



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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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: W. Va. Code 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:

W. Va. Code 3-3-2a(c) gives the Secretary of State authority to propose legislative and emergency rules as may be necessary to implement the provisions of Chapter 3 of the West Virginia Code pertaining to the establishment of community voting locations, which shall include establishment criteria to assure neutrality and security in the selection of community voting locations by county commissions.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/30/2022

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/31/2022

COMMENTS RECEIVED: Yes

(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?

N/a.

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 establishes the process, deadlines, and notice requirements for counties to establish community voting locations. The purpose of the rule is to provide a uniform procedure guiding all counties for establishing additional early in-person voting locations for use during the 10-day early voting period. Changes reflect 2011 statutory changes regarding county political party executive committees' ability to nominate community voting locations, county clerk process for submitting nominated locations to county commission with deadlines, and process for counties to continue use of a designated community voting location for each election as permitted by statute.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Circumstances requiring the rule include response to Attorney General Opinion issued April 18, 2022 (<https://ago.wv.gov/publicresources/Attorney%20General%20Opinions/Documents/Opinion%20of%20the%20Attorney%20General%20Concerning%20the%20Selection%20of%20Community%20Locations%20for%20Early%20In-Person%20Voting%20%28April%2018%2c%202022%29.PDF>) regarding 2011 statutory changes which conflict with rule provisions for executive committee authority. Additional circumstances are based on public comments.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/a

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

N/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2022 Increase/Decrease (use "-")	2023 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

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

N/a

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

Yes

Donald Kersey -- 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~~ COMMUNITY VOTING
LOCATIONS

§153-13-1. General.

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

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

1.3. Filing Date. -- ~~May 6, 2019.~~

1.4. Effective Date. -- ~~May 6, 2019.~~

1.5. Sunset Provision. -- This Rule shall terminate and have no further force or effect on ~~May 6, 2024~~ August 1, 2028.

§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"~~ "Community voting location or locations" means one or more locations for in-person early voting in addition to the primary location as provided for in W. Va. Code §3-3-2a.

2.1.7. "Election day" means the regularly scheduled date of a primary election according to W. Va. Code § 3-5-1, a general election under W. Va. Code § 3-1-31(a), or a special election under the authorizing statute or official act, and shall not be interpreted to refer to the first day of early in-person voting.

§153-13-3. Early Voting Community Voting Location Satellite Precinct Selection; Emergency Location Changes.

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~~ community voting location in writing 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~~ community voting locations;

3.2.1.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.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~~ community voting locations 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~~ community voting locations.

3.3. In order to assure neutrality in the ~~satellite precinct~~ community voting location 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~~ The county executive committees of the two major political parties may nominate sites to be used as community voting locations during the early voting period pursuant to W. Va. Code § 3-3-2a(b)(3). Nominations under this section shall be made by written request to the clerk delivered no later than 150 days prior to election day, and shall clearly list the address(es) and neutrality criteria listed in Section 3.3.2 for each proposed community voting location. Upon the clerk's approval of the written proposal, the clerk shall submit the proposal to the county commission prior to the notice deadline set forth in section 3.1 of this rule; *Provided*, That pursuant to the clerk's authority under W. Va. Code § 3-3-2a(b), delinquent nominations by county executive committees shall not prohibit the clerk from approving or submitting a proposal to the county commission within the deadlines set forth by law and this rule.

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.a. Distance from the main early voting location;

3.3.2.b. Population centers of the county;

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

3.3.2.d. Political party affiliation ratio of registered voters in the precinct of the proposed community voting location balanced against the affiliation ratio of the county as a whole or balanced against the affiliation ration of other proposed community voting 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 community voting location proposal must be approved for each particular primary, general or special election and is only valid for the election for which it was approved may continue to be used in subsequent elections without complying with the approval process if the county commission finds, and the clerk agrees, at least 50 days, but not more than 80 days prior to the election, that the location continues to qualify under this rule according to W. Va. Code § 3-3-2a(b)(8).

~~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. No later than 60 days prior to election day, in the case of an emergency that results in the unavailability of a designated community voting location, the county commission may enter an order to move the community voting location with the clerk’s approval under W. Va. Code § 3-3-2a(b). Reasonable notice of the ordered change shall be given to the public in a clear and conspicuous manner, which may include but is not limited to public announcements, news media, social media, and posting on the county’s website.~~

3.6. After the deadline has passed for an emergency community voting location change under Section 3.5, if for any reason the election cannot be held at the designated community voting location and no provision has been made by the county commission for holding the election at another place, the election workers for that precinct may hold the election at the nearest place which they can secure for the purpose. They shall make known by proclamation to voters present at the time for opening the polls, and by posting a notice at or near the entrance of the first named community voting location, the address to the new community voting location. The county commission shall establish another place of voting for that community voting location with the clerk’s approval under W. Va. Code § 3-3-2a(b) as soon thereafter as practicable.

§153-13-4. Crediting of Voter Record.

4.1. Any voter who votes at an early voting ~~satellite precinct~~ community voting location shall immediately be given credit in the uniform voter registration system, or an electronic poll book system, as the case may be, and the clerk shall take all necessary steps to prevent a voter from voting more than once. In ~~satellite precincts~~ community voting locations 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~~ Community Voting Locations.

5.1. All election material and equipment used at any ~~satellite precinct~~ community voting location 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~~ community voting location in numbers sufficient for the efficient conduct of early voting.

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

5.4. Early voting at a ~~satellite precinct~~ community voting location must be available 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 thirteenth (13th) day before the election and continuing through the third (3rd) day before the election. A ~~satellite precinct~~ community voting location 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~~ community voting location location is 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~~ community voting location must be open for an equal number of voting days and the same number of hours per day, except for ~~satellite precinct~~ community voting locations 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-community voting location~~ location employees will record the number of the last ballot used and will record the number of votes recorded on voting equipment.

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~~ community voting location 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~~ community voting location employees shall sign their names across the tape.

6.4. At the beginning of voting hours the next day, the two ~~satellite~~ community voting location 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 shall be inspected to assure there has been no tampering. Then the seal(s) shall be broken and the materials removed for voting. Any discrepancy must be immediately reported to the Clerk and no voting may take place at the ~~satellite precinct~~ community voting location until the discrepancy is resolved.

6.5. Ballot boxes and machines may not be removed from the ~~satellite-precinct location~~ community 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~~ community voting location workers, of differing political affiliation, to the main early voting location before being counted.

7.3. For counties using optical scan systems, direct recording or ExpressVote equipment, the ballots and machine memory device(s) shall be sealed and transported by the two (2) ~~satellite location~~ community voting 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~~ community voting location.