Va. Code §3-3-8.

7.2. For counties using paper ballots, the ballot boxes shall be sealed and transported by two satellite location workers, of differing political affiliation, to the main early voting location before being counted.

7.3. For counties using optical scan systems, ~~or direct recording equipment, or ExpressVote equipment,~~ the ballots and machine memory device(s) ~~will~~ shall be sealed and transported by the two (2) satellite location workers, of differing political affiliation, to the main early voting location before being counted.

7.4. Provisional ballots will be placed in a sealed bag and transported to the main early voting location for disposition in accordance with W. Va. Code § 3-3-8(d)

§153-13-8. Public Notice.

8.1. Not later than seven (7) calendar days before the start of early voting, the county commission shall cause a notice to be broadcast in a manner sufficient to reach a majority of citizens in the county as determined by the County Commission or published as defined in section two of this rule, and placed on the county's website (if applicable). The notice placed on the county's website must remain on the website until the close of the early voting period. All notices shall state the location or locations and dates and hours of operation for each early voting satellite precinct.