

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

FILED

FEB 17 3 50 PM '94

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Secretary of State TITLE NUMBER: 153

RULE TYPE: Procedural; CITE AUTHORITY WV Code §3-1A-6

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 NEW RULE BEING PROPOSED: 17

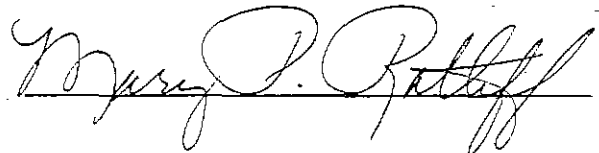
TITLE OF RULE BEING PROPOSED: Procedures for canvassing

lever voting machine elections

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 March 19, 1994 AT 12:00 noon. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Mary Ratliff, Deputy
Secretary of State
Bldg. 1, Suite 157K
1900 Kanawha Blvd. East
Charleston, WV 25305

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



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Procedures for canvassing lever voting machine elections
Type of Rule: Legislative Interpretive Procedural
Agency Secretary of State
Address Bldg. 1, Suite 157K
1900 Kanawha Blvd. East
Charleston, WV 25305-0777

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ n/a	\$	\$	\$	\$
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

n/a

3. Objectives of these rules:

n/a

Rule Title: Procedures for canvassing lever voting machine elections

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

n/a

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

n/a

C. Economic Impact on Citizens/Public at Large.

n/a

Date: 2/17/94

Signature of Agency Head or Authorized Representative

Mary P. Gathoff

BREIF SUMMARY OF THE PROPOSED PROCEDURAL RULE

This rule provides guidelines for the board of canvassers to use in canvassing the results of an election involving lever voting machines.

**TITLE 153
PROCEDURAL RULE
SECRETARY OF STATE**

**SERIES 17
PROCEDURES FOR CANVASSING LEVER VOTING MACHINE ELECTIONS**

§153-17-1. General.

1.1. Scope. -- This procedural rule provides guidelines for the board of canvassers to use in canvassing the results of an election involving lever voting machines.

1.2. Authority. -- W. Va. Code §3-1A-6

1.3. Filing Date. --

1.4. Effective Date. --

§153-17-2. Preparation.

2.1. Schedule the canvass on Friday after a primary election and on Monday after a general election.

2.2. A quorum of the commission must be present to conduct the canvass. Throughout this process the commission sits as the board of canvassers. If a quorum is not present, the meeting will stand adjourned until the next day. If the canvass cannot be completed in one (1) session, you may adjourn, but for no longer than absolutely necessary.

§153-17-3. Examining the Voting Machines.

3.1. Call the meeting the order at the place where the machines are stored. Any candidate or his party representative may be present at the canvass.

3.2. One (1) machine at a time, open the machine, examine the certificate of results from each precinct and compare the results reported with the tallies entered on the machines. Enter the true results of each machine on your record fro the precinct. Relock the machine.

3.3. After all the machines have been examined, adjourn the meeting to the commission room and resume the canvass.

§153-17-4. Canvassing Each Precinct.

4.1. Verification of votes cast.

a. Consider the precincts one at a time.

b. Open the poll book and determine the number of signed poll slips. (This can be determined from the printed numbers rather than a count.)

A. If the number equals the number of voters voting on the machine plus the number of challenged ballots, there is no need to recheck individual poll slips.

B. If the totals do not match, check whether the poll clerks entered the names of absentee balloters on the last few poll slips.

C. If you cannot resolve the difference, make a note of it in your record of the canvass of that precinct.

c. Examine the returns and determine whether the sum of the recorded votes of the several machines is equal to the number of votes reported on the official returns for the precinct.

d. Make an official record of your findings on the precinct, indicating that the comparison of the poll books and official returns showed the returns to be proper, or if any discrepancy was not resolved, a description of what you found.

e. Reseal the poll book.

4.2. Determining the challenged ballots.

a. Determine whether each challenged ballot is to be counted. Check the registration books for each person who is challenged for a reason relating to registration. The law allows you to ask election commissioners and clerks for evidence, if necessary, but you are not allowed to consider extrinsic evidence (such as a neighbor's testimony about a voter's residence). If you take testimony from the officials, it must be recorded.

b. Record a separate motion and the vote on the disposition of each ballot. If challenged ballots which were cast by eligible voters who voted challenged ballots only because of machine breakdown or because they had waited for a long period but could not remain in line to vote on the machine, segregate that group of ballots. Rule upon those ballots as a group, recording the names of each person in that category and whether their names appear on the registration record.

c. Before opening any envelopes, lay aside all ballots which are not to be counted.

d. If the precinct had challenged ballots voted only because of breakdowns or lines, count those ballots first. Open all the envelopes, remove the folded ballots, shuffle and intermingle the ballots before counting to preserve the secrecy, then tally those ballots.

e. For all ballots challenged on grounds of eligibility or other reasons, open the envelope of the first ballot to be counted, mark the envelope and the back of the ballot number 1. Proceed with the other envelopes and ballots from that precinct, marking them 2, 3, 4, etc.

f. Once all the ballots have been removed from the envelopes and both marked to correspond, turn the ballots over so the number does not show, and shuffle and intermingle them. Then, without turning them over to reveal the numbers, count the ballots, reshuffle them, then return each one to the envelope from which it came.

g. Add the votes counted in steps 4.2.d and 4.2.f to the original returns and record the results in the record of the canvass.

h. Reseal the registration books and an envelope containing the challenged ballots.

§153-17-5. Declaring the Results.

After the above procedures have been completed for each precinct, retotal the votes cast for each candidate in all precincts. Declare these totals, and enter each total into the record of the canvass. Announce the time (at least forty-eight (48) hours after the declaration), when the results will be certified if no recount is requested, then adjourn until that time.

§153-16-6. Certifying the Results.

If no recount is requested, enter the totals for each candidate in words and in figures on a certificate of results. Pass a motion to certify the results of the election and have each member of the canvassing board sign the certification. Issue a certificate of election to the winning candidates.

§153-16-7. Preparing for a Recount.

If a recount or contest is requested in one (1) race but not others, certify the results for the uncontested offices, and schedule a date for the recount to begin (no earlier than three (3) days after the notices are served). Prepare the proper notices of the recount and make arrangements for the sheriff to serve the notices within twenty-four (24) hours. The machines are not to be reexamined for redetermining the vote during a recount, but the counted challenged ballots may be recounted.