

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

Form #3

Do Not Mark In This Box

2009 JUL 31 PM 4:55

SECRETARY OF STATE
STATE OF WEST VIRGINIA

**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: 3-3A-3

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

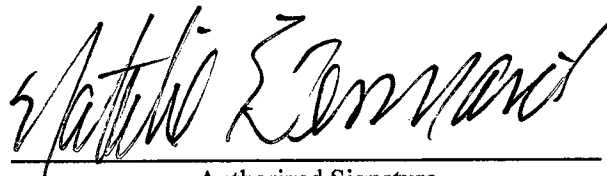
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 39

TITLE OF RULE BEING PROPOSED: Vote by Mail Pilot Project Phase 2: Voting by Mail

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.



Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 30, 2009

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Secretary of State
Building 1, Room 157-K
1900 Kanawha Blvd. E.
Charleston, WV 25305

LEGISLATIVE RULE TITLE: ~~Vote by Mail Pilot Project Phase 2: Voting by Mail~~

1. Authorizing statute(s) citation 3-3A-3

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

June 25, 2009

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

n/a

c. Date of Public Hearing(s) *or* Public Comment Period ended:

July 27, 2009

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

Attached X

No comments received

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

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Dave Nichols, Manager of Elections
Building 1, Room 157-K
1900 Kanawha Blvd. E.
Charleston, WV 25305
(304)558-6000 (office) (304)558-8386 (fax)
dnichols@wvsos.com

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

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 or comment period:

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

d. Attach findings and determinations and reasons:

Attached

Title 153 Series 39

Circumstances and Summary

Circumstances:

During the 2009 Regular Session of the West Virginia State Legislature, lawmakers passed Enrolled Committee Substitute for House Bill 3134 authorizing a pilot project which allows the Secretary of State to choose five municipalities to conduct their entire election by mail rather than the usual process of early voting and open polling places on election day.

Summary:

This rule sets forth and clarifies the guidelines to be used by the municipal recorder or other officer authorized by charter or ordinance provisions to conduct voting for any election held entirely within a municipality to conduct municipal elections by mail; including, but not limited to, program participation selection criteria, procedures for conducting voting by mail, requirements for places of deposit and security of ballots and ballot deposit locations.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Vote by Mail Pilot Project Phase 2: Voting by Mail

Rule Title: _____

Type of Rule:

☒ Legislative ☐ Interpretive ☐ Procedural

Agency:

Secretary of State

Address:

Building 1, Room 157-K
1900 Kanawha Blvd E
Charleston, WV 25305

Phone Number:

304-558-6000

Email: dnichols@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.

This rule will have no impact on state costs and/or revenues.

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	0.00	0.00	0.00
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Vote by Mail Pilot Project Phase 2: Voting by Mail

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

This rule will have no impact on state costs and/or revenues.

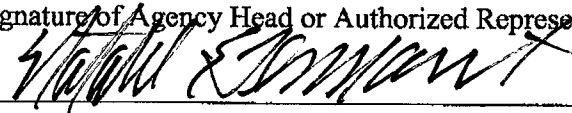
MEMORANDUM

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.

Because municipalities are responsible for financial provisions of their own elections, this rule will have no impact on state costs and/or revenues.

Date: July 30, 2009

Signature of Agency Head or Authorized Representative



Title 153
Legislative Rule
Secretary of State

SERIES 39
Vote-by-Mail Pilot Project Phase 2:
Voting by Mail

RECEIVED
2009 JUL 31 PM 4:35
SECRETARY OF STATE
STATE OF WEST VIRGINIA

§ 153-39-1. General.

1.1. Scope. -- This rule establishes the guidelines to be used by the municipal recorder or other officer, hereafter "Clerk," authorized by charter or ordinance provisions to conduct voting for any election held entirely within a municipality to conduct municipal elections by mail; including, but not limited to, program participation selection criteria, procedures for conducting voting by mail, requirements for places of deposit and, security of ballots and ballot deposit locations.

1.2. Authority.- W.Va. Code § 3-3A-3.

1.3. Filing Date. --

1.4. Effective Date. --

§ 153-39-2. Definitions.

2.1. For the purposes of this rule:

- 2.1.1. "Authorized personnel" means those individuals the clerk chooses to assist with election administration.
- 2.1.2. "Ballot packet" means all information mailed to the voter pursuant to section five of this rule.
- 2.1.3. "Clerk" means the municipal recorder or other officer authorized by charter or ordinance to conduct voting for any election held entirely within a municipality.
- 2.1.4. "Counting Board" means those election officials appointed by the clerk pursuant to W.Va. State Code §§ 3-1-28, 3-1-29, and 3-1-30.
- 2.1.5. "Master Election List" means the official record of the election.
- 2.1.6. "Non Affiliated Voter" or "NAV" means a properly registered voter who is not registered as a member of any political party.

2.1.7. "Program" means Phase 2 of the Vote by Mail Pilot Program as authorized by W. Va. State Code § 3-3A-3.

2.1.8. "Received by the clerk" means properly received by the clerk in the designated post office box or official ballot deposit box or clerk's office.

2.2. All references to time of day in this rule mean local time.

§ 153-39-3. Program Participant Selection Process.

3.1. Each municipality choosing to participate in the program shall submit to the Secretary of State the following information:

3.1.1. A copy of a resolution duly passed by the municipality's governing body stating:

3.1.1.a. The municipality's intent to participate in the program; and

3.1.1.b. That it is the duty of all officials designated to supervise and conduct the program, other municipal officials, and all election commissioners to abide by the Secretary of State's rules, orders and instructions and to use the forms, lists and records prescribed by the Secretary of State.

3.1.2. Official voter participation statistics for the most recent two municipal election cycles;

3.1.3. Information relating to the total expenses of the previous two election cycles; and

3.1.4. The municipality's plan, in accordance with the provisions of this Rule, for the conduct of the election including:

3.1.4.1. Method of voting (i.e. direct recording electronic, optical scan, or hand-counted paper ballot);

3.1.4.2. Officials designated to conduct the election, including duties of each official;

3.1.4.3. Proposed number and locations for ballot deposit locations;

3.1.4.4. Provisions for ballot and ballot box security at each ballot deposit location;

3.1.4.5. The date of the next-scheduled municipal election; and

3.1.4.6. The process by which the municipality will notify the public of the change in the administration of the election, if selected to participate in the program.

- 3.2. The Secretary of State shall collect and evaluate all information submitted by the municipalities pursuant to subsection one of this section to determine the viability of each municipality's proposal using the following criteria:
 - 3.2.1. The municipality has legally passed an ordinance stating all information required in 3.1.1. of this rule;
 - 3.2.2. There is sufficient historical voter participation information provided to allow for comparison of voter turnout with elections conducted in the program;
 - 3.2.3. There is sufficient historical expense information provided to allow for comparison of expenses associated with elections conducted in the program;
 - 3.2.4. The proposed number and locations of ballot deposit locations is reasonable, sufficient and convenient in relation to the number of registered voters in the municipality;
 - 3.2.5. The provisions for security at each ballot deposit location are sufficient to ensure the integrity of ballots and prevent fraud; and
 - 3.2.6. The process by which the municipality will notify the public of the change in the administration of the election is reasonable to ensure the voters in the municipality will know and understand the change.
- 3.3. If the Secretary of State determines that the information submitted by a municipality is deficient in any way, he or she shall give notice in writing to the municipality outlining the area or areas of deficiency. Such notice shall also state the municipality has five (5) business days to correct the deficiencies and return the information to the Secretary of State before the end of business on the fifth day for continued consideration for program participation.
- 3.4. If the Secretary of State determines that the information submitted or corrected and resubmitted by a municipality is sufficient, it will be eligible to participate in the program.
- 3.5. If more than five (5) municipalities are eligible to participate in the program, the five (5) program participants shall be selected using a drawing by lot by the Secretary of State to be held the first Monday in December next preceding the election: *Provided*, That there be no more than two (2) municipalities selected from each size classification unless there are spaces available.
- 3.6. If five (5) or fewer than five (5) municipalities have submitted the required information to be considered for program participation, all such municipalities shall be considered as having been selected to participate in the program and no drawing by lot will be necessary.

