

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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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 §§3-6-5, 3-4A-27, 3-1A-6, 3-6-4a

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: 27

TITLE OF RULE BEING PROPOSED: PROCEDURES FOR HANDLING BALLOTS AND
COUNTING WRITE-IN VOTES IN COUNTIES USING PUNCH CARD OR OPTICAL SCAN
BALLOTS

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

STATEMENT OF CIRCUMSTANCES

TITLE 153, SERIES 27

This proposed rule was issued as a procedural guideline in 1994 and used in the 1994 elections by counties using punch card and optical scan ballots. It is being filed to insure the application of uniform ballot counting procedures as required by West Virginia Code §3-4A-27 and §3-6-5.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Procedures for Handling Ballots and Counting Write-in
Votes in Counties 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	HEREAFTER
<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 Handling Ballots and Counting Write-in
Votes in Counties 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

Tom Hubler

DATE: JULY 26, 1995

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: MARY RATLIFF, DEPUTY SECRETARY OF STATE

LEGISLATIVE RULE TITLE: PROCEDURES FOR HANDLING BALLOTS AND COUNTING WRITE-IN

1. Authorizing statute(s) citation VOTES IN COUNTIES USING PUNCH CARD OPTICAL SCAN BALLOTS

§§3-6-5, 3-4A-27, 3-1A-6, 3-6-4a

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 26, 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 _____

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 _____

d. Attach findings and determinations and reasons:

Attached _____ N/A _____

SUMMARY

TITLE 153, SERIES 27

This proposed legislative rule sets out the guidelines and steps required in order to process punch card and optical scan ballots containing write-in votes. These special procedures result from the inability of the electronic tabulator to determine the intention of the voter in certain cases when write-in votes are attempted, including straight-ticket voting and potential over-voting.

FILED

TITLE 153
PROCEDURAL RULES
SECRETARY OF STATE

JUL 26 2 21 PM '95

SERIES 27
PROCEDURES FOR HANDLING BALLOTS AND COUNTING WRITE-IN
VOTES IN COUNTIES USING PUNCH CARD OR OPTICAL SCAN BALLOTS

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§153-27-1. General.

1.1. Scope. – This rule provides guidelines for the counting of write-in votes in counties that use the punch card or optical scan ballot systems.

1.2. Authority. – WV Code §§3-1A-6, 3-4A-27, 3-6-4a, and 3-6-5

1.3. Filing Date. –

1.4. Effective Date. –

§153-27-2. Definitions.

2.1. "Official write-in candidate" means one who has filed a write-in candidate's certificate of announcement, paid the filing fee, and has been certified according to the provisions of West Virginia Code §3-6-4a.

2.2. "Attempted write-in vote" means any punch or mark in a write-in voting position on a ballot or any writing, stamping or attaching by sticker of a name in the position provided for write-in votes to be entered for the voting system.

2.3. "Valid write-in vote" means a vote cast for an official write-in candidate which by permitted means which includes the following elements:

2.3.1. a punch or mark in the voting position specified for write-in votes for the office;

2.3.2. an entry of the name of the official write-in candidate in the proper location, which shall include the first name, or last name, or both first and last names in such a way that the intention of the voter can be determined; and

2.3.3. for punch card systems, an entry of the name of the office for which the write-in vote is cast in the proper location.

2.4. The "proper location for entering a write-in vote" shall mean:

2.4.1. for punch card systems, in any position on the inside of the grey secrecy envelope; and

2.4.2. for optical scan systems, on or near the blank line labeled "WRITE-IN, IF ANY" positioned under the office for which the vote is cast.

2.5. "Overvote" means a combination of votes for an office which results in the voter casting more votes for that office than there are persons to be elected. For example, a person who marks one party nominee and also casts an attempted write-in vote for the same office and only one person is to be elected has "overvoted," whether or not the write-in vote can be counted.

2.6. "Central counting center" means the room in the county courthouse where the ballot boxes are opened and the ballots processed and tabulated on election night.

2.7. "Inspection team" or "ballot box team" means two persons, one from each major political party, appointed and deputized according to §3-4A-27 by the clerk of the county commission for the purpose of opening ballot boxes, verifying the statement of ballots used, and for punch card voting systems, separating ballots with attempted write-in votes from ballots without attempted write-in votes, and for ballots without attempted write-in votes, separating the ballot cards from the grey secrecy envelopes.

