

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

Do Not Mark In this Box

FILED

JUL 25 2 58 PM '95

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: Secretary of State TITLE NUMBER: 153

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 Units Called to Active Duty.

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

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.

Ken Hechler

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	HEREAFTER
<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 Hillier

DATE: July 25, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Mary Ratliff

LEGISLATIVE RULE TITLE: Absentee Voting by Military Voters who are
members of Reserve Units Called to Active Duty

1. Authorizing statute(s) citation §3-1A-6; 42 U.S.C. §1973ff-1

2. a. Date filed in State Register with Notice of Hearing

June 23, 1995

b. What other notice, including advertising, did you give of the hearing?

N/A

c. Date of Hearing(s) July 24, 1995

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 25, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:

Mary Ratliff

558-60000

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. 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.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

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.

FILED

JUL 25 2 59 PM '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 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 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)

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
help we can get)

July 25, 1995

NO COMMENTS WERE RECEIVED, THEREFORE NO CHANGES WERE MADE