

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

Form #3

Do Not Mark In This Box

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2005 JUL 29 P 2:46

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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: §3-1-48

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

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

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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.

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 - <sup>mandated</sup> 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	current Increase/Decrease (use "-")	next 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

Betty S. Ireland

**TITLE 153  
LEGISLATIVE RULE  
SECRETARY OF STATE**

**SERIES 11  
PUBLIC TESTING OF BALLOT-MARKING VOTING SYSTEMS AND PRECINCT BALLOT-  
SCANNING DEVICES**

**§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.

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**§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.

**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: 7/29/2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Secretary of State Betty Ireland  
1900 Kanawha Blvd E  
Charleston WV 25305  
304-558-6000

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

1. Authorizing statute(s) citation §3-1-48

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:  
6/29/2005

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

c. Date of Public Hearing(s) *or* Public Comment Period ended:  
6/29/2005

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

Attached \_\_\_\_\_ No comments received   x

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

7/29/2005

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

Betty Ireland  
Secretary of State  
1900 Kanawha Blvd E  
Charleston WV  
558-6000 phone  
558-0900 fax  
wvsos@wvsos.com

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- 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)

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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.

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b. Date of hearing or comment period:

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

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d. Attach findings and determinations and reasons:

Attached 

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