2.8. "Write-in counting team" or "counting team" for punch card systems means two persons, one from each major political party, appointed and deputized according to §3-4A-27 by the clerk of the county commission for the purpose of examining ballots containing attempted write-in votes, determining which of those votes are valid write-in votes, and determining whether the punch card must be duplicated or hand counted in order to tabulate the remaining offices accurately.

2.9. "Write-in counting team" or "counting team" for optical scan systems means two persons, one from each major political party, appointed and deputized according to §3-4A-27 by the clerk of the county commission for the purpose of examining ballots containing attempted write-in votes, determining which of those votes are valid write-in votes, and determining whether the ballot must be temporarily altered or duplicated in order to tabulate the remaining offices accurately.

2.10. "Resolution team" means two persons, one from each major political party, appointed and deputized according to §3-4A-27 by the clerk of the county commission of a county using an optical scan voting system, for the purpose of examining ballots isolated by the tabulator because of damages, flaws, unreadable marks, or other defects, determining and determining whether the ballot must be duplicated or hand counted in order to tabulate the ballot accurately.

§157-27-3. Casting and Counting Write-in Votes.

3.1. Valid write-in votes may be cast and counted for the election for any official write-in candidate for election to an office or party position other than Delegate to National Convention, but not for the nomination of any candidate. Write-in votes for any person or name other than an official write-in candidate shall be disregarded.

3.2. An attempted write-in vote shall be counted when the write-in counting team or resolution team finds the vote meets the conditions of a "valid write-in vote" as defined in Section 2.3 of this rule and does not create an overvote for the office.

3.3. Acceptable means of making a write-in vote include printing or writing with pen or pencil, imprinting with an inked rubber stamp, and attaching a sticker or gummed label.

3.4. In punch card voting systems, an attempted write-in vote found on a grey secrecy envelope which does not contain a punch card ballot signed by the poll clerks shall be disregarded.

§153-27-4. Procedures for Punch Card Ballots.

4.1. The clerk of the county commission shall appoint as many inspection teams as are needed to efficiently complete the procedures for all precincts in the county.

4.2. After taking into consideration the number of official write-in candidates and the anticipated write-in voting in the county, the clerk of the county commission shall appoint as many write-in counting teams as are needed to efficiently complete the procedures and prevent delays in completing the count for all precincts in the county.

4.3. Each inspection team shall use the following procedures for examining ballots and separating punch card ballot cards from grey secrecy envelopes:

4.3.1. They shall handle the ballots of only one precinct at a time, so as not to intermingle the ballots of various precincts;

4.3.2. They shall examine each envelope for attempted write-in votes before removing the ballot card.

a. The inspection team shall not remove the ballot card from any grey secrecy envelope on which a name is entered on either the secrecy envelope or the ballot card as an attempted write-in vote.

b. If no name is entered on either the secrecy envelope or the ballot card as an attempted write-in vote, the inspection team shall remove the ballot card for tabulation, without regard to whether a punch was entered in any write-in position on the

ballot. The tabulator program will properly reject any straight-ticket vote or overvote if a write-in position is punched.

4.3.3. When all grey secrecy envelopes from a specified precinct have been examined, all secrecy envelopes containing a write-in vote and a ballot card shall be banded and clearly labeled with the number of the precinct;

4.3.4. All ballots not containing names entered as attempted write-in votes shall be separated from the grey secrecy envelopes, and the ballots and envelopes shall be separately banded and clearly labeled with the precinct number;

4.3.5. Any grey secrecy envelope found in the ballot box which contains an attempted write-in vote but does not contain a valid ballot signed by the poll clerk's shall be placed together in an envelope marked with the precinct number and the words "Secrecy envelopes found without ballots" and delivered as directed by the clerk of the county commission, to be placed with the precinct ballots and materials delivered to the canvassing board;

4.3.6. All packages of ballots and envelopes from a precinct shall be delivered to a write-in counting team, except when no secrecy envelopes containing a punch card ballot and an attempted write-in vote have been found by the inspection team.

