

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #8

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2009 NOV 19 AM 10:32

WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY AMENDMENT TO AN EMERGENCY RULE

AGENCY: Secretary of State TITLE NUMBER: 153

DATE EMERGENCY RULE WAS ORIGINALLY FILED: August 4, 2009

FIRST EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X NO

SECOND EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

DATE OF FIRST EMERGENCY AMENDMENT:


SERIES NUMBER OF RULE: 13

TITLE OF RULE: Early Voting In Person Satellite Precincts

THE ATTACHED IS AN EMERGENCY AMENDMENT TO AN EXISTING EMERGENCY RULE. THIS EMERGENCY AMENDMENT BECOMES EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY AMENDMENT ARE AS FOLLOWS:

This amendment is offered in response to modifications to the proposed rule by LRMRC.



Authorized Signature

Use additional sheets if necessary



EMERGENCY RULE QUESTIONNAIRE

DATE: November 19, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Secretary of State
Building 1, Room 157-K
1900 Kanawha Blvd E
Charleston, WV 25305

EMERGENCY RULE TITLE: Early Voting in Person Satellite Precincts

1. Date of filing November 19, 2009
2. Statutory authority for promulgating emergency rule:
3-3-2a(c)
3. Date of filing of proposed legislative rule: July 31, 2009
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? New language
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.
~~Emergency Rule required by WV State Code~~

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

n/a

8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

~~Because this Rule and the legislation authorizing it affect the 2010 Primary Election~~
cycle, an Emergency Rule is necessary for affected parties to begin their work prior to
~~Legislative Rule authorization by the Legislature.~~

Title 153 Series 13

Emergency Circumstances and Summary

Emergency Circumstances:

In W.Va. State Code §3-3-2a(c) the West Virginia Legislature required an Emergency Rule.

Summary:

This rule establishes 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.

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: Early Voting In Person Satellite Precincts

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: Secretary of State

Address: Building 1, Room 157-K
1900 Kanawha Blvd E
Charleston, WV 25305

Phone Number: 304-558-6000 Email: dnichols@wvsos.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure
will have on costs and revenues of state government.

This measure will have no impact on costs or revenues of state government.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of
Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00		0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00		0.00

Rule Title: _____

Rule Title:

Early Voting in Person Satellite Precincts

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

n/a

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Because the counties bear the costs associated with elections, there will be no impact on state revenue.

Date: November 19, 2009

Signature of Agency Head or Authorized Representative



Title 153
Legislative Rule
Secretary of State

FILED
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SERIES 13
Early Voting in Person Satellite Precincts

OFFICE OF THE SECRETARY OF STATE

§153-13-1. General.

1.1. Scope. - This rule establishes 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. -

1.4. Effective Date.-

1.5 This version reflects amendments made by the Legislative Rule Making Review Committee on November 18, 2009.

§153-13-2. Definitions.

2.1. For the purposes of this rule:

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

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

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

2.1.d. "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.e. "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.f. "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.a. The proposed location or locations for early voting satellite precincts;

3.2.a.1. 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.a.2. The proposed location must have secure access to the internet, or telephone access, for purposes of immediately crediting the voter's vote.

3.2.b. 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 persons may not be registered with the same political party affiliation or two 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.c. 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.a. 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.b. 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.b.1. Distance from the main early voting location;

3.3.b.2. Population centers of the county;

3.3.b.3. Historic voting turnout rates of the proposed location compared to the county as a whole;

3.3.b.4. 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 ration 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 to 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.a. Wait until access has been reestablished; or

4.2.b. Go to another location to vote early; or

4.2.c. 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.a. Provisions for the security of ballots and other election material; and

5.1.b. 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. Each early voting satellite precinct must be open the same hours as the main early voting location beginning on the twentieth (20th) 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 Saturday's prior to the election.

§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 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.

6.4 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 on the PEB container shall be compared to assure there has been no tampering. Then the seal(s) shall be broken and the Personalized Electronic Ballots 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, the ballots and machine memory device will be sealed and transported by the two satellite location workers 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)

§153-13-68. 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.