

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

Form #7

Do Not Mark In This Box

Filing Date

FILED

2009 AUG -4 PM 12: 20

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Secretary of State TITLE NUMBER: 153

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

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 13

TITLE OF RULE BEING PROPOSED: Early Voting in Person Satellite Precincts

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

The rule, as authorized in the 2009 Regular Session of the West Virginia Legislature, impacts the 2010 Primary Election cycle. In order for the affected parties to begin the process outlined in the Agency Approved Rule, an Emergency Rule is needed to be effective until the Legislature can review and approve the Agency Approved Rule.



Authorized Signature

Use additional sheets if necessary



EMERGENCY RULE QUESTIONNAIRE

DATE: _____

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
(304)-558-6000

EMERGENCY RULE TITLE: Early Voting in Person Satellite Precincts

1. Date of filing _____

2. Statutory authority for promulgating emergency rule:

3-3-2a(c)

3. Date of filing of proposed legislative rule: July 30, 2009

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? This rule is 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.

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

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

Early Voting in Person Satellite Precincts

Rule Title: _____

Type of Rule:

Legislative Interpretive Procedural

Agency:

Secretary of State

Address:

Bldg 1, Suite 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 and 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	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	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.

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 counties bear the cost of elections, this measure will have no impact on state revenue.

Date: _____

Signature of Agency Head or Authorized Representative

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.

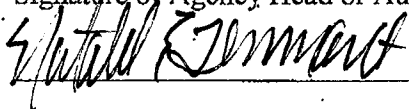
MEMORANDUM

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 counties bear the cost of elections, this measure will have no impact on state revenue.

Date:

Signature of Agency Head or Authorized Representative



Title 153
Legislative Rule
Secretary of State

FILED

2009 AUG -4 PM 12: 20

SERIES 13
Early Voting in Person Satellite Precincts

OFFICE WEST VIRGINIA
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. –

§153-13-2. Definitions.

- 2.1. For the purposes of this rule:
 - 2.1.1. “Clerk” means the Clerk of the County Commission or other official charged with the administration of elections.
 - 2.1.2. “Early voting” means early in-person absentee voting as provided for in W.Va. Code §3-3-3.
 - 2.1.3. “Published” means a Class II-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.
 - 2.1.4. “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 later 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 and the days and hours each precinct will be open;
 - 3.2.2. Provisions for staffing the satellite precinct including a minimum of two persons: *Provided*, That the two persons shall 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
 - 3.2.3. Any other procedures necessary for the proper conduct of an election according to provisions of W.Va. Code §§3-1, 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 ensure neutrality in the satellite precinct selection process, 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.
 - 3.4. The County Commission shall approve or disapprove the proposal submitted by the clerk no later than 90 days prior to election day. An early voting satellite precinct plan 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 no early voting satellite precincts shall be authorized in the county for the election cycle.

§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.

§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, except for differing hours or days approved by the County Commission.
- 5.4. Each early voting satellite precinct must be open for a minimum of three (3) consecutive days per location.
- 5.5. 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, 3-3-2a and 3-3-3.

§153-13-6. Public Notice.

- 6.1. 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.