

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2006 JUN 28 P 2:29

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Secretary of State TITLE NUMBER: 153

RULE TYPE: Legislative CITE AUTHORITY: §3-1A-6; 42 U.S.C. §1973ff.1

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

TITLE OF RULE BEING AMENDED: Absentee Voting by Military Voters Who are Members of Reserve Unites Called to Active Duty

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 28, 2006 AT 9:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Jason Williams, Manager
Elections Division
Secretary of State's Office
1900 Kanawha Boulevard East
Charleston WV 25305

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Absentee Voting by Military Voters Who are members of Reserve Units Called to Active Duty

Type of Rule: Legislative Interpretive Procedural

Agency: Jason Williams, Manager

Address: Elections
Secretary of State's Office
1900 Kanawha Boulevard E
Charleston WV 25305

Phone Number: 558-6000 Email: jwilliams@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 rule changes circuit clerk to county in this rule and has no fiscal impact

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	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Absentee Voting by Military Voters Who are members of Reserve Units Called to Active Duty

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

No impact

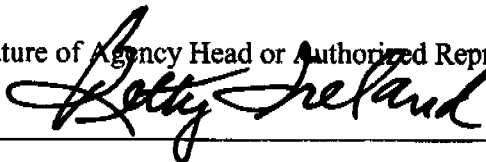
MEMORANDUM

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.

No impact

Date: 6/28/2006

Signature of Agency Head or Authorized Representative





OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland

Secretary of State

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.

This rule changes circuit clerk to county clerk.

The amendments take out references to lever voting machines & punch card ballots.

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

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

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§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. -- ~~April 22, 1996.~~

1.4. Effective Date. -- ~~June 7, 1996.~~

§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 ~~circuit clerk~~ 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 united 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 ~~circuit clerk~~ 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 ~~circuit clerk~~ 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

153CSR23

at the time within forty-two (42) days of the election, then the voter shall be allowed to vote at the ~~circuit clerk's~~ 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 ~~Circuit Clerk~~
County Clerk, _____,
dates

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

I further swear of 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 ~~Circuit Clerk~~ County Clerk

My commission expires _____.

(seal)