



**WEST VIRGINIA  
SECRETARY OF STATE**

**NATALIE E. TENNANT**

**ADMINISTRATIVE LAW DIVISION**

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8/24/2016 2:48:43 PM

OFFICE OF  
WEST VIRGINIA SECRETARY OF STATE

**FORM 3 -- NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE  
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY Secretary Of State

RULE TYPE Legislative AMENDMENT TO EXISTING RULE No TITLE-SERIES 153-

RULE NAME Voter Registration at the Division of Motor Vehicles 03

CITE AUTHORITY 3-2-11(n)

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.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

Yes

Natalie E Tennant -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



Title-Series: 153-03



Rule Id: 10240



Document: 28864



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)**

AGENCY	Secretary Of State		
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	No
RULE NAME	Voter Registration at the Division of Motor Vehicles		TITLE-SERIES 153-03

CITE AUTHORITY 3-2-11(n)

**PRIMARY CONTACT**

Dave Nichols  
1900 Kanawha Blvd E  
Bldg 1 Ste 157-K  
Charleston, STATE ZIP

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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)**

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CITE AUTHORITY 3-2-11(n)

AUTHORIZING STATUTE(S) CITATION  
3-2-11(n)

DATE FILED IN STATE REGISTER WITH NOTICE OF HEARING OR PUBLIC COMMENT PERIOD  
Friday, July 22, 2016

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?  
N/A

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED  
Monday, August 22, 2016

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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 2)**

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RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	No TITLE-SERIES 153-
RULE NAME	Voter Registration at the Division of Motor Vehicles		03

CITE AUTHORITY 3-2-11(n)

ATTACH LIST OF PERSONS WHO APPEARED AT HEARING, COMMENTS RECEIVED, AMENDMENTS, REASONS FOR AMENDMENTS.

No comments received

DATE YOU FILED IN STATE REGISTER THE AGENCY APPROVED PROPOSED LEGISLATIVE RULE FOLLOWING PUBLIC HEARING: (BE EXACT)

Tuesday, August 23, 2016

Natalie E Tennant -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 3)**

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CITE AUTHORITY 3-2-11(n)

IF THE STATUTE UNDER WHICH YOU PROMULGATED THE SUBMITTED RULES REQUIRES CERTAIN FINDINGS AND DETERMINATIONS TO BE MADE AS A CONDITION PRECEDENT TO THE PROMULGATION. 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.

**Natalie E Tennant -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



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**FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 4)**

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RULE NAME	Voter Registration at the Division of Motor Vehicles		03

CITE AUTHORITY 3-2-11(n)

DATE OF HEARING OR COMMENT PERIOD

ON WHAT DATE DID YOU FILE IN THE STATE REGISTER THE FINDINGS AND DETERMINATIONS REQUIRED TOGETHER WITH THE REASONS THEREFOR?

ATTACH FINDINGS AND DETERMINATIONS AND REASONS  
**None**

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**  
Natalie E Tennant -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 1)**

AGENCY	Secretary Of State				
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	No	TITLE-SERIES	153-
RULE NAME	Voter Registration at the Division of Motor Vehicles				03

CITE AUTHORITY 3-2-11(n)

**PRIMARY CONTACT**

Dave Nichols  
1900 Kanawha Blvd E  
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CITE AUTHORITY 3-2-11(n)

SUMMARIZE IN A CLEAR AND CONCISE MANNER WHAT IMPACT THIS MEASURE WILL HAVE ON COSTS AND REVENUES OF STATE GOVERNMENT.

In FY 2015, the DMV upgraded its computer systems to include electronic voter registration. The cost at that time for full implementation was \$33,000. Because compliance with the provisions of HB 4013 and this rule would only require modifications to the current system and not a full system change, it is believed the cost will be less than the initial \$33,000. However, because of a potential change in vendors, the DMV has not yet been able to provide a cost estimate. This Fiscal Note will be updated once the DMV can provide that information.

Natalie E Tennant -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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CITE AUTHORITY 3-2-11(n)

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.