- 3.7. The Secretary of State shall notify each program participant of their selection into the program in writing within fourteen (14) business days of the selection.

§ 153-39-4. Determining Eligibility to Receive a Ballot.

- 4.1. All citizens legally registered to vote in the municipality in accordance with the provisions of W.Va. State Code §3-2, shall be eligible to receive a ballot by mail for the municipal election.
- 4.2. If non-affiliated voters are permitted by party rules to vote in the primary of a major party, a non-affiliated voter desiring to vote a partisan ballot must notify the clerk of their intention no later than the twentieth (20th) day prior to the election.

§ 153-39-5. Mailing Ballots.

- 5.1. No sooner than eighteen (18) days nor later than fourteen (14) days before the election, the clerk shall mail the following ballot packet to all voters determined eligible to vote in the municipal election per the provisions of section four of this rule:
- 5.1.1. One of each type of official ballot the voter is eligible to vote, prepared according to law and signed by two election officials of opposite parties;
- 5.1.2. One envelope, unsealed, which may have no marks except the designation "Voter's Ballot Envelope No. 1";
- 5.1.3. One mailing envelope, unsealed, designated "Voter's Ballot Envelope No. 2";
- 5.1.4. Instructions for voting by mail including:
- 5.1.4.a. Instructions for marking and folding the ballot, to place it in the secrecy envelope (Envelope No. 1) and the ballot return envelope (Envelope No. 2) and how to sign the ballot return envelope;
- 5.1.4.b. A warning that the ballot return envelope must be signed or the ballot will not be counted;
- 5.1.4.c. A warning that signing someone else's ballot return envelope is illegal;
- 5.1.4.d. An alternative procedure for any person who is unable to sign a ballot return envelope;
- 5.1.4.e. Instructions for returning a spoiled ballot should the voter make a mistake or otherwise need a new ballot; and

5.4.1.f.A prominently displayed notice that each ballot must be received by the clerk by 8:00p.m. on election day in one of the following three ways:

- 5.1.4.f.1. By mail;
 - 5.1.4.f.2. By casting the ballot at an official ballot deposit location; or
 - 5.1.4.f.3. By hand delivering the ballot to the clerk or clerk's designee.
- 5.1.5. For electronic systems, a device for marking by electronically sensible pen or ink, as may be appropriate;
 - 5.1.6. Notice that a list of write-in candidates upon request;
 - 5.1.7. Any other supplies required for voting in the particular voting system;
 - 5.1.8. Notice of the amount of postage required to return the ballot using First Class USPS postage;
 - 5.1.9. The locations and available hours of all ballot deposit sites;
 - 5.1.10. Notice that privacy booths are available at a designated location for optional use by voters; and
 - 5.1.11. A candidates information pamphlet created by the municipality, if applicable.
- 5.2. The clerk shall indicate on the poll book record of each voter who is sent a ballot that a ballot has been sent to the voter and the date it was mailed.
- 5.3. The voter shall mark the ballot alone: *Provided*, That the voter may have assistance in voting according to the provisions of W. Va. State Code §3-3-6.
- 5.4. After the voter has voted the ballot or ballots, the voter shall:
- 5.4.1. Place the ballot or ballots in Envelope no.1 and seal that envelope;
 - 5.4.2. Place sealed Envelope no. 1 inside Envelope no. 2 and seal Envelope no. 2;
 - 5.4.3. Complete and sign the forms on Envelope no. 2; and
 - 5.4.4. Return the envelope to the clerk by mail using either the required amount of postage for the USPS or other express shipping service, or by delivering the voted ballot to an official ballot deposit location.

- 5.5. Ballots returned by USPS mail or other express shipping service are to be accepted if the ballot is received by the clerk no later than 8:00p.m. on election day. Ballots postmarked by election day but received by the clerk after 8:00p.m. on election day will not be counted.
- 5.6. Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following the election, after which time they are to be destroyed without being opened.
- 5.7. Ballots which are hand delivered are to be accepted if they are received by the clerk no later than 8:00p.m. on election day.
- 5.8. Prior to the election, the clerk shall arrange with the local Post Office to secure a Post Office box to be used only for the return of mailed ballots.
- 5.9. The clerk shall coordinate with the Post Office a regularly scheduled mail pick up time for each day and an 8:00p.m. pick up time on election day.

§ 153-39-6. Official Ballot Deposit Locations.

- 6.1. Each municipality shall establish the number of official ballot deposit locations in the following manner:
 - 6.1.1. Each Class I and Class II municipality must establish no fewer than three (3) official ballot deposit locations; and
 - 6.1.2. Each Class III and Class IV municipality must establish no fewer than two (2) official ballot locations.
- 6.2. An official ballot deposit location must be maintained at the elections office of each municipality.
- 6.3. Proposed official ballot deposit locations shall be determined using the following criteria:
 - 6.3.1. Security,
 - 6.3.2. Concentration of population,
 - 6.3.3. Convenience for voters,
 - 6.3.4. Access for the physically disabled; and
 - 6.3.5. Parking availability

- 6.4. Official ballot deposit boxes must be locked and secure from being moved or in view of authorized personnel.
- 6.5. Official ballot deposit boxes at staffed locations must be locked and sealed and accessible only by authorized personnel or deputized staff. The box may be exchanged for a locked or sealed empty box on a predetermined schedule or it may be re-locked or re-sealed when emptied by at least two people of opposite parties authorized to handle the election material.
- 6.6. Official ballot deposit boxes at staffed locations must be in view of on-site staff and transported only by election or deputized staff to the elections office on a predetermined schedule or as needed.
- 6.7. Outdoor official ballot deposit boxes must be accessible only by keys in possession of authorized personnel.
- 6.8. The clerk shall establish a predetermined schedule (or more frequently if necessary) to empty outdoor official ballot deposit boxes, transfer the voted ballots into a locked or sealed ballot box, bag or pouch and transport them to the elections office.
- 6.9. The official ballot deposit location at the elections office must be established beginning the first day ballots are mailed and must be accessible during regular business hours through the day next preceding the election; *Provided*, That the location be open and accessible on the final Saturday preceding election day beginning at 9:00a.m. and ending at 5:00p.m.
- 6.10. Official ballot deposit locations other than the elections office must be established no later than five calendar days before election day; *Provided*, That official ballot deposit locations must be open and accessible the Saturday next preceding election day beginning at 9:00a.m. and ending at 5:00p.m.

§ 153-39-7. Ballot Reception, Signature Verification and Sorting.

