

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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1990 SEP 28 2:30 PM
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; 42U.S.C. §1973ff-1
AMENDMENT TO AN EXISTING RULE: YES ___ NO X
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____
TITLE OF RULE BEING AMENDED: _____
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 23
TITLE OF RULE BEING PROPOSED: Absentee Voting by Military Voters Who
are Members of Reserve Units Called to Active Duty

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 October 29, 1990 AT 4:30 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Mary Ratliff, Deputy
Secretary of State
State Capitol
Charleston, WV 25305

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

Ken Hechler

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: X Legislative Interpretive Procedural

Agency Secretary of State Address State Capitol
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	N/A	N/A	N/A	N/A	
Current Expense	N/A	N/A	N/A	N/A	
Repairs and Alterations	N/A	N/A	N/A	N/A	
Equipment	N/A	N/A	N/A	N/A	
Other	N/A	N/A	N/A	N/A	

2. Explanation of above estimates:

3. Objectives of these rules:

West Virginia residents who are called to active service may not be able to exercise their voting rights under present provisions of absentee voting law.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

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

None

C. Economic Impact on Citizens/Public at Large.

None

Date: September 29, 1990

Signature of Agency Head or Authorized Representative

Tom Hubler

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. --

1.4. Effective date. --

§153-23-2. Absentee voting for activated reservists.

2.1. Any registered voter who is a member of a reserve unit that is called to 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 of being 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 where 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 to 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 _____,
date _____,

I will be unable to vote by mail at my service 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)