



**WEST VIRGINIA  
SECRETARY OF STATE**

**NATALIE E. TENNANT**

**ADMINISTRATIVE LAW DIVISION**

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8/24/2016 2:51:41 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 List Maintenance by the Secretary of State** **05**

CITE AUTHORITY **3-2-23a**

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: 153-05



Rule Id: 10241



Document: 28865



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FORM 10 -- LEGISLATIVE QUESTIONNAIRE (Page 1)

AGENCY Secretary Of State

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

RULE NAME Voter Registration List Maintenance by the Secretary of State 05

CITE AUTHORITY 3-2-23a

**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)**

AGENCY	Secretary Of State		
RULE TYPE	Legislative	AMENDMENT TO EXISTING RULE	No TITLE-SERIES
RULE NAME	Voter Registration List Maintenance by the Secretary of State		153-05

CITE AUTHORITY 3-2-23a

AUTHORIZING STATUTE(S) CITATION  
3-2-23a

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

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 2)**

AGENCY Secretary Of State

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

RULE NAME Voter Registration List Maintenance by the Secretary of State 05

CITE AUTHORITY 3-2-23a

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)**

AGENCY Secretary Of State  
 RULE TYPE Legislative AMENDMENT TO EXISTING RULE No TITLE-SERIES 153-  
 RULE NAME Voter Registration List Maintenance by the Secretary of State 05

CITE AUTHORITY 3-2-23a

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.



Title-Series: 153-05



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

AGENCY Secretary Of State  
RULE TYPE Legislative AMENDMENT TO EXISTING RULE No TITLE-SERIES 153-  
RULE NAME Voter Registration List Maintenance by the Secretary of State 05

CITE AUTHORITY 3-2-23a

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
RULE NAME	Voter Registration List Maintenance by the Secretary of State		153-05

CITE AUTHORITY 3-2-23a

**PRIMARY CONTACT**

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

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CITE AUTHORITY 3-2-23a

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

Because there may never be a time when this rule would be applied, it is difficult to ascertain what costs (if any) would be incurred by the State. However, every effort would be made by the Secretary of State to use current staffing to effect the changes in voter registration lists if intervention became necessary.

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: 153-05



Rule Id: 10241



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**FORM 11 -- FISCAL NOTE FOR PROPOSED RULES (Page 2)**

AGENCY Secretary Of State  
RULE TYPE Legislative AMENDMENT TO EXISTING RULE No TITLE-SERIES 153-  
RULE NAME Voter Registration List Maintenance by the Secretary of State 05

CITE AUTHORITY 3-2-23a

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	0	0	0
PERSONAL SERVICES	0	0	0
CURRENT EXPENSES	0	0	0
REPAIRS AND ALTERATIONS	0	0	0
ASSETS	0	0	0
OTHER	0	0	0
ESTIMATED TOTAL REVENUES	0	0	0

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)**

AGENCY	Secretary Of State		
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CITE AUTHORITY 3-2-23a

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

Because there may never be a time when this rule would be applied, it is difficult to ascertain what costs (if any) would be incurred by the State. However, every effort would be made by the Secretary of State to use current staffing to effect the changes in voter registration lists if intervention became necessary.

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 4)**

AGENCY	Secretary Of State		
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CITE AUTHORITY 3-2-23a

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.

Because there may never be a time when this rule would be applied, it is difficult to ascertain what costs (if any) would be incurred by the State. However, every effort would be made by the Secretary of State to use current staffing to effect the changes in voter registration lists if intervention became necessary.

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

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 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 List Maintenance by the Secretary of State 05

CITE AUTHORITY 3-2-23a

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

With the passage of Enr. C.S. for S.B. 591 (2016), the Legislature clarified and added restrictions on the circumstances under which the Secretary of State may make changes to voter records - a duty largely left strictly to County Clerks. The rule is necessary to further clarify the conditions and remedies available to both the County Clerks and the Secretary of State in any case where a county has not performed required voter registration list maintenance.

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: 153-05



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**TITLE 153  
LEGISLATIVE RULE  
SECRETARY OF STATE**

**SERIES 5  
VOTER REGISTRATION LIST MAINTENANCE  
BY THE SECRETARY OF STATE**

**§153-5-1. General.**

1.1. Scope. -- This rule governs the procedures necessary for the Secretary of State to conduct voter registration list maintenance.

1.2. Authority. -- W. Va. Code § 3-2-23a.

1.3. Filing Date. --

1.4. Effective Date. --

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

**§153-5-2. Definitions.**

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

2.2. "WVSOS" means the West Virginia Secretary of State or his or her designee.

**§153-5-3. Notice Requirement.**

3.1. Before the WVSOS can conduct voter registration list maintenance on the voter registration records of any county, the WVSOS shall send a notice by certified mail, return receipt requested, to the County Clerk of the affected county.

3.1.a. Nothing in this subsection shall prevent the WVSOS and a County Clerk from communicating by other means in an effort to effect the desired outcome;

3.2. The notice required by subsection 3.1 of this rule and W.Va. State Code §3-2-3(a) shall be mailed at least 90 days prior to the WVSOS conducting voter registration list maintenance on a county's records.

3.3. The notice required by subsection 3.1 of this rule and W.Va. State Code §3-2-3(a) shall include:

3.3.a. The record(s) the WVSOS has identified as potentially requiring list maintenance; and

3.3.b. That the county has 90 days to explain why list maintenance has not been performed, perform the required list maintenance, or design a plan in cooperation with the WVSOS for the County Clerk to perform the required list maintenance which may take longer than 90 days.

3.4. If the County Clerk fails in 90 days to commence to perform the required voter registration list maintenance or reach an agreement with the WVSOS to conduct such maintenance past the 90 days, the WVSOS may perform the list maintenance on the records identified in the notice.

**§153-5-4. Required Voter Registration List Maintenance.**

4.1. If the WVSOS finds that a County Clerk has failed within 45 days to update a voter registration record based on a notification received pursuant to W.Va. State Code §3-2-23, the WVSOS may initiate the process of sending notice to the County Clerk as set forth in section three of this rule.

4.2. If the WVSOS finds that a County Clerk has failed within 45 days to take any required step of the systematic program for removal of ineligible voters from the active registration files as required by 52 U.S.C. §20507 and W.Va. State Code §§3-2-25, 3-2-26, and 3-2-27, the WVSOS may initiate the process of sending notice to the County Clerk as set forth in section three of this rule.

4.2.a. If the WVSOS sends confirmation notices as part of list maintenance, the county shall be responsible for the cost of the confirmation notices, labels, and postage as required by W.Va. State Code §3-2-25(d).