

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In this Box

**FILED**

JUN 23 10 11 AM '95

OFFICE OF 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; also see 42 U.S.C.  
AMENDMENT TO AN EXISTING RULE: YES ☒ NO ☐  
§1973ff-1.

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 23

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

IF NO, SERIES NUMBER OF NEW 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 24 AT 9:00 a.m.  
ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING  
ADDRESS.

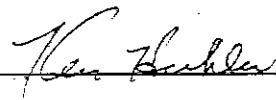
Election Division  
Secretary of State

Building 1, Rm. 157-K

1900 Kanawha Blvd., E.

Charleston, WV 25305-0770

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



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

## STATEMENT OF CIRCUMSTANCES

TITLE 153, SERIES 23

This rule is the same as that authorized by the Legislature in S. B. 1 (1992) and now in effect. It is being refiled according to the requirements of S. B. 573 (1995).

## 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:  X  Legislative   Interpretive   Procedural

Agency Secretary of State

Address Building 1, Rm. 157-K

1900 Kanawha Blvd., E.

Charleston, WV 25305-0770

#### 1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$0	\$0	\$0	\$0	\$0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

#### 2. Explanation of above estimates:

N/A

#### 3. Objectives of these rules:

N/A

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

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

N/A

C. Economic Impact on Citizens/Public at Large.

N/A

Date: June 22, 1995

Signature of Agency Head or Authorized Representative

*Ken Hechler*

FILED

JUN 23 10 11 AM '95

TITLE 153  
LEGISLATIVE RULE  
SECRETARY OF STATE

OFFICE OF WEST VIRGINIA  
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. -- April 6, 1992

1.4. Effective date. -- April 6, 1992

**§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, 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, 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 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 §3-3-5 of the West Virginia Code.

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 circuit clerk's office pursuant to the provisions of §3-3-3 of the West Virginia Code.

**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, \_\_\_\_\_,  
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 Circuit Clerk

My commission expires \_\_\_\_\_

(seal)

## SUMMARY

TITLE 153, SERIES 23

This legislative rule provides special procedures for absentee voting by members of the military services who are called to active duty and will be unable to vote an absentee ballot under the normal procedures set out in West Virginia Code.