WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION

Form #3

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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: §3-1A-6

AMENDMENT TO AN EXISTING RULE: YES x NO ___

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 18

TITLE OF RULE BEING AMENDED: Procedures for Canvassing Elections

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ___

TITLE OF RULE BEING PROPOSED: ___

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.

Betty S. Ireland

Authorized Signature

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Procedures for Canvassing Elections

Type of Rule: [X] Legislative [ ] Interpretive [ ] Procedural

Agency: Jason Williams, Manager

Address: Elections
Secretary of State's Office
1900 Kanawha Boulevard E
Charleston WV 25305

Phone Number: 558-6000 Email: jwilliams@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.

This rule removes lever voting machines from this rule and has no fiscal impact

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	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: _____

Rule Title: Procedures for Canvassing Elections

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

No impact

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.

No impact

Date: 6/28/2006

Signature of Agency Head or Authorized Representative

Betty Ireland

OFFICE OF THE SECRETARY OF STATE
STATE OF WEST VIRGINIA

Betty Ireland
Secretary of State

This rule details procedures for the board of canvassers for canvassing the results of elections conducted with paper ballots, or electronically tabulated including optical scan ballots.

The amendments take out references to lever voting machines & punch card ballots.

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TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 18
PROCEDURES FOR CANVASSING ELECTIONS

§153-18-1. General.

1.1. Scope. -- This rule details procedures for the board of canvassers for canvassing the results of elections conducted with paper ballots, ~~lever voting machines,~~ or electronically tabulated ballots, including ~~punch card ballots and~~ optical scan ballots.

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

1.3. Filing Date. -- ~~April 22, 1996.~~

1.4. Effective Date. -- ~~June 7, 1996.~~

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§153-18-2. Definitions.

2.1. "Board of canvassers" or "board" means:

2.1.a. The county commission of each county for any statewide primary, general or special election held throughout the county, and for any other election conducted in conjunction with a statewide election using the same precincts and election officials;

2.1.b. The county commission of the affected county for any special election ordered by that Commission and held throughout all or part of that county, and for any other election conducted in conjunction with that county election using the same precincts and election officials;

2.1.c. The county commission and the board of education, jointly, for any special levy or bond election ordered by the board of education;

2.1.d. The municipal governing body for any primary, general or special election conducted by the municipal governing body entirely within the city and not held in conjunction with any county or state election.

2.2. "Canvass" means the proceeding required by law in which the materials, equipment and results of an election are reviewed, corrected and officially recorded prior to the certification of that election.

2.3. "Election" means any statewide primary, general or special election held under the provisions of the West Virginia Code throughout the state or any of its subdivisions.

2.4. "Electronically tabulated ballots" means ballots authorized under the provisions of W. Va. Code §3-4A et seq., including those ballots referred to as punch card and optical scan ballots, which are counted by means of electronic scanners or readers.

~~2.5. "Lever voting machines" means those mechanical vote recording devices authorized under the provisions of W. Va. Code §3-4 et seq. in which the votes cast are recorded on counters within the voting machine.~~

~~2.6.~~ 2.5. "Paper ballots" means ballots authorized under the provisions of W. Va. §3-1 et seq. Code which are counted by hand.

§153-18-3. Preparation.

3.1. The governing body constituting the board of canvassers shall schedule the canvass to begin on the Friday immediately following 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, the canvass shall begin on the next business day.

3.1.a. For a canvass conducted by the county commission or a joint canvass conducted by the county commission and board of education, the canvass shall be held at the county courthouse; except that, for an election conducted with lever voting machines, the canvass shall be convened at the place of storage of the voting machines in order to perform the review required under section 7.

3.1.b. For a canvass conducted by a municipal governing body, the canvass shall be held at city hall.

3.2. A quorum of the governing body constituting the board of canvassers, or in the case of a joint board of canvassers as prescribed in 2.1.c., a quorum of each governing body, must be present to conduct the canvass.

3.2.a. If a quorum of the governing body, or each governing body, is not present, the meeting will stand adjourned until the next business day.

3.2.b. If the canvass cannot be completed in one day, the board of canvassers may adjourn until the next day, and so on from day to day until the canvass is completed and the results declared.

3.3. The board of canvassers may utilize regular or temporary personnel to assist with the canvass, but all procedures must be conducted under the supervision of a quorum of the board.

3.4. The presiding officer of the governing body shall act as the presiding officer of the board of canvassers.

3.5. The clerk of the county commission for canvasses conducted by the county commission, or the municipal clerk or recorder for canvasses conducted by the municipal governing body, shall assist the board of canvassers.