4.4. Each write-in counting team shall proceed as follows:

4.4.1. They shall handle the ballots of only one precinct at a time;

4.4.2. They shall assign a write-in number to each ballot containing a write-in vote within each precinct.

a. The write-in numbers for each precinct shall begin with one (1) and continue in sequence through all write-in ballots in that precinct. [For example, if there are ten (10) ballots with write-in votes for a precinct, the write-in numbers assigned would begin with one (1) and end with ten (10).]

b. Before counting any punch card ballot containing a write-in vote, they shall take the ballots one by one and mark the grey secrecy envelope and the corresponding ballot with the same precinct and write-in number.

4.4.3. After all ballot cards and envelopes are numbered, they shall examine the ballots and envelopes one by one in order to determine whether the write-in vote shall be counted and whether any duplication of the ballot is necessary.

a. They shall first examine the attempted write-in vote to determine whether the name of an office to be filled in that election is given. If not, the attempted

vote shall be disregarded, the envelope placed in the stack of invalid write-ins, and the punch card placed in the stack to be tabulated. If an office to be filled is named, they shall proceed to the next step, 4.4.3b.

b. They shall then determine if the vote is entered in the proper place for write-in votes. If the name is entered in the proper location, they shall proceed to the next step, 4.4.3c. If not, the ballot shall be reviewed as an invalid write-in, step 4.4.3e. or 4.4.3f.

c. They shall determine whether the vote is a valid write-in vote, that the name entered is the name of an official write-in candidate for the office entered, and whether the write-in voting position for that office is punched. Where more than one person is to be elected to an office, a single write-in punch shall suffice for more than one write-in vote for that office.

d. If the vote is a valid write-in vote, they shall also examine the punch card to determine whether the voter made an overvote, as defined in section 2.5 of this rule. overvote.

A. If there is no overvote, a tally mark shall be entered on the write-in record sheet for the precinct, the envelope placed in the stack of valid write-ins, and the ballot card stacked for the tabulator.

B. If there is an overvote, the mark "OV" shall be made in large letters on the envelope which shall then be placed in the stack of invalid write-ins, and the ballot card stacked for the tabulator. The tabulator program will cause the other votes to be rejected.

e. If the vote is not a valid write-in vote because the name is not that of an official write-in candidate for the office or it is not placed in the proper position, but the write-in position for the office is punched, the envelope shall be placed in the stack of invalid write-ins, and the punch card placed in the stack to be tabulated.

f. If the vote is not a valid write-in vote because the write-in position for the office is not punched, they shall also examine the punch card to determine whether the voter's intention for that office is clear.

A. If the attempted write-in would not have caused an overvote and the ballot contains no straight ticket vote, the voter's intention is clear. The envelope and original ballot shall be placed in the stack of invalid write-ins and the punch card placed in the stack of ballots to be tabulated.

B. If the attempted write-in would have caused an overvote or would have caused a straight ticket vote to be rejected for that office had the vote been a

valid write-in, the voter's intention is not clear. The write-in team shall duplicate the ballot according to the provisions of West Virginia Code §3-4A-27(d), and punch the write-in position so as to cause the tabulator to reject the overvote or straight ticket vote. The envelope shall be placed in the stack of invalid write-ins, the original ballot in a stack of ballots duplicated and the duplicate punch card placed in the stack of ballots to be tabulated. [Note: If the straight ticket party has a vacancy on the ballot for the write-in office which meant the write-in would not have caused an overvote, or if the straight ticket party has no nominee for the office, the card may be counted by the electronic tabulator without duplication.]

4.4.4. For each precinct, a careful tally of write-in votes under this procedure shall be kept by each deputized person designated to count ballots containing write-in votes;

4.4.5. After all ballots for the precinct have been processed, the stack of grey secrecy envelopes and all ballots banded and labeled or sealed according to the detailed step procedures incorporated herein, the write-in team shall deliver the ballots to be tabulated and the write-in tally sheets to a designated person, and shall place all other materials in a location specified by the clerk of the county commission, to be kept secure until the canvass.

4.5. As soon as practical after the tabulation of the precinct, the tally of all tabulated ballots and write-in votes for official