

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

Do Not Mark In this Box

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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: _____

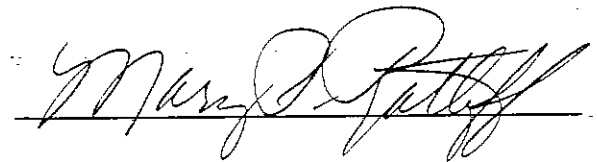
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 18

TITLE OF RULE BEING PROPOSED: Procedures for canvassing electronic
ballot elections using punch card or optical scan ballots

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 25305-0770

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 electronic ballot elections using punch card or optical scan ballots
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
ESTIMATED TOTAL COST	\$	\$	\$	\$	\$
PERSONAL SERVICES	n/a				
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 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.

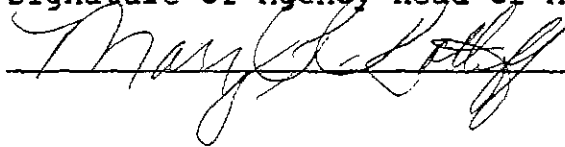
n/a

C. Economic Impact on Citizens/Public at Large.

n/a

Date: 2/18/94

Signature of Agency Head or Authorized Representative



**TITLE 153
PROCEDURAL RULE
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. --

1.4. Effective Date. --

§153-18-2. 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 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.

§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 balloters 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.

3.2. 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.)

b. Record a separate motion and the vote on the disposition of each ballot.

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.

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.

§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.

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.

§153-18-7. 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 notices of the recount and make arrangements for the sheriff to serve the notices within twenty-four (24) hours.