- 7.1. The clerk or clerk's designee shall keep a record of ballots returned by the USPS, ballots received from official ballot deposit locations, ballots returned unsigned and ballots returned as undeliverable.
- 7.2. If a ballot is returned in an unsigned envelope the clerk shall make a reasonable attempt to notify the voter that the ballot cannot be processed unless the envelope is signed prior to 8:00p.m. on election day. A signature may not be faxed or sent via other electronic means. The clerk may:
 - 7.2.1. Issue a replacement ballot;
 - 7.2.2. Have the voter sign the return identification ballot envelope (envelope no. 2) at the elections office; or

- 7.2.3. Mail the original unsigned envelope to the voter for a signature if time allows.
- 7.3. If, during a scheduled election, the voter returns a return identification ballot envelope for a previous election date the clerk shall make a reasonable attempt to notify the voter that the ballot cannot be processed unless the ballot is placed in the proper envelope prior to 8:00p.m. on election day. The clerk may:
 - 7.3.1. Issue a replacement ballot; or
 - 7.3.2. Mail the original envelope to the voter for the voter to return the ballot in the proper envelope.
- 7.4. When a ballot has been returned by the voter the clerk shall check Envelope no. 2 for valid signatures and compare the voter's signature on Envelope no. 2 with the signature kept on file for the voter's registration. If the clerk is able to determine that the same person signed Envelope no. 2 and the voter registration card, the ballot may be accepted and processed.
- 7.5. If the clerk determines that the signature on Envelope no. 2 and the voter's registration do not match, the clerk shall issue a challenge to the ballot and send notice in writing to the voter that the ballot has been challenged and the reason for the challenge.
- 7.6. The clerk shall review all initially rejected signatures using the following criteria:
 - 7.6.1. Capitol letters match;
 - 7.6.2. Letters tail off alike;
 - 7.6.3. Letter spacing is the same;
 - 7.6.4. The beginning and ending of the signature and the slant are consistent;
 - 7.6.5. Unique letters match; and
 - 7.6.6. Overall appearances match.
- 7.7. When a ballot has been returned by the voter and is accepted, it is included in the master list for the election. If the return identification envelope is unsigned and is returned to the voter for signature, the ballot is not posted until the signed envelope is returned.
 - 7.7.1. Automated reports and computer programs may be used for the master list and logs that track reissued, replacement and challenged ballots.
 - 7.7.2. Reissued and replacement ballots must be identified to ensure only the correct ballot is being counted.

7.7.3. Challenged ballots must be noted on the master list and processed separately according to provisions of section eight of this rule.

7.8. Ballots that have been accepted shall be processed in the following manner:

7.8.1. The clerk or clerk's designee shall mark the voter's record in the poll book indicating the voter has voted in the election; and

7.8.2. The ballot shall be sorted according to precinct and shall be placed in the ballot box designated for the precinct to be kept locked until opened according to provisions of section nine of this rule.

§ 153-39-8. Provisional Ballots.

8.1. Ballots issued pursuant to the rules of the Vote by Mail Pilot Program may be challenged and determined to be provisional ballots for any reason outlined in W.Va. Code §3-3-10.

8.2. Ballots determined to be provisional prior to mailing shall not be signed by the poll clerks, and notation must be made in the poll book that the voter has been mailed a provisional ballot.

8.3. When a voter returns a provisional ballot the record shall be updated in both the master list and poll book and the ballot shall be kept secure and remain sealed until canvass, but not placed in the ballot box.

8.4. If a ballot is challenged at the time it is returned to the clerk, the clerk shall update the record in both the master list and poll book and the ballot shall be kept secure and remain sealed until canvass, but not placed in the ballot box.

8.5. The clerk shall make every reasonable effort to obtain all information and documentation necessary to resolve challenges to a ballot prior to the start of canvass.

§ 153-39-9. Opening Ballot Return Envelopes.

9.1. The clerk shall appoint one or more Counting Boards as necessary for the efficient processing and counting of ballots on election day.

9.2. The clerk shall maintain a record of all Counting Board members, including each member's political party affiliation, oath and board assignments. If there is more than one Counting Board the clerk shall maintain a record specifying the precincts processed by each counting board.

9.3. No sooner than 5:00p.m. on election day, the Counting Board or Boards may open the ballot boxes, process the ballots by removing the ballots from the envelopes and

returning the ballots to the locked box for their specified precinct; *Provided*, That no ballot shall be unfolded or read prior to being returned to the ballot box.

- 9.4. Ballot envelopes received after 5:00p.m., but no later than 8:00p.m. on election day shall be accepted or rejected pursuant to provisions of section seven of this rule. Accepted ballot envelopes shall be processed by the Counting Board or Boards and the folded and unread ballots shall be placed in the appropriate ballot box.

§ 153-39-10. Ballot Counting Procedures in Paper Ballot Systems.

- 10.1. After all ballots determined to have been received by the clerk by 8:00p.m. on election day have been returned to the election office, they shall be accepted or rejected according to provisions of section seven of this rule. Accepted ballots shall be processed as outlined in 9.3 of this rule. The ballot box or boxes shall then be opened separately and all votes shall be tallied in the presence of the entire election board.
- 10.2. Ballots shall be counted and recorded pursuant to provisions of W.Va. State Code §§3-6-6, 3-6-7, and 3-6-8, unless otherwise provided for in this rule.

§ 153-39-11. Ballot Counting Procedures in Optical Scan Ballot Systems.

- 11.1. After all ballots determined to have been received by the clerk by 8:00p.m. on election day have been returned to the election office, they shall be accepted or rejected according to provisions of section seven of this rule. Accepted ballots shall be processed as outlined in 9.3 of this rule, except that the ballots shall not be folded. The ballot box or boxes shall be opened separately and the ballots prepared for counting.
- 11.2. Ballots shall be counted and recorded pursuant to provisions of W.Va. State Code §§3-4A-19, 3-4A-27, and W.Va. Code of State Rules 153-27, unless inapplicable or otherwise provided for in this rule.

§ 153-39-12. Ballot Counting Procedures in Direct Recording Electronic Systems.

- 12.1. After all ballots determined to have been received by the clerk by 8:00p.m. on election day have been returned to the election office, they shall be accepted or rejected according to provisions of section seven of this rule. Accepted ballots shall be processed as outlined in 9.3 of this rule, except that the ballots shall not be folded. The ballot box or boxes shall be opened separately and the ballots prepared for counting.
- 12.2. Ballots shall be counted and recorded pursuant to provisions of W.Va. State Code §3-3-8, unless inapplicable or otherwise provided for in this rule.

§ 153-39-13. Training of Election Officials.

- 13.1. Each municipality shall attend mandatory training provided by the Secretary of State. Failure to attend training constitutes forfeiture of participation in the program.

David Nichols

From: Hedda Haning [haning2@verizon.net]
Sent: Monday, July 06, 2009 11:10 AM
To: David Nichols
Subject: Re: mail voting

Dave,

I was heartened to hear of a trial on mail-in voting here in WV.

My exploration of Oregon's experience has been generally positive, without evidence of significant dishonesty, and with lower cost and higher participation.

My one disappointment, is that perfectly good voter completed ballots would be entered into computerized DREs thus rendering the outcome uncertain in terms of security. I know that is the approach used in DRE counties on absentee ballots, a system which should be changed not emulated.

Thank you for your speedy reply.

