

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
**KEN HECHLER**  
**ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In this Box

**FILED**

JUL 28 1 27 PM '95

OFFICE OF 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  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 18

TITLE OF RULE BEING AMENDED: PROCEDURES FOR CANVASSING ELECTRONIC  
BALLOT ELECTIONS USING PUNCH CARD OR OPTICAL SCAN BALLOTS

IF NO, SERIES NUMBER OF NEW 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.

*Ken Hechler*

4.40

## STATEMENT OF CIRCUMSTANCES

TITLE 153, SERIES 18

This rule was promulgated as a procedural rule in 1994, after having been first issued as procedural guidelines in 1988 (only for punch card ballots). These procedures have been in use since the Primary Election of 1988, with modifications in 1994 to include optical scan ballots. It is being refiled according to the requirements of S. B. 573 (1995).

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Procedures for Canvassing Electronic Ballot Elections Using Punch Card or Optical Scan Ballots

Type of Rule:  Legislative  Interpretive  Procedural

Agency Secretary of State

Address Building 1, Rm. 157-K

1900 Kanawha Blvd., E.

Charleston, WV 25305-0770

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$0	\$0	\$0	\$0	\$0
PERSONAL SERVICES					
CURRENT EXPENSE					
REPAIRS & ALTERATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

N/A

3. Objectives of these rules:

N/A

Rule Title: Procedures for Canvassing Electronic Ballot Elections  
Using Punch Card or Optical Scan Ballots

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: June 22, 1995

Signature of Agency Head or Authorized Representative

*Alan Hechler*

DATE: JULY 28, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: MARY RATLIFF, DEPUTY SECRETARY OF STATE

LEGISLATIVE RULE TITLE: PROCEDURES FOR CANVASSING ELECTRONIC BALLOT ELECTIONS  
USING PUNCH CARD OR OPTICAL SCAN BALLOTS

1. Authorizing statute(s) citation \_\_\_\_\_

§3-1A-6

2. a. Date filed in State Register with Notice of Hearing

JUNE 23, 1995

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

N/A

c. Date of Hearing(s) \_\_\_\_\_

JULY 24, 1995

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, 1995

f. Name and phone number(s) of agency person(s) to contact for additional information:

MARY RATLIFF

558-6000

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

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b. Date of hearing:           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

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d. Attach findings and determinations and reasons:

Attached           N/A

## SUMMARY

TITLE 153, SERIES 18

This proposed legislative rule sets out the guidelines and steps required in order to conduct a canvass of an election in which punch card or optical scan ballots are used according to the requirements of West Virginia Code §3-4A-28 and §3-6-9.

FILED

JUL 28 1 27 PM '95

TITLE 153  
PROCEDURAL RULE  
SECRETARY OF STATE

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 18  
PROCEDURES FOR CANVASSING ELECTRONIC BALLOT ELECTIONS  
USING PUNCH CARD OR OPTICAL SCAN BALLOTS

**§153-18-1. General.**

1.1. Scope. -- This procedural rule provides guidelines for the board of canvassers to use in canvassing the results in elections involving punch card ballots.

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

1.3. Filing Date. -- April 26, 1994

1.4. Effective Date. -- May 26, 1994

**§153-18-2. 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 session, you may adjourn, but for no longer than absolutely necessary.

2.3. Call the meeting to order and have the returns of the election, the tabulating and voting devices and the ballot boxes brought in.

2.4. 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.

2.5. 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 3.2.