Effect Of Proposal	Current Increase/Decrease (use ' - ')	Next Increase/Decrease (use ' - ')	Fiscal Year (Upon Full Implementation)
--------------------	--	---------------------------------------	---

ESTIMATED  
TOTAL COST

PERSONAL SERVICES

CURRENT EXPENSES

REPAIRS AND  
ALTERATIONS

ASSETS

OTHER

ESTIMATED  
TOTAL REVENUES

Natalie E Tennant -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 3)**

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CITE AUTHORITY 3-2-11(n)

3. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT). PLEASE INCLUDE ANY INCREASE OR DECREASE IN FEES IN YOUR ESTIMATED TOTAL REVENUES.

In FY 2015, the DMV upgraded its computer systems to include electronic voter registration. The cost at that time for full implementation was \$33,000. Because compliance with the provisions of HB 4013 and this rule would only require modifications to the current system and not a full system change, it is believed the cost will be less than the initial \$33,000. However, because of a potential change in vendors, the DMV has not yet been able to provide a cost estimate. This Fiscal Note will be updated once the DMV can provide that information.

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CITE AUTHORITY 3-2-11(n)

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.

In FY 2015, the DMV upgraded its computer systems to include electronic voter registration. The cost at that time for full implementation was \$33,000. Because compliance with the provisions of HB 4013 and this rule would only require modifications to the current system and not a full system change, it is believed the cost will be less than the initial \$33,000. However, because of a potential change in vendors, the DMV has not yet been able to provide a cost estimate. This Fiscal Note will be updated once the DMV can provide that information.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

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**FORM 12 -- BRIEF SUMMARY AND STATEMENT OF CIRCUMSTANCES (Page 1)**

AGENCY	Secretary Of State				
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	No	TITLE-SERIES	153-
RULE NAME	Voter Registration at the Division of Motor Vehicles				03

CITE AUTHORITY 3-2-11(n)

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN RULE AND STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE.

W.Va. State Code §3-2-11(n), as amended and reenacted through Enr. C.S. for H.B. 4013 (2016), requires the Secretary of State to promulgate legislative rules to implement the changes made to the voter registration process at the Division of Motor Vehicles. The Agency Approved rule is the culmination of several meetings with representative from the West Virginia County Clerks Association, the four recognized political parties, the League of Women Voters, Citizens Action Group, The Brennan Center for Justice, The Center for Secure and Modern Elections, and the West Virginia Division of Motor Vehicles.

W.Va. State Code §3-1A-6(a) requires the Secretary of State to consult with the State Election Commission prior to promulgating any Legislative Rule. In a properly-noticed meeting of the State Election Commission held August 22, 2016, the Secretary of State's Office presented this rule to and consulted with the State Election Commission regarding the rules contents, policy, and necessity, and the process for developing the rule itself.

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENTS ARE TRUE AND CORRECT.

**Yes**  
**Natalie E Tennant -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**



Title-Series: 153-03



Rule Id: 10240



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**TITLE 153  
LEGISLATIVE RULE  
SECRETARY OF STATE**

**SERIES 3  
VOTER REGISTRATION AT  
THE DIVISION OF MOTOR VEHICLES**

**§153-3-1. General.**

1.1. Scope. -- This rule governs the procedures necessary for implementation and processing of voter registration applications at and from the West Virginia Division of Motor Vehicles.

1.2. Authority. -- W. Va. Code § 3-2-11(n).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Date. -- This rule will sunset 5 years from effective date.

**§153-3-2. Definitions.**

2.1. "Applicant" means an individual who has presented himself or herself at the DMV for the purpose of applying for the issuance, renewal, or change of address of a motor vehicle driver's license or official identification card pursuant to W.Va. State Code §17B-2-1, *et seq.*

2.2. "County Clerk" means the Clerk of the County Commission.

2.3. "DMV" means the West Virginia Division of Motor Vehicles or other division or department that may be established by law to perform motor vehicle driver licensing services.

2.4. "SVRS" means the statewide voter registration database as described in W.Va. State Code §3-2-4a.

2.5. "WVSOS" means the West Virginia Secretary of State.