Sincerely,

Hedda L. Haning
 1031 Forest Rd
 Charleston, WV 25314
 304-344-0472

----- Original Message -----

From: David Nichols
To: 'Hedda Haning'
Sent: Monday, July 06, 2009 7:46 AM
Subject: RE: mail voting

Hedda,

For whatever reason, the Gazette chose not to include the links we sent them. There are actually two rules and here are the links to them: [Phase 1](#) & [Phase 2](#).

When making a public comment, all that is required is to send me (either my USPS or email) a letter outlining any proposed changes or areas of deficiency that may need corrected.

I hope this helps.

Thanks,
 -dave

Dave Nichols

Manager of Elections
 WV Secretary of State
 Bldg 1 Rm 157-K
 1900 Kanawha Blvd. E
 Charleston, WV 25305
 (304)558-6000
 (304)951-2675

From: Hedda Haning [mailto:haning2@verizon.net]
Sent: Sunday, July 05, 2009 3:25 PM
To: David Nichols
Subject: mail voting

Dave,

There was a short article in the paper about limited voting by mail. The article advised that there is an opportunity to comment on the WVSOS site. I could not locate that and would like to comment.

Please help.

Thanks,
 Hedda Haning
 304-344-0472

7/27/2009

David Nichols

From: Hayes_Theiling@mail.MPL.com

Sent: Tuesday, July 07, 2009 9:13 AM

To: Elections Support Email

Subject: Support for mail-in ballots

Dear Sir or Madam,

I am writing in support of the plan to allow mail-in balloting in WV. I think this would increase voter participation and reduce expenses. I hope we'll at least test it out here. Thank you for your consideration in this matter.

Sincerely,

Hayes Theiling
800-B Charles Avenue
Morgantown, WV 26505

7/27/2009

David Nichols

From: smelenri@access.k12.wv.us
Sent: Wednesday, July 08, 2009 5:05 PM
To: Elections Support Email
Subject: vote-by-mail

I am very much against the vote-by-mail law. Our country is based on a secret vote. Voting from home makes it possible for one family member to vote for another family member, husbands for wives, sons/daughters for elderly family members. I hope this will be reconsidered.

I AM DEFINITELY FOR VOTE BY
MAIL FOR FUTURE ELECTIONS! THE
SET-UP NOW MEANS RIDICULOUS
EXPENSE FOR THE CITY/COUNTY AND
LONG, BORING DAYS FOR THE POLL-
WORKERS — CONSIDERING THE LOW
TURNOUT OF VOTERS. CHANGE THE
SYSTEM. I'LL VOTE BY MAIL.

FORMER POLLWORKER,
PATTI L. CURRY
421 LAWNVIEW DR.
MORGANTOWN, WV 26505

7-11-09

The time has come to modern-
ize our election methods. I am
74 years old and voting by mail makes
sense.

Shirley M. Curry
421 - Pleasant St.
Morgantown, W. Va.

David Nichols

From: Judy Cooper
Sent: Monday, July 20, 2009 8:58 AM
To: David Nichols
Subject: FW: early voting by mail

From: george's email [mailto:kline12@verizon.net]
Sent: July 17, 2009 11:18 PM
To: WV Secretary of State
Subject: early voting by mail

Dear Natalie Tennant:

I am totally against voting by mail in any form. Early voting is bad enough.

Voter fraud has been going on for years and years in WV. You are just inviting more fraud by allowing "voting by mail".

Thank you
George W. Wilsman Jr.
3811 Broad Street
Parkersburg, Wv.
26104

I am using the Free version of SPAMfighter.
We are a community of 6 million users fighting spam.
SPAMfighter has removed 371 of my spam emails to date.
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David Nichols

From: Lisa Dooley [wvml@wvml.org]
Sent: Wednesday, July 22, 2009 9:14 AM
To: David Nichols
Subject: RE: VBM rules

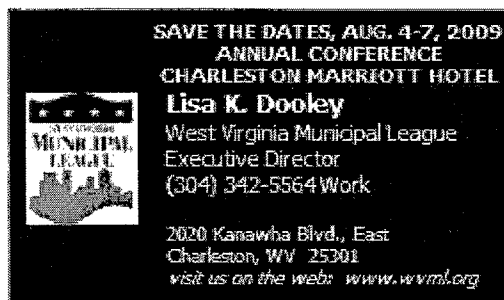
Attachments: Vote-by-Mail Phase 2 (Series 39)(non draft).doc; Vote-by-Mail Phase 1 (Series 38)9non draft).doc

David,

Here are my grammatical markups. I will resend to the clerks. They had no problems with the class IV early voting. Not sure they have seen the pilot rules.

Thanks, I will let you know what I hear.

Lisa



Disclaimer: The content of this reply is provided as a general informational service to you as participating member of the West Virginia Municipal League. The information contained herein does not constitute legal advice and does not create an attorney-client relationship between you and WVML Programs or the WV Municipal League. You should not act or refrain from acting based upon this information without first consulting your city attorney or other legal counsel. This reply is a confidential communication and shall be treated as an internal memoranda or letter received by a public body exempt from disclosure. This communication and any files transmitted with it are intended solely for the use of the individual(s) to whom it is addressed. Please notify the sender immediately if you have received this communication by mistake. If you are not the intended recipient you are hereby notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

From: David Nichols [mailto:DNichols@wvsos.com]
Sent: Wednesday, July 22, 2009 7:45 AM
To: 'Lisa Dooley'
Subject: RE: VBM rules

Lisa,

I just wanted to send a quick reminder that the Vote by Mail rules are open for public comment until 10:00am on July 27. At this point I haven't heard anything from anyone regarding these rules. If possible, I would like to get some input before the deadline so any potential issues can be addressed. I've attached copies of both rules for easy reference.

Thanks,
 -dave

Dave Nichols

Manager of Elections
 WV Secretary of State

7/27/2009

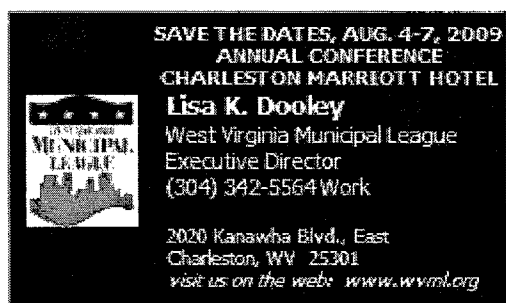
Bldg 1 Rm 157-K
1900 Kanawha Blvd. E
Charleston, WV 25305
(304)558-6000
(304)951-2675

If a person is unclear concerning election law provisions, the Election Division can be used as an interpretive resource. However, where your legal rights are concerned, you must consult with your own attorney to be fully and properly advised.

From: Lisa Dooley [mailto:wvml@wvml.org]
Sent: Friday, June 26, 2009 12:12 PM
To: David Nichols
Subject: RE: VBM rules

Thanks Dave,

Lisa



Disclaimer: The content of this reply is provided as a general informational service to you as participating member of the West Virginia Municipal League. The information contained herein does not constitute legal advice and does not create an attorney-client relationship between you and WVML Programs or the WV Municipal League. You should not act or refrain from acting based upon this information without first consulting your city attorney or other legal counsel. This reply is a confidential communication and shall be treated as an internal memoranda or letter received by a public body exempt from disclosure. This communication and any files transmitted with it are intended solely for the use of the individual(s) to whom it is addressed. Please notify the sender immediately if you have received this communication by mistake. If you are not the intended recipient you are hereby notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

From: David Nichols [mailto:DNichols@wvsos.com]
Sent: Friday, June 26, 2009 11:45 AM
To: 'Lisa Dooley'
Subject: VBM rules

Lisa,
The Vote by Mail rules have been filed for public comment. They will be on our website soon, but I've attached a copy for your reference and for you to send to whomever may have interest.