**§153-18-3. Canvassing Each Precinct.**

3.1. Verifying the statement of ballots used.

a. Consider only one precinct and have only one ballot box open at a time.

b. Open the ballot box and lay the "Statements of Ballots Used," the envelopes of spoiled, challenged, voted and unused (if any) ballots, the absentee envelopes and applications, and the poll book and the registration books before the canvassing board. (The unused ballots for any precinct in which the count of voted and unused ballot or ballot cards was verified at the central counting center will have been destroyed on election night.)

c. Compare the total number of regular plus absentee ballots deposited on the "Statement of Ballots Used" (SBU) with the total number of ballots tabulated. If the totals are not equal, count the number of voted ballots.

d. Open the spoiled ballot envelope and count the number of spoiled ballots. Compare that number to the SBU.

e. Open the challenged ballot envelope and count the number of challenged ballots. Compare that number to the SBU.

f. Count the number of absentee ballot envelopes (except any which were challenged) and compare that number to the SBU.

g. 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 regular and absentee ballots deposited plus the number of challenged ballots (do not include spoiled ballots), there is no need to recheck.

B. If the totals do not match, first check whether the poll clerks entered the names of absentee voters on the last few poll slips. If that does not resolve the difference, check whether persons voting spoiled ballots signed two (2) poll slips instead of only one.

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

h. If the counting center staff found a discrepancy between the number of unused ballots returned and the number on the SBU, see if any of the counting you have done so far will help resolve the discrepancy. If not, recheck the number of unused ballots.

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

j. Reseal the voted ballot and spoiled ballot envelopes and have each member of the board sign the seal. Reseal the poll book.

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.

3.2. 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 2.5, and

b. If the certification of the circuit clerk required in subsection 2.4.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.

3.3. 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.)

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.

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

d. Open the outer envelope of the first ballot to be counted, mark the outer envelope and the front of the inner envelope with the number 1. Proceed with the other envelopes from that precinct, marking them 2, 3, 4, etc. 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 3.2.c.

e. If the ballot or ballot cards are to be counted by electronic tabulating equipment, shuffle the inner envelopes, open them one by one, remove the ballot or ballot card and number the back of the ballot or ballot card to correspond to the inner and outer envelope from which it came. Tabulate all such ballots from a precinct at one time and not separately, to protect the secrecy of the ballots. Return the ballots to their original envelopes.

f. If the ballot or ballot cards are to be counted by hand, once all the inner envelopes have been removed from the outer envelopes and both marked to correspond, turn the inner envelopes over, and shuffle and intermingle them. Then open the inner envelopes one by one without turning the envelope over to reveal the number, count the ballot and return it to the inner envelope from which it came.

g. Add the votes counted to the original returns and record that information in the record of the canvass.

h. Reseal the registration books.

3.3. Checking the vote recording devices for punch card systems only.

a. Open each vote recording device used in the precinct.

b. Using a sample ballot, compare the ballot labels in the device with the sample. If they are the same, and if the ballot labels are properly lined up with the punch holes, close and reseal the device. If a ballot label is found to be different, or damaged or defaced in some way, make a record of your findings, including the number of the defective device.

#### **§153-18-4. Handcounting Five Percent (5%) of Precincts.**

4.1. Determine how many precincts must be handcounted. Use the following table:

1-29	One precinct
30-49	Two precincts
50-69	Three precincts
70-89	Four precincts, etc.

In other words, no less than one and round up from .5)

4.2. Decide how to make the random selection. For example, put all the precinct numbers in a hat and draw. You cannot just arbitrarily choose which ones to hand count.

4.3. Two (2) people should examine each ballot, reading out the votes cast on optical scan ballots or position numbers punched on punch card ballots, and two (2) others should separately record the votes or numbers read.

4.4. Record the results from each precinct in the had counted precincts. Compare these with

the tabulated results from the same precincts. If there is more than one percent (1%) difference, all precincts must be hand counted.

notices of the recount and make arrangements for the sheriff to serve the notices within twenty-four (24) hours.

**§153-18-5. 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.

**§153-18-6. 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.

**§153-18-7. 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

KEN HECHLER  
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**STATE OF WEST VIRGINIA**

**SECRETARY OF STATE**

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WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

PENNEY BARKER  
Supervisor, Corporations

(Plus all the volunteer  
help we can get)

JULY 28, 1995

NO COMMENTS WERE RECEIVED, THEREFORE NO CHANGES WERE MADE