**§153-3-3. Information to be Obtained by the DMV for the Purposes of Voter Registration.**

3.1. If the applicant does not decline to register to vote or update their current voter registration record, the DMV shall obtain the following information and release the information electronically to the Secretary of State:

3.1.a. Type of voter registration transaction (New or Update)

3.1.b. Full name, including first, middle, last and any former names;

3.1.c. Date of birth;

3.1.d. Residence address;

3.1.e. Mailing address;

3.1.f. County of residence;

- 3.1.g. The applicant's electronic signature;
- 3.1.h. Telephone number(s);
- 3.1.i. Email address;
- 3.1.j. Driver's license number;
- 3.1.k. Last four digits of the Social Security number;
- 3.1.l. Political party membership, if any;
- 3.1.m. A data field indicating whether the applicant has attested that he or she meets all voter eligibility requirements as set forth in W.Va. State Code §§3-2-2(a) and 3-2-2(b);
- 3.1.n. Date of application; and
- 3.1.o. If the license transaction is to change from another state to West Virginia, whether the applicant is registered to vote in another state and the state.

3.2. If the applicant affirmatively declines to become registered to vote or update their voter registration record during the transaction at the DMV, the DMV shall release the following information electronically to the Secretary of State:

- 3.2.a. Full name, including first, middle, last and any former names;
- 3.2.b. Residence address;
- 3.2.c. Date of birth;
- 3.2.d. The applicant's electronic signature; and
- 3.2.e. A data field indicating that the applicant affirmatively declined to register to vote or update their voter registration record during the transaction with the DMV.

3.3. If an applicant affirmatively declines to register to vote or update his or her registration, the declination cannot be used as an indication to cancel the applicant's voter registration if he or she is registered.

#### **§153-3-4. Transfer of Data from DMV to the SOS.**

4.1. The DMV shall electronically transfer data required to be collected in subsections 3.1 and 3.2 of this rule to the WVSOS at least once per day as agreed upon in a Memorandum of Understanding between the DMV and the WVSOS.

4.2. The WVSOS shall maintain all records collected in conjunction with subsection 3.2 of this rule as the declination required by the National Voter Registration Act of 1993 (NVRA).

4.2.a. Records shall be maintained only for the purposes of facilitating future attempts to register to vote.

4.2.b. The WVSOS may utilize the information obtained pursuant to subsection 3.2 of this rule to contact those individuals who have affirmatively declined to register to vote to provide those individuals with information and options on how to register to vote if they choose to do so in the future.

4.2.c. Records will be kept for a period of two (2) years in accordance with the provisions of NVRA, then deleted.

#### **§153-3-5. Processing of Applications in SVRS.**

5.1. The WVSOS shall ensure that all information collected pursuant to subsection 3.1 of this rule will be entered into the SVRS and presented to the County Clerk of the county in which the applicant applies to register to vote.

5.2. The County Clerk will review and process the application according to the requirements of state and federal law.

5.3. If the County Clerk receives information in SVRS regarding a new application from a previously cancelled voter, the County Clerk shall process the application as a positive action by the applicant to register to vote.

5.4. If a voter's status in SVRS is "inactive," and the County Clerk receives an application to register to vote or otherwise update said voter's registration information, the County Clerk shall change that voter's status to "active."

5.5. The effective date of the registration is the date the applicant applied at the DMV. However, applicants are still subject to the voter registration deadline in W.Va. State Code §3-2-6 in order to be eligible to vote or have changes to their record effective for an election.

5.6. If the information provided by the DMV pursuant to subsection 3.1 of this rule does not include a mailing address, the applicant's residence address shall be used as the mailing address.

5.7. If the applicant is approved for registration and if information is available from paragraph 3.1.o of this rule, the County Clerk will send a notice to the appropriate election official for the applicant's former residence indicating that the applicant is now registered to vote in West Virginia.

#### **§153-3-6. Automatic Voter Registration Procedures at the DMV.**

6.1. The DMV and the WVSOS will coordinate to determine the process for voter registration at DMV locations to make the program efficient for voters, the DMV, County Clerks, and the WVSOS.