

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

Form #7

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FILED

2012 AUG -3 PM 1:58

OFFICE WEST VIRGINIA
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: West Virginia Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: W.Va. Code §3-2-6a

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: 44

TITLE OF RULE BEING PROPOSED: Regulation of Late Voter Registration

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:

Please See Attached



Authorized Signature

Use additional sheets if necessary



EMERGENCY RULE QUESTIONNAIRE

DATE: August 3, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Secretary of State
Building 1, Suite 157-K; 1900 Kanawha Blvd. East; Charleston WV 25305
304=558-6000

EMERGENCY RULE TITLE: Regulation of Late Voter Registration

1. Date of filing August 3, 2012
2. Statutory authority for promulgating emergency rule:
§3-2-6a gives us authority to promulgate procedures to the law.
3. Date of filing of proposed legislative rule: August 1, 2012
4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? It adopts the language of the legislative rule our office filed on August 1, 2012
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.
See Attached

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.

See Attached

Emergency Rule Request

HB 4257 was passed during the 2012 Legislative session. This law creates section §3-2-6a of the Code that allows members of the military, military families, and overseas citizens who work out of the country for national security purposes, the opportunity to register to vote when they come home to West Virginia after the close of voter registration. The Legislation requires the Secretary of State to prescribe procedures to implement this law. The Secretary of State filed a legislative rule on August 1, 2012.

Currently, there are no procedures in place to verify that the individual wanting to register to vote actually meets the eligibility criteria of the new law. The law omits important documents that the applicant would need to present to the clerk of the county commission at the time of registration. The law is silent on how the clerk of the county commission will verify the applicant's address in this particular situation.

The rule filed August 1, 2012 in our office addresses the procedures which the law required the Secretary of State to prescribe. The Secretary of State and the clerks of the county commission worked together to create a rule that not only makes the process efficient on the administrative side, but also makes sense for the voter. The issue is the rule making process takes a little over 15 months to complete. That would take us well beyond the 2012 General Election and therefore these voters could be potentially disenfranchised for this upcoming presidential election. In that the law became effective on June 8, 2012, the procedures must be approved and in place before the November 2012 General Election.

Without procedures, it is impossible to implement this new law. The Secretary of State's office and the clerks of the county commission always strive to ensure that every legally qualified person has the right to vote. As the election officials of the State we always look for new ways to assist our uniformed servicemen and women in the voting process. It is the Secretary of State's highest priority to ensure uniformed servicemen and women have the opportunity to vote. These men and women have sacrificed so much defending our freedom at the very least we can defend their freedom at the ballot box. Without this rule in place, we would be doing a great injustice not only to the men and women who are currently serving but also to those people that came before them. We are asking that you grant us this emergency rule request so that this group of citizens will not be denied their right to vote.

SUMMARY OF RULE

REGULATION OF LATE VOTER REGISTRATION

This new Legislative Rule is required to be created by W.Va. Code §3-2-6a. This rule provides for late voter registration of any member of a uniformed service of the United States who is active or was discharged 60 days preceding an election, any member of the Merchant Marine, any person residing overseas by virtue of his or her employment in support of national security functions or purposes, and the spouse or dependent(s) residing with one of the above, within the 20 days immediately preceding an election.



EMERGENCY RULE QUESTIONNAIRE

DATE: August 3, 2012

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) West Virginia Secretary of State
Building 1, Suite 157-K; 1900 Kanawha Blvd. East; Charleston WV 25305
304=558-6000

EMERGENCY RULE TITLE: Regulation of Late Voter Registration

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~~§3-2-6a gives us authority to promulgate procedures to the law.~~
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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.

See Attached

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.

See Attached

APPENDIX B
FISCAL NOTE FOR PROPOSED RULES

Rule Title: REGULATION OF LATE VOTER REGISTRATION

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: West Virginia Secretary of State

Address: Building 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25302

Phone Number: 304-558-6000 Email: rczickafoose@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.

Creation of additional form required. Minimal financial impact due to a low number of voters using this Process.