-dave

Dave Nichols

Manager of Elections
WV Secretary of State
Bldg 1 Rm 157-K
1900 Kanawha Blvd. E
Charleston, WV 25305

7/27/2009

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Title 153
Legislative Rule
Secretary of State

SERIES 39
Vote-by-Mail Pilot Project Phase 2:
Voting by Mail

§ 153-39-1. General.

- 1.1. Scope. -- This rule establishes the guidelines to be used by the municipal recorder or other officer, hereafter "Clerk," authorized by charter or ordinance provisions to conduct voting for any election held entirely within a municipality to conduct municipal elections by mail; including, but not limited to, program participation selection criteria, procedures for conducting voting by mail, requirements for places of deposit and, security of ballots and ballot deposit locations.
- 1.2. Authority.- W.Va. Code § 3-3A-3.
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§ 153-39-2. Definitions.

- 2.1. For the purposes of this rule:
 - 2.1.1. "Authorized personnel" means those individuals the clerk chooses to assist with election administration.
 - 2.1.2. "Ballot packet" means all information mailed to the voter pursuant to section five of this rule.
 - 2.1.3. "Clerk" means the municipal clerk, recorder or other officer authorized by charter or ordinance to conduct voting for any election held entirely within a municipality.
 - 2.1.4. "Counting Board" means those election officials appointed by the clerk pursuant to W.Va. State Code §§ 3-1-28, 3-1-29, and 3-1-30.
 - 2.1.5. "Master Election List" means the official record of the election.

- 2.1.6. "Non Affiliated Voter" or "NAV" means a properly registered voter who is not registered as a member of any political party on a partisan election ballot in a partisan municipal election.
- 2.1.7. "Program" means Phase 2 of the Vote by Mail Pilot Program as authorized by article three-A of W. Va. State Code § 3-3A-3.
- 2.1.8. "Received by the clerk" means properly received by the clerk in the designated post office box or official ballot deposit box or clerk's office.

2.2. All references to time of day in this rule mean local time.

§ 153-39-3. Program Participant Selection Process.

- 3.1. Each municipality ~~choosing, wishing to participate in the program~~ shall submit to the Secretary of State the following information:

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- 3.1.1. A copy of a resolution duly passed by the municipality's governing body stating:
 - 3.1.1.a. The municipality's intent to participate in the program; and
 - 3.1.1.b. That it is the duty of all officials designated to supervise and conduct the program, other municipal officials, and all election commissioners to abide by the Secretary of State's rules, orders and instructions and to use the forms, lists and records prescribed by the Secretary of State.
- 3.1.2. Official voter participation statistics for the most recent two municipal election cycles;
- 3.1.3. Information relating to the total expenses of the previous two election cycles; and
- 3.1.4. The municipality's plan, in accordance with the provisions of this Rule, for the conduct of the election including:
 - 3.1.4.1. Method of voting (i.e. direct recording electronic, optical scan, or hand-counted paper ballot);
 - 3.1.4.2. Officials designated to conduct the election, including duties of each official;
 - 3.1.4.3. Proposed number and locations for ballot deposit locations;
 - 3.1.4.4. Provisions for ballot and ballot box security at each ballot deposit location;
 - 3.1.4.5. The date of the next-scheduled municipal election; and

3.1.4.6. The process by which the municipality will notify the public of the change in the administration of the election, if selected to participate in the program.

- 3.2. The Secretary of State shall collect and evaluate all information submitted by the municipalities pursuant to subsection one of this section to determine the viability of each municipality's proposal using the following criteria:

3.2.1. The municipality has legally passed an ordinance ~~resolution~~ stating all information required in 3.1.1. of this rule;

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3.2.2. There is sufficient historical voter participation information provided to allow for comparison of voter turnout with elections conducted in the program;

3.2.3. There is sufficient historical expense information provided to allow for comparison of expenses associated with elections conducted in the program;

3.2.4. The proposed number and locations of ballot deposit locations is reasonable, sufficient and convenient in relation to the number of registered voters in the municipality;

3.2.5. The provisions for security at each ballot deposit location are sufficient to ensure the integrity of ballots and prevent fraud; and

3.2.6. The process by which the municipality will notify the public of the change in the administration of the election is reasonable to ensure the voters in the municipality will know and understand the change.

- 3.3. If the Secretary of State determines that the information submitted by a municipality is deficient in any way, he or she shall give notice in writing to the municipality outlining the area or areas of deficiency. Such notice shall also state the municipality has five (5) business days to correct the deficiencies and return the information to the Secretary of State before the end of business on the fifth day for continued consideration for program participation.
- 3.4. If the Secretary of State determines that the information submitted or corrected and resubmitted by a municipality is sufficient, it will be eligible to participate in the program.
- 3.5. If more than five (5) municipalities are eligible to participate in the program, the five (5) program participants shall be selected using a drawing by lot by the Secretary of State to be held the first Monday in December next preceding the election: *Provided*, That there be no more than two (2) municipalities selected from each size classification unless there are spaces available.
- 3.6. If five (5) or fewer than five (5) municipalities have submitted the required information to be considered for program participation, all such municipalities shall be

considered as having been selected to participate in the program and no drawing by lot will be necessary.

- 3.7. The Secretary of State shall notify each program participant of their selection into the program in writing within fourteen (14) business days of the selection.

§ 153-39-4. Determining Eligibility to Receive a Ballot.

- 4.1. All citizens legally registered to vote in the municipality in accordance with the provisions of W.Va. State Code §3-2, shall be eligible to receive a ballot by mail for the municipal election.
- 4.2. If non-affiliated voters are permitted by party rules to vote in the primary of a major party, a non-affiliated voter desiring to vote a partisan ballot must notify the clerk of their intention no later than the twentieth (20th) day prior to the election.

§ 153-39-5. Mailing Ballots.

- 5.1. No sooner than eighteen (18) days nor later than fourteen (14) days before the election, the clerk shall mail the following ballot packet to all voters determined eligible to vote in the municipal election per the provisions of section four of this rule:
- 5.1.1. One of each type of official ballot the voter is eligible to vote, prepared according to law and signed by two election officials of opposite parties;
- 5.1.2. One envelope, unsealed, which may have no marks except the designation "Voter's Ballot Envelope No. 1";
- 5.1.3. One mailing envelope, unsealed, designated "Voter's Ballot Envelope No. 2";
- 5.1.4. Instructions for voting by mail including:
- 5.1.4.a. Instructions for marking and folding the ballot, to place it in the secrecy envelope (Envelope No. 1) and the ballot return envelope (Envelope No. 2) and how to sign the ballot return envelope;
- 5.1.4.b. A warning that the ballot return envelope must be signed or the ballot will not be counted;
- 5.1.4.c. A warning that signing someone else's ballot return envelope is illegal;
- 5.1.4.d. An alternative procedure for any person who is unable to sign a ballot return envelope;
- 5.1.4.e. Instructions for returning a spoiled ballot should the voter make a mistake or otherwise need a new ballot; and

5.4.1.f.A prominently displayed notice that each ballot must be received by the clerk by 8:00p.m. on election day in one of the following three ways:

- 5.1.4.f.1. By mail;
 - 5.1.4.f.2. By casting the ballot at an official ballot deposit location; or
 - 5.1.4.f.3. By hand delivering the ballot to the clerk or clerk's designee.
-
- 5.1.5. For electronic systems, a device for marking by electronically sensible pen or ink, as may be appropriate;
 - 5.1.6. A list of write-in candidates;
 - 5.1.7. Any other supplies required for voting in the particular voting system;
 - 5.1.8. Notice of the amount of postage required to return the ballot using First Class USPS postage;
 - 5.1.9. The locations and available hours of all ballot deposit sites;
 - 5.1.10. Notice that privacy booths are available at a designated location for optional use by voters; and
 - 5.1.11. A candidates information pamphlet, if applicable.
- 5.2. The clerk shall indicate on the poll book record of each voter who is sent a ballot that a ballot has been sent to the voter and the date it was mailed.
- 5.3. The voter shall mark the ballot alone: *Provided*, That the voter may have assistance in voting according to the provisions of W. Va. State Code §3-3-6.
- 5.4. After the voter has voted the ballot or ballots, the voter shall:
- 5.4.1. Place the ballot or ballots in Envelope no.1 and seal that envelope;
 - 5.4.2. Place sealed Envelope no. 1 inside Envelope no. 2 and seal Envelope no. 2;
 - 5.4.3. Complete and sign the forms on Envelope no. 2; and

- 5.4.4. Return the envelope to the clerk by mail using either the required amount of postage for the USPS or other express shipping service, or by delivering the voted ballot to an official ballot deposit location.
- 5.5. Ballots returned by USPS mail or other express shipping service are to be accepted if the ballot is received by the clerk no later than 8:00p.m. on election day. Ballots postmarked by election day but received by the clerk after 8:00p.m. on election day will not be counted.
- 5.6. Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following the election, after which time they are to be destroyed without being opened.
- 5.7. Ballots which are hand delivered are to be accepted if they are received by the clerk no later than 8:00p.m. on election day.
- 5.8. Prior to the election, the clerk shall arrange with the local Post Office to secure a Post Office box to be used only for the return of mailed ballots.
- 5.9. The clerk shall coordinate with the Post Office a regularly scheduled mail pick up time for each day and an 8:00p.m. pick up time on election day.

§ 153-39-6. Official Ballot Deposit Locations.

- 6.1. Each municipality shall establish the number of official ballot deposit locations in the following manner:
 - 6.1.1. Each Class I and Class II municipality must establish no fewer than three (3) official ballot deposit locations; and
 - 6.1.2. Each Class III and Class IV municipality must establish no fewer than two (2) official ballot locations.
- 6.2. An official ballot deposit location must be maintained at the elections office of each municipality.
- 6.3. Proposed official ballot deposit locations shall be determined using the following criteria:
 - 6.3.1. Security,
 - 6.3.2. Concentration of population,
 - 6.3.3. Convenience for voters,
 - 6.3.4. Access for the physically disabled; and

6.3.5. Parking availability

- 6.4. Official ballot deposit boxes must be locked and secure from being moved or in view of authorized personnel.
- 6.5. Official ballot deposit boxes at staffed locations must be locked and sealed and accessible only by authorized personnel or deputized staff. The box may be exchanged for a locked or sealed empty box on a predetermined schedule or it may be re-locked or re-sealed when emptied by at least two people of opposite parties authorized to handle the election material.
- 6.6. Official ballot deposit boxes at staffed locations must be in view of on-site staff and transported only by election or deputized staff to the elections office on a predetermined schedule or as needed.
- 6.7. Outdoor official ballot deposit boxes must be accessible only by keys in possession of authorized personnel.
- 6.8. The clerk shall establish a predetermined schedule (or more frequently if necessary) to empty outdoor official ballot deposit boxes, transfer the voted ballots into a locked or sealed ballot box, bag or pouch and transport them to the elections office.
- 6.9. The official ballot deposit location at the elections office must be established beginning the first day ballots are mailed and must be accessible during regular business hours through the day next preceding the election; *Provided*, That the location be open and accessible on the final Saturday preceding election day beginning at 9:00a.m. and ending at 5:00p.m.
- 6.10. Official ballot deposit locations other than the elections office must be established no later than five calendar days before election day; *Provided*, That official ballot deposit locations must be open and accessible the Saturday next preceding election day beginning at 9:00a.m. and ending at 5:00p.m.

§ 153-39-7. Ballot Reception, Signature Verification and Sorting.

- 7.1. The clerk or clerk's designee shall keep a record of ballots returned by the USPS, ballots received from official ballot deposit locations, ballots returned unsigned and ballots returned as undeliverable.
- 7.2. If a ballot is returned in an unsigned envelope the clerk shall make a reasonable attempt to notify the voter that the ballot cannot be processed unless the envelope is signed prior to 8:00p.m. on election day. A signature may not be faxed or sent via other electronic means. The clerk may:
 - 7.2.1. Issue a replacement ballot;

- 7.2.2. Have the voter sign the return identification ballot envelope (envelope no. 2) at the elections office; or
- 7.2.3. Mail the original unsigned envelope to the voter for a signature if time allows.
- 7.3. If the voter returns a return identification ballot envelope during a scheduled election cycle for a previous election date the clerk shall make a reasonable attempt to notify the voter that the ballot cannot be processed unless the ballot is placed in the proper envelope prior to 8:00p.m. on election day. The clerk may:
 - 7.3.1. Issue a replacement ballot; or
 - 7.3.2. Mail the original envelope to the voter for the voter to return the ballot in the proper envelope.
- 7.4. When a ballot has been returned by the voter the clerk shall check Envelope no. 2 for valid signatures and compare the voter's signature on Envelope no. 2 with the signature kept on file for the voter's registration. If the clerk is able to determine that the same person signed Envelope no. 2 and the voter registration card, the ballot may be accepted and processed.
- 7.5. If the clerk determines that the signature on Envelope no. 2 and the voter's registration do not match, the clerk shall issue a challenge to the ballot and send notice in writing to the voter that the ballot has been challenged and the reason for the challenge.
- 7.6. The clerk shall review all initially rejected signatures using the following criteria:
 - 7.6.1. Capitol letters match;
 - 7.6.2. Letters tail off alike;
 - 7.6.3. Letter spacing is the same;
 - 7.6.4. The beginning and ending of the signature and the slant are consistent;
 - 7.6.5. Unique letters match; and
 - 7.6.6. Overall appearances match.
- 7.7. When a ballot has been returned by the voter and is accepted, it is included in the master list for the election. If the return identification envelope is unsigned and is returned to the voter for signature, the ballot is not posted until the signed envelope is returned.
 - 7.7.1. Automated reports and computer programs may be used for the master list and logs that track reissued, replacement and challenged ballots.

7.7.2. Reissued and replacement ballots must be identified to ensure only the correct ballot is being counted.

7.7.3. Challenged ballots must be noted on the master list and processed separately according to provisions of section eight of this rule.

