

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: §3-1A-6

RULE TYPE: PROCEDURAL INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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 ADOPTED: 17

TITLE OF RULE BEING ADOPTED: Procedures for Canvassing Lever Voting
Machine Elections

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS May 26, 1994

Ken Hechler

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**TITLE 153
PROCEDURAL RULE
SECRETARY OF STATE**

OFFICE OF WEST VIRGINIA
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 to begin on Friday after a primary election and on the fifth day, not counting Sunday, after a general election. If the fifth day falls on a Saturday or legal holiday, begin the canvass on the next business day.

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 and Receiving the Absentee Ballots.

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 for 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.

3.4. Receive from the clerk of the circuit court all absentee ballots, lists and other documentation as follows:

a. All absentee ballots postmarked by election day but received after the close of the polls, to be delivered in packets labeled with the precinct number, along with the original applications and a precinct list of such ballots;

b. All absentee ballots not postmarked by election day and received after the polls closed, to be delivered in a single packet, along with the original applications and a list of such ballots;

c. All challenged absentee ballots, to be delivered in packets by precinct, along with the original applications and a precinct list of such ballots; and

d. Certification by the circuit clerk that the voter registration records for each absentee voter have been checked and that all unchallenged absentee ballots were cast by voters properly registered.

3.5. Open the packet of absentee ballots without postmarks or with postmarks dated after election day and received after the polls closed, examine each envelope for the postmark and count the number of such ballots. Enter the number of ballot envelopes found with a late or absent postmark in the record of the canvass, return the envelopes to the packet and hold them to be sealed after the precincts have been

processed. If any ballot envelopes are found to contain a postmark dated on or before election day, place those envelopes with the proper precinct to be processed according to subsection 4.2.

§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. Receiving and processing absentee ballots arriving after election day.

a. Examine ballot envelopes for a postmark of election day or earlier. If the required postmark does not appear on an

envelope, place the unopened envelope in packet specified in section 3.5, and

b. If the certification of the circuit clerk required in subsection 3.4.d has not been received, compare the information on each absentee ballot envelope with voter registration records to assure the ballot may be counted.

c. Hold the envelopes until any challenged ballots have been determined, and count the valid absentee ballots in the same manner and along with the challenged ballots which are counted.

4.3. 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, or list the challenges in two (2) groups, those from which the challenges are to be removed along with the reason for removing the challenge, and those for which the challenges shall stand, and record a separate motion and the vote on each of the groups. 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. Include all absentee ballots accepted for counting under the provisions of 4.2.c.

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 4.3.d and 4.3.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.

§153-17-6. Certifying the Results.

6.1. If no recount is requested, prepare duplicate certificates of results for the primary election for each office and each party as required by W. Va. Code §3-5-17, or for the general election for each office as required by W. Va. Code §3-6-10. Enter the totals for each candidate in words and in numbers on the certificates.

6.2. Enter a motion to certify the results of the election and have each member of the canvassing board sign each certification.

6.3. For a statewide primary election, file one (1) original with the election records, and transmit the remaining original certificates of results as specified in W. Va. Code §3-5-18. For a statewide general election, file one (1) original with the election records, and transmit the remaining original certificates of results as specified in W. Va. Code §3-6-11 and issue a certificate of election to the winning candidates (for county offices or single county districts only). For both primary and general elections, transmit the original, if required, or a copy of each certificate to the Secretary of State.

§153-17-7. 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.