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	100.00	0.00	0.00
Personal Services	100.00	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: Regulation of Late Voter Registration

Rule Title:

REGULATION OF LATE VOTER REGISTRATION

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

Creation of new forms. Mininal expenses and personnel use.

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.

n/a

Date: August 1, 2012

Signature of Agency Head or Authorized Representative

Nataniel Clement

**TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE**

FILED

2012 AUG -3 PM 1:58

**SERIES 44
REGULATION OF LATE VOTER REGISTRATION**

OFFICE WEST VIRGINIA
SECRETARY OF STATE

§153-44-1. General.

1.1. Scope. -- This rule provides for late voter registration of any member of a uniformed service of the United States who is active or was discharged 60 days preceding an election, any member of the Merchant Marine, any person residing overseas by virtue of his or her employment in support of national security functions or purposes, and the spouse or dependent(s) residing with one of the above, within the 20 days immediately preceding an election.

1.2. Authority. -- W. Va. Code §3-2-6a.

1.3. Filing Date. -- _____.

1.4. Effective Date. -- _____.

§153-44-2. Definitions.

2.1. HAVA Approved Identification: Documentation approved in the Help America Vote Act of 2002 as appropriate identification to register to vote. This includes current and valid photo identification, utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

2.2. Voter Affidavit: The document to be signed by the voter which verifies their eligibility to participate in late voter registration.

2.3. Employer Affidavit: The document provided by the employer of a person returning from overseas which verifies their eligibility to participate in late registration.

§153-44-3. Process for a member of a uniformed service of the United States on active duty, a member of a uniformed service of the United States who has been discharged from active duty during the 60 days preceding the election and a member of the Merchant Marine of the United States.

3.1. The applicant shall file a voter registration form in person at the clerk of the county commission office.

3.2. The applicant shall file a voter affidavit prescribed by the Secretary of State.

3.3. The applicant shall present to the clerk of the county commission HAVA approved identification at the time of registration.

3.4. The applicant shall present to the clerk of the county commission an official discharge notice or military orders.

3.5. The applicant will vote a provisional absentee ballot by mail which will be counted by the board of canvassers unless the clerk of the county commission determines that the voter failed to meet the eligibility requirements.

3.6. The clerk of the county commission shall confirm the address of the applicant upon receipt of the absentee ballot.

§153-44-4. Process for a person who was residing overseas because of employment in support of national security.

4.1. The applicant shall file a voter registration form in person at the clerk of the county commission office.

4.2. The applicant shall file a voter affidavit prescribed by the Secretary of State.

4.3. The applicant shall present to the clerk of the county commission HAVA approved identification at the time of registration.

4.4. The applicant shall present to the clerk of the county commission, at the time of registration, a notarized employer affidavit completed by their employer that certifies the applicant's job was in support of national security. A copy of the original employer affidavit is acceptable.

4.5. The applicant will vote a provisional absentee ballot by mail which will be counted by the board of canvassers unless the clerk of the county commission determines that the voter failed to meet the eligibility requirements.

4.6. The clerk of the county commission shall confirm the address of the applicant upon receipt of the absentee ballot

§153-44-5. A spouse or dependent of a member of a uniformed service of the United States on active duty, a member of a uniformed service of the United States who has been discharged from active duty during the 60 days preceding the election, a member of the Merchant Marine of the United States, and a person who was residing overseas because of employment which was in support of national security.

5.1. The applicant shall file a voter registration form in person at the clerk of the county commission office.

5.2. The applicant shall file a voter affidavit prescribed by the Secretary of State.

5.3. The applicant shall present to the clerk of the county commission HAVA approved identification at the time of registration.

5.4. The applicant shall present to the clerk of the county commission, at the time of registration, one of the following documents, a copy of an official discharge notice or military

orders for the uniformed service member or a notarized affidavit from the spouse's/parent's employer.

5.5. The applicant will vote a provisional absentee ballot by mail which will be counted by the board of canvassers unless the clerk of the county commission determines that the voter failed to meet the eligibility requirements.

5.6. The clerk of the county commission shall confirm the address of the applicant upon receipt of the absentee ballot.

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