

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

Form #7

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2005 JUN 29 A 8:30

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF AN EMERGENCY RULE**

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: §3-1-48

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 11

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

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary

  
Authorized Signature

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 -

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**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.

**EMERGENCY RULE QUESTIONNAIRE**

DATE: 6/29/2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Secretary of State

Building 1, Suite 157K

Charleston WV 25305 558-6000

EMERGENCY RULE TITLE: Public Testing of Ballot-Marking Voting Systems & Precinct Ballot-Scanning Devices

1. Date of filing June 29, 2005

2. Statutory authority for promulgating emergency rule:

§3-1-48

3. Date of filing of proposed legislative rule: June 29, 2005

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule? New Language from HB 2950

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the **immediate** preservation of public peace, health, safety or welfare.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

Mandated by HB 2950 to file as emergency

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

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