3.6. The officers having custody of the materials and equipment of the election shall bring it before the board at the proper time, as follows:

3.6.a. When paper ballots were used, the ballot boxes, all packages of voted, unused, spoiled and challenged ballots, the pollbooks, tally sheets, precinct return certificates, official registration records, and cumulative returns;

3.6.b. For canvasses of electronically tabulated ballot elections, the ballot boxes, all packages of tabulated, spoiled, challenged and any unused ballots, the pollbooks, official registration records, voting devices, tabulating equipment, and computer printouts of the unofficial tabulation of the ballots for each precinct and any supplementary tabulations such as tally sheets of hand counted ballots with write-in votes prepared on election night; and

~~3.6.c. For canvasses of lever voting machine elections, following the examination of the voting machines at the place where they are stored, according to the procedures outlined in section 7, the packages of challenged, unused, and voted paper ballots used in conjunction with the election, the pollbooks, official registration records, the precinct return certificates, and the cumulative returns.~~

§153-18-4. Order of Canvassing Procedures by Voting System.

4.1. For canvasses of elections conducted with paper ballots, the board of canvassers shall proceed with steps outlined in sections 5, 6, 9, 10 and 11, in that order.

4.2. For canvasses of elections conducted with electronically tabulated ballots, the board of canvassers shall proceed with steps outlined in sections 5, 6, 8, 9, 10 and 11, in that order.

4.3. For canvasses of elections conducted with lever voting machines, the board of canvassers shall proceed with steps outlined in sections 7, 5, 6, 9, 10 and 11, in that order.

§153-18-5. Receiving the Absentee Ballots for All Voting Systems.

5.1. The clerk responsible for absentee voting for the election shall deliver to the board of canvassers all absentee ballots, lists and other documentation as follows:

5.1.a. All absentee ballots postmarked on or before election day but received after delivery to the polls, along with the original applications and a precinct list of those ballots, to be delivered in packets labeled with the precinct number;

5.1.b. All absentee ballots challenged by the circuit clerk, along with the original applications and a precinct list of those ballots, to be delivered in packets by precinct; and

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

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

5.2. The board of canvassers shall open the packet of absentee ballots with late or missing postmarks received after the polls have closed, as described in subdivision 5.1.c. The board shall then:

5.2.a. Examine each absentee envelope for the postmark;

5.2.b. Count and record in the record of the canvass the number of ballot envelopes found with a late or missing postmark, return the envelopes to the packet and hold them to be sealed after the precincts have been processed; and

5.2.c. Place any ballot envelopes found to contain a postmark dated on or before election day with the materials from the proper precinct to be processed utilizing the step procedures issued by the Secretary of State according to subsection 6.1.

§153-18-6. Canvassing Each Precinct.

6.1. At least once annually, and not less than 15 days before the first election held in that calendar year, the Secretary of State shall provide a step procedures manual for canvassing individual precincts to each governing body responsible for canvassing the returns of that election.

6.1.a. The manual shall include detailed descriptions of the steps required to verify the accuracy of the "Statement of Ballots Used", the steps required for processing absentee ballots as provided in subsections 5.1.a. and 5.2.c., and the steps required for determining the disposition of the challenged ballots.

6.1.b. The manual shall include worksheets for the board of canvassers to record the findings relating to each precinct and to enter the tallies of challenged or absentee ballots counted by the board of canvassers and added to the unofficial results.

6.2. In canvassing the precincts, the board of canvassers shall perform the step procedures and complete the worksheets for each precinct, considering one precinct at a time.

~~**§153-18-7. Special Canvassing Procedures for Elections Conducted with Lever Voting Machines.**~~

~~7.1. Immediately after convening the canvass and before canvassing the individual precincts as provided in section 5 of this rule, the board of canvassers shall examine each voting machine, with only one machine open at a time.~~

~~7.1.a. The board shall first compare the number of the machine and the number of the external counter with the corresponding numbers entered on the precinct return sheet.~~

~~7.1.b. The board shall then open the back of the machine and read the tallies recorded on the counters for each position and compare those numbers with the results recorded on the precinct returns. If the numbers differ, the board shall enter the true numbers on the precinct returns in red ink, and relock the machine.~~

~~7.2. Any candidate or that candidate's party representative may observe the reading and recording of the tallies during the examination of the voting machines.~~

§153-18-8. Special Canvassing Procedures for Elections Conducted with Electronically Tabulated Ballots; Hand Counting Five Percent (5%) of Precincts.

8.1. The board of canvassers shall tally by hand the ballots of a number of precincts equal to five percent of the total number of precincts in the jurisdiction, not fewer than one precinct, and with fractions rounded to the nearest whole number, as in the following table.