7.8. Ballots that have been accepted shall be processed in the following manner:

7.8.1. The clerk or clerk's designee shall mark the voter's record in the poll book indicating the voter has voted in the election; and

7.8.2. The ballot shall be sorted according to precinct and shall be placed in the ballot box designated for the precinct to be kept locked until opened according to provisions of section nine of this rule.

§ 153-39-8. Provisional Ballots.

- 8.1. Ballots issued pursuant to the rules of the Vote by Mail Pilot Program may be challenged and determined to be provisional ballots for any reason outlined in W.Va. Code §3-3-10.
- 8.2. Ballots determined to be provisional prior to mailing shall not be signed by the poll clerks, and notation must be made in the poll book that the voter has been mailed a provisional ballot.
- 8.3. When a voter returns a provisional ballot the record shall be updated in both the master list and poll book and the ballot shall be kept secure and remain sealed until canvass, but not placed in the ballot box.
- 8.4. If a ballot is challenged at the time it is returned to the clerk, the clerk shall update the record in both the master list and poll book and the ballot shall be kept secure and remain sealed until canvass, but not placed in the ballot box.
- 8.5. The clerk shall make every reasonable effort to obtain all information and documentation necessary to resolve challenges to a ballot prior to the start of canvass.

§ 153-39-9. Opening Ballot Return Envelopes.

- 9.1. The clerk shall appoint one or more Counting Boards as necessary for the efficient processing and counting of ballots on election day.
- 9.2. The clerk shall maintain a record of all Counting Board members, including each member's political party affiliation, oath and board assignments. If there is more than one Counting Board the clerk shall maintain a record specifying the precincts processed by each counting board.

- 9.3. No sooner than 5:00p.m. on election day, the Counting Board or Boards may open the ballot boxes, process the ballots by removing the ballots from the envelopes and returning the ballots to the locked box for their specified precinct; *Provided*, That no ballot shall be unfolded or read prior to being returned to the ballot box.
- 9.4. Ballot envelopes received after 5:00p.m. on election day shall be accepted or rejected pursuant to provisions of section seven of this rule. Accepted ballot envelopes shall be processed by the Counting Board or Boards and the folded and unread ballots shall be placed in the appropriate ballot box.

§ 153-39-10. Ballot Counting Procedures in Paper Ballot Systems.

- 10.1. After all ballots determined to have been received by the clerk by 8:00p.m. on election day have been returned to the election office, they shall be processed as outlined in 9.3 of this rule. The ballot box or boxes shall then be opened separately and all votes shall be tallied in the presence of the entire election board.
- 10.2. Ballots shall be counted and recorded pursuant to provisions of W.Va. State Code §§3-6-6, 3-6-7, and 3-6-8, unless otherwise provided for in this rule.

§ 153-39-11. Ballot Counting Procedures in Optical Scan Ballot Systems.

- 11.1. After all ballots determined to have been received by the clerk by 8:00p.m. on election day have been returned to the election office, they shall be processed as outlined in 9.3 of this rule, except that the ballots shall not be folded. The ballot box or boxes shall be opened separately and the ballots prepared for counting.
- 11.2. Ballots shall be counted and recorded pursuant to provisions of W.Va. State Code §§3-4A-19, 3-4A-27, and W.Va. Code of State Rules 153-27, unless inapplicable or otherwise provided for in this rule.

§ 153-39-12. Ballot Counting Procedures in Direct Recording Electronic Systems.

- 12.1. After all ballots determined to have been received by the clerk by 8:00p.m. on election day have been returned to the election office, they shall be processed as outlined in 9.3 of this rule, except that the ballots shall not be folded. The ballot box or boxes shall be opened separately and the ballots prepared for counting.
- 12.2. Ballots shall be counted and recorded pursuant to provisions of W.Va. State Code §§3-3-8, unless inapplicable or otherwise provided for in this rule.

§ 153-39-13. Training of Election Officials.

- 13.1. Each municipality shall attend mandatory training provided by the Secretary of State. Failure to attend training constitutes forfeiture of participation in the program.

KANAWHA COUNTY COMMISSION

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Henry C. Shores
Commissioner

W. Kent Carper
Commissioner

David J. "Dave" Hardy
Commissioner

July 24, 2009

Dave Nichols, Manager of Elections
West Virginia Secretary of State
State Capitol Building 1, Suite 157-K
Charleston, WV 25305-0770

Dear Secretary Tennant:

The passage of House Bill 3134, during the 2009 Legislative Session, was a progressive step in making voting effortless and convenient for voters. I commend the Secretary Tennant and her office on the proposed rules open for public comment. I believe these rules will provide security of the ballots and more voting opportunities for the public.

Vote-By-Mail programs have proven to be successful and cost effective in other states. For example, in Oregon, counties have saved up to \$1 million by conducting primary and general elections by mail. Furthermore, in the 2004 Election, Oregon attributed record turnout to their Vote-By-Mail system. Washington State is another state that has seen successful results with their Vote-By-Mail program. Currently, 38 counties of the 39 in Washington are conducting voting by mail.

In the past, there have been critics of Vote-By-Mail systems. However, I believe the rules proposed by the Secretary of State's Office provide critical security and protection against voter fraud. Most importantly, this will increase voter turnout. Again, I commend Secretary Tennant and her office on making voting more accessible for West Virginia residents.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Kent Carper", is written over a horizontal line. Below the signature, the text "W. Kent Carper" is printed in a small font.

W. Kent Carper

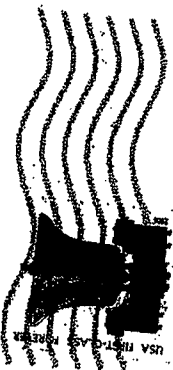
WKC/cc



James V. Watson
105 Amber Ln.
Fairmont, WV 26554-8667

CLARKSBURG WV 263

23 JUL 2009 PM 2 L



Dave Nichols
Election Manager
Building 1, Suite 157-K
19006 Hancock Blvd.
E. Clarksburg, WV 26301
5365

7-89

Dear Mr. Nichols,

I would like to comment on the Secretary of State's proposed vote-by-mail.

I am against the whole idea. It is not something we should even consider.

1. The postal service is not reliable. My personal mail is often already opened - not by accident. For important mail you pay extra to send it registered or return receipt to make sure it gets there. You would never know for sure that your ballot arrived or was not tampered with on the way.

2. If it is the cost you are looking at - cut one of your many programs to the

non-working class) instead Taxpayers - people who are working - should be able to utilize some of their taxes by having the polls open on election day. Maybe it's getting more expensive because you are trying to put too much into "early" voting.

3. If you are too lazy to get out and vote on election day, then you shouldn't vote. Don't tell me there are older people who have a hard time getting out. They manage to get out & go whenever they want - to get their hair done, go shopping, go to the Senior Center, wherever. They find a way to get there.

Cut out the early voting and keep the polls open on election day. No vote-by-mail!

Thank you.

Mary E. Watson

July 27, 2009

Mr. David Nicols
Election Manager, WV Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305

Re: Comments on Rules for Vote-by-Mail Pilot Project, Phase 1 & Phase 2

Dear Mr. Nicols,

We appreciate the opportunity to comment on the rules for Phase 1 and Phase 2 of the vote-by-mail pilot project. We applaud the passage of HB 3134 and appreciate the support of the Secretary of State for this and other measures aimed at increasing participation in our elections.

Below are our comments on, and suggested changes to, the proposed rules.

Phase 1 – Class IV Early Voting by Mail

§153-38-5 – Voting an Early Voting Ballot by Mail

- Section 5.3.3 is confusing and should be rewritten. Upon acceptance of a completed early voting by mail application, the clerk shall determine whether certain requirements have been met. One of these requirements is “The applicant is not making his or her first vote after having registered by post card registration...” However, “if an applicant is making his or her first vote after having registered by postcard registration, the applicant is exempt from these requirements.” Is the intent of this exemption to prohibit newly registered voters from voting early by mail? If this is not the intent, perhaps section 5.3.3 should simply be deleted for clarity. Newly registered voters should be allowed to vote early by mail provided the requirements in 5.3.1 and 5.3.2 are met.

This is the intent

- Subsequent sections refer to precincts on ballot envelopes; however, it is unclear at what point the precinct numbers are placed on the ballot envelopes. Does this happen prior to the vote by mail ballot and other materials being mailed to the voter, or after the sealed envelope is returned to the clerk by the voter? This should be clarified.

§153-38-8 – Disposition of Early Voting By Mail Ballots

- There is more than one section 8.2 and some subsections are misnumbered.
- The first sentence in section 8.1 should be amended as follows:

Upon receipt of an early voting by mail ballot, the clerk or clerk's designee shall mark the voter's record in the poll book indicating the voter has voted in the election.

- Is separating ballots by precinct upon receipt a requirement for all voting systems or are there exemptions? This needs to be clarified. Specifically, there are inconsistencies between the requirements in section 8.1 and 8.2. If ballots are placed in boxes designated for each precinct when they are initially received (section 8.1), why would the ballot boxes in municipalities using paper ballots need to be opened and ballots separated by precinct prior to being delivered to the polls (section 8.2)? Any exemptions to the requirement that ballot boxes be kept locked until "after the polls close on Election Day," as in the case of municipalities using paper ballots, should also be clarified.

§153-38-10 – Challenging of Early Voting by Mail Ballots

- The phrase "by personal appearance" in sections 10.1.4 and 10.2.5 does not seem applicable to voting-by-mail. *This is OK*
- Phase 2 outlines specific criteria for reviewing all initially rejected signatures. These criteria should be included in Phase 1.

Phase 2 – Voting by Mail

§153-39-2 – Definitions

- Section 2.1.6 should be amended as follows:

"Non Affiliated Voter" or "NAV" means a properly registered voter who is not registered as a member of any political party ~~on a partisan election ballot in a partisan municipal election.~~

- Section 2.1.7 should be amended as follows:

"Program" means Phase 2 of the Vote by Mail Pilot Program as authorized by ~~article three A §3-3A-3~~ of W.Va. State Code ~~§3-3A-3.~~

§153-39-7 – Ballot Reception, Signature Verification and Sorting

- Section 7.3 should be amended as follows:

If, during a scheduled election, the voter returns a return identification ballot envelope ~~during a scheduled election cycle~~ for a previous election date the clerk shall make a reasonable attempt to notify the voter that the ballot cannot be processed unless the ballot is placed in the proper envelope prior to 8:00p.m. on election day. The clerk may:

§153-39-9 – Opening Ballot Return Envelopes

- Section 9.4 should be amended as follows:

Ballot envelopes received after 5:00p.m., but no later than 8:00p.m.✓ on election day shall be accepted or rejected pursuant to provisions of section seven of this rule. Accepted ballot envelopes shall be processed by the Counting Board or Boards and the folded and unread ballots shall be placed in the appropriate ballot box.

§153-39-10 - 12 – Ballot Counting Procedures

- Section 10.1 should be amended as follows:

After all ballots determined to have been received by the clerk by 8:00p.m. on election day, they shall be accepted or rejected pursuant to provisions of section seven of this rule.✓ Accepted ballots shall be processed as outlined in 9.3 of this rule. The ballot box or boxes shall then be opened separately and all votes shall be tallied in the presence of the entire election board.

- Sections 11.1 and 12.1 should be amended as follows:

After all ballots determined to have been received by the clerk by 8:00p.m. on election day, they shall be accepted or rejected pursuant to provisions of section seven of this rule.✓ Accepted ballots shall be processed as outlined in 9.3 of this rule, except that the ballots shall not be folded. The ballot box or boxes shall then be opened separately and all votes shall be tallied in the presence of the entire election board.

Again, thank you for the opportunity to comment. Should you have any questions regarding our recommendations, please contact me.

Sincerely,

Julie Archer
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COMMENTS CONCERNING the Proposed VOTE-by-MAIL PILOT

PROJECT Phase 2: Voting by Mail

- 1) §153-39-3.1.3: What are the costs of electronic voting, the capital costs of the machines, their rental, upkeep, storage, and programming as compared to simply going back to 100% hand-counted paper ballots? I propose a pilot program to hand-count one precinct of a mock election using an old-fashioned tally board (chalk/dry mark) and a simple folding table. Pay the citizen poll-workers instead of the secret corporate programmers. The old expression "KISS" is most likely the most cost effective. Try it and see.
- 2) §153-39-5.1: What if the ballot gets lost in the mail? Who will be held responsible and what remedies will be in place to appease voter disenfranchisement?
- 3) To the extent of our limited funds, the Constitution Party of West Virginia has recently purchased some select voter registration lists for use in statewide mailings and door-to-door ballot access petitioning. My personal experience with this is that up to one third of voter mailing addresses are **undeliverable**. Additionally, when people move, they tend not to inform the county clerk, so many addresses list several previous residents as still being active voters. This condition is particularly amplified in apartment units. Also, Berkeley, and some other counties allow voter registration to PO boxes which can suddenly close and then be reopened to new persons.
 - a) As with the proposed early voting-by-mail, there is going to be a tremendous waste of postage, materials, and labor involved with mailing ballots to every voter.
 - b) There will be a serious **security problem** regarding the **extra ballots** mailed to households as well as those placed in closed PO boxes which will be accessible to new boxholders. Are postal employees to be held liable for resultant voter fraud?
- 4) §153-39-5.1.11: Would not including candidate information pamphlets with ballots be considered electioneering and thus prohibited by law?
- 5) §153-39-5.1.9 and 6: Concerning locations and available hours of all **ballot deposit sites**, including those boxes placed outside and secured/tied down, it is blatantly clear that this presents a tremendous **security risk** to the integrity of the democratic process. Additionally, even if a viable security plan was conceived, it is clear that such a plan would cost an inordinate amount of money. Have the **taxpayers** of West Virginia been informed of these additional burdens? This entire section reeks of opportunity for tampering and vote fraud.
- 6) §153-39-7.4, 7.5, and 7.6: What formal training will be provided to these clerks so that they will have the skills to positively identify voter signatures without photo ID. Are **handwriting analysis** courses planned? What are the costs of such training?

SIGNATURE: _____

STATE OF WEST VIRGINIA, COUNTY OF Berkeley

The foregoing instrument was acknowledged before me this 24th day of July, 2009

By Jeffrey C. Becker

My commission expires 7/30/12



Jeffrey C. Becker
116 G and E Cir.
Inwood, WV 25428-5395



OFFICIAL SEAL
(Notary Public)
STATE OF WEST VIRGINIA
LAURA CAMPBELL
2081 DOMINION ROAD
GERRARDSTOWN, WV 25420
My Commission Expires July 30, 2012