



**WEST VIRGINIA
SECRETARY OF STATE**

NATALIE E. TENNANT

ADMINISTRATIVE LAW DIVISION

eFILED

6/30/2015 1:40:46 PM

OFFICE OF
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY Secretary Of State

RULE TYPE Legislative AMENDMENT TO EXISTING RULE Yes TITLE-SERIES 153-

RULE NAME Absentee Voting by Military Voters Who Are Members of Reserve Units Called to Active Duty

CITE AUTHORITY 3-1A-6

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Natalie E Tennant -- 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-Series: 153-23



Rule Id: 9803



Document: 26855



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)

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RULE NAME Absentee Voting by Military Voters Who Are Members of Reserve Units Called to Activ²³
Duty
CITE AUTHORITY 3-1A-6

PRIMARY CONTACT

Dave Nichols
ADDRESS LINE 1
ADDRESS LINE 2
CITY, STATE ZIP

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AUTHORIZING STATUTE(S) CITATION
3-1A-6

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD
Wednesday, May 27, 2015

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?
Copies of proposed amendment were provided to the County Clerks' Association.

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED
Tuesday, June 30, 2015

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ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED,
AMENDMENTS, REASONS FOR AMENDMENTS.

No comments received

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE
FOLLOWING PUBLIC HEARING: (BE EXACT)

Wednesday, July 01, 2015

Natalie E Tennant -- By my signature, I certify that I am the person authorized to file legislative rules, in
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IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION. GIVE THE DATE UPON WHICH YOU FILED IN THE STATE REGISTER A NOTICE OF THE TIME AND PLACE OF A HEARING FOR THE TAKING OF EVIDENCE AND A GENERAL DESCRIPTION OF THE ISSUES TO BE DECIDED.

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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 4)

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DATE OF HEARING OR COMMENT PERIOD

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS
REQUIRED TOGETHER WITH THE REASONS THEREFOR?

ATTACH FINDINGS AND DETERMINATIONS AND REASONS
None

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)

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SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

There will be no impact on the costs or revenues caused by the rule's repeal.

Natalie E Tennant -- 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.



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FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)

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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.

| Effect Of Proposal | Current Increase/Decrease (use ' - ') | Next Increase/Decrease (use ' - ') | Fiscal Year (Upon Full Implementation) |
|-----------------------------|--|---------------------------------------|---|
| 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 |
| ESTIMATED TOTAL REVENUES | 0 | 0 | 0 |

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3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

Because the provisions of the rule are already obsolete, there will be no impact on the costs or revenues caused by the rule's repeal.

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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 provisions of the rule are already obsolete, there will be no impact on the costs or revenues caused by the rule's repeal.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

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FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)

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Duty
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SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

The provisions of the rule have been superseded by changes to federal and state law. The rule is proposed for repeal.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes
Natalie E Tennant -- 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.



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TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 23
ABSENTEE VOTING BY MILITARY VOTERS
WHO ARE MEMBERS OF RESERVE
UNITS CALLED TO ACTIVE DUTY

~~§153 23 1. General.~~

~~1.1. Scope. — This rule provides for absentee voting procedures to be used when a member of the reserves, who has been called to active duty, applies for an absentee ballot and is unable to receive and return that ballot within the time required using normal procedures.~~

~~1.2. Authority. — W. Va. Code §3-1A-6; also see 42 U.S.C. §1973ff-1.~~

~~1.3. Filing Date. — May 7, 2007.~~

~~1.4. Effective Date. — May 7, 2007.~~

~~§153 23 2. Absentee Voting for Activated Reservists.~~

~~2.1. Any registered voter who is a member of a reserve unit that is called into active duty as a result of an order of the President of the United States and who, as a result of that order, will not be able to vote in any primary, general, or special election held in this state because they will be unable to vote in person or by normal procedures for absentee voting, shall be allowed to cast an absentee ballot by mail or by voting in person at the office of the county clerk, in the county in which he or she is registered, as provided for in this rule.~~

~~2.2. For the purposes of this rule, a reserve unit includes all units that can be called into active duty as part of the United States Army, Navy, Air Force, Marine Corps or Coast Guard.~~

~~§153 23 3. Procedures.~~

~~3.1. Any person who has been ordered to active duty, pursuant to the terms of section two of this rule, may apply to the county clerk, in the county where registered, to cast an absentee ballot by completing a federal postcard application (FPCA) or a state Application for Voting an Absent Voters Ballot and Form A-8, entitled "Affidavit of Military Voter Called to Active Service Requesting to Vote Absentee."~~

~~3.2. The county clerk shall examine the application and the affidavit and if the voter requests that an absentee ballot be sent to the voter's home address, then a ballot shall be sent to the address provided by the voter in the affidavit and shall not be challenged for the reason of being returned from within the county. The request shall, in all other respects, be handled as provided for in W. Va. Code §3-3-5.~~

~~3.3. If the voter requests permission to cast an absentee ballot in person, and the application is made at the time within forty two (42) days of the election, then the voter shall be allowed to vote at the county clerk's office pursuant to the provisions of W. Va. Code §3-3-3.~~

**AFFIDAVIT OF MILITARY VOTER CALLED TO ACTIVE SERVICE
REQUESTING TO VOTE ABSENTEE**

I, _____, a registered voter in Precinct _____

in the County of _____, do solemnly swear or affirm under penalty of perjury, that I am required to be absent from the county in which I am registered during the entire period of absentee voting in the office of the County Clerk, _____, _____ dates

and during the hours which polls are open on election day on _____ date

I further swear or affirm that, because I have been called to active service in the _____ (branch of service) on _____, I

will be unable to vote by mail at my service date address, therefore, I request: (Check one)

(1) The official absentee ballot be mailed to my home address within the county at

(address/city)

before my departure, and that I will return the ballot from within the county before my departure to active service.

_____ OR

(2) To vote an absentee ballot in person at the clerk's office before my departure because I will be unable to receive and return a ballot by mail within the time allowed.

Signature of Voter

Subscribed and sworn before me this _____ day of _____, 19____.

Notary Public or County Clerk

My commission expires _____.

(seal)