When the total precincts equal:	Count the ballots of:
1 - 29	One precinct
30 - 49	Two precincts
50 - 69	Three precincts
70 - 89	Four precincts
90 - 109	Five precincts
110 - 129	Six precincts
130 - 149	Seven precincts
150 - 169	Eight precincts
170 - 189	Nine precincts

8.2. The board shall identify the precincts to be counted by random selection, such as by drawing, and may not arbitrarily select.

8.3. In order to reduce the potential for error, the tally should be made with two persons reading out the votes cast on each ballot, and two other should separately record the votes read.

8.4. After the hand count of each precinct is recorded, the board shall compare the recorded tallies with the tabulated results of the same precincts.

8.5. If the difference between the tabulated results of the randomly selected precincts and the hand counted results of the same ballots is more than 1% of the total votes cast, all precincts must be hand counted.

153-18-9. Declaring the Results.

9.1. After the canvassing procedures have been completed for all precincts, the board shall re-total the votes cast for each candidate and for or against every issue. The board shall then declare

the resulting totals and enter each total into the record of the canvass.

9.2. The board shall also announce the place and time, which shall be scheduled at least forty-eight (48) hours after the declaration, of the meeting at which the results will be certified if no recount is requested, and shall then adjourn until that time.

§153-18-10. Certifying the Results.

10.1. If no recount is demanded according to the requirements of law, the board shall prepare duplicate certificates for a primary election for each office and each party, and for the general election for each office and ballot issue, with the total votes for each candidate or question entered in words and numbers on the certificates. In the general election, the certificates for federal, statewide, legislative and judicial offices shall be prepared in triplicate originals.

10.2. The board shall take official action to certify the results of the election, and each member of the canvassing board shall sign each certificate.

10.3. The board of canvassers shall transmit certificates for a primary election within thirty (30) days from the election, or within thirty (30) days from the completion of a recount if one is requested, as follows:

10.3.a. One of each original shall be filed with the election records of the county commission, or of the municipal governing board for a municipal primary election.

10.3.b. For candidates on the ballot only within the county, including single county districts, county offices and county executive committee, one of each original shall be filed with the clerk of the circuit court, and one copy of each shall be filed with the Secretary of State.

10.3.c. For candidates on the ballot in more than one county, one of each original shall be filed with the Secretary of State.

10.3.d. For issues on the ballot, one of each original shall be filed with the Secretary of State.

10.3.e. Upon request of the chairman of the political party executive committee of the county, a certificate showing the number of votes received by each of the candidates of the party in the county or any magisterial district therein.

10.3.f. For municipal elections, one of each original shall be filed with the municipal recorder or clerk.

10.4. The board of canvassers shall transmit certificates for a general election within thirty (30) days from the election, or within thirty (30) days from the completion of a recount if one is requested, as follows:

10.4.a. One of each original shall be filed with the election records of the county

commission, or of the municipal governing board for a municipal primary election.

10.4.b. One certificate shall be mailed to each candidate voted for on the ballot.

10.4.c. For candidates for President and Vice President, United States Senator, United States House of Representatives, Justice of the Supreme Court of Appeals, and judge of circuit court shall be filed with the Governor, and one copy of each shall be filed with the Secretary of State.

10.4.d. For candidates for statewide office, except Justice of the Supreme Court of Appeals, and candidates for State Senate and House of Delegates, one of each original shall be filed with the Secretary of State.

10.4.e. For issues on the ballot, one of each original shall be filed with the Secretary of State.

§153-18-11. Preparing for a Recount.

11.1. If a recount is requested by any candidate, the board of canvassers shall proceed to certify the results for all offices and issues not subject to the recount request.

11.2. For any office in which a recount has been properly requested and a bond posted, the board shall immediately schedule a date for the recount to begin, which shall be no earlier than three days after the notices are served.

11.3. The board shall prepare the proper notices for the recount proceeding and make arrangements with the sheriff to serve the notices on each of the other candidates in the race in which the recount has been requested within twenty-four (24) hours following the meeting held for the purpose of certifying the 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: July 28, 2006

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:(*Agency Name, Address & Phone No.*) Secretary of State
Elections Division
Suite 157K, Building 1
Charleston WV

558-6000 jwilliams@wvsos.com

LEGISLATIVE RULE TITLE: Procedures for Canvassing Elections

1. Authorizing statute(s) citation §3-1A-7

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

June 28, 2006

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

None

c. Date of Public Hearing(s) ***or*** Public Comment Period ended:

July 28, 2006

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)

July 28, 2006

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

Jason Williams, Manager
Elections Division
Secretary of State
1900 Kanawha Blvd E
Charleston WV

jwilliams@wvsos.com
558-6000
Fax 558-0900

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)

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.

N/A

b. Date of hearing or comment period:

N/A

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

N/A

d. Attach findings and determinations and reasons:

Attached N/A