

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #2

Do Not Mark In This Box

FILED

2005 JUN 29 A 8:15

OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Secretary of State TITLE NUMBER: 153

RULE TYPE: Legislative CITE AUTHORITY: §3-1-48

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: 11

TITLE OF RULE BEING PROPOSED: Public Testing of Ballot-Marking Voting Systems & Precinct
Ballot-Scanning Devices

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON July 29, 2005 AT 10:00 a.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

HAVA
Secretary of State
Building 1, Suite 157K
1900 Kanawha Boulevard E
Charleston, WV 25305-0770

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

#3.00

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

FILED

2005 JUN 29 A 8:15

SERIES 11
PUBLIC TESTING OF BALLOT-MARKING VOTING SYSTEMS AND PRECINCT BALLOT SCANNING DEVICES
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

§153-11-1. General.

1.1. Scope. -- To provide for ballot-marking voting systems and precinct ballot scanning the approval and use of various types of vote recording devices to be publicly tested in accordance with H.B. 2950 (2005).

1.2. Authority. -- W. Va. Code. § 3-4A-9a and 3-4A-9b.

1.3. Filing Date. -- _____, 2005.

1.4. Effective Date. -- _____, 2005.

§153-11-2. Definitions.

2.1. For the purposes of this rule:

2.1.a. "Ballot-marking accessible voting system" means a device which allows voters, including voters with disabilities, to mark an optical scanning or mark-sensing voting system ballot, privately and independently.

2.1.b. "Precinct ballot-scanning device" means a device used by the voter at the precinct on election day or during early voting for the purpose of scanning the voter's ballot after the ballot has been voted but prior to depositing the ballot into the ballot box.

§153-11-3. Implementation of Ballot-Marking Accessible Voting System.

Prior to the use of a ballot-marking accessible voting system in an election, the system shall be publicly tested in accordance with sections thirteen and seventeen, article four-A, chapter three of the West Virginia Code.

§153-11-4. Implementation of Precinct Ballot-Scanning Device.

Prior to the use of a precinct ballot-scanning device in an election, the device shall be publicly tested in accordance with sections thirteen and seventeen, article four-A, chapter three of the West Virginia Code.

§153-11-5. Procedures Manual for Using the Precinct Ballot-Scanning Device.

5.1. At least once annually, the Secretary of State shall provide a procedures manual for using the precinct ballot-scanning device in an election. The manual shall include a step-by-step procedure to be followed in the precinct where the device is being used.

5.2. Election officials shall carry out the procedures set out in the procedures manual when using the precinct ballot-scanning device in an election.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Public Testing of Ballot-Marking Voting Systems & Precinct Ballot-Sanning Device

Type of Rule: Legislative Interpretive Procedural

Agency: Secretary of State

Address: 157 Kanawha Boulevard E,
Charleston WV 25305-0770

Phone Number: (304) 558-6000

Email: wvsos@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.

*N/A - mandated
All HAVA costs will be borne by
Federal funding. There are no extraordinary
expenses to the state.*

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	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	- 0 -	- 0 -	- 0 -
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues	- 0 -	- 0 -	- 0 -

Rule Title: Public Testing of Ballot-Marking Voting Systems & Precinct Ballot-Sanning Device

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

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

N/A

Date: 6/28/05

Signature of Agency Head or Authorized Representative

John J. Ireland

PROPOSED LEGISLATIVE RULE §153-11

Public Testing of Ballot-Marking Voting Systems & Precinct Ballot-Scanning Devices

Brief Summary

This proposed rule allows a voting system that utilizes a ballot-marking device to be tested by the State Election Commission for possible inclusion on the list of systems eligible to be purchased for compliance with the Help America Vote Act of 2002.

It also allows for precinct-based ballot scanning devices to be used with an optical scan voting system, devices which will scan ballots for over-votes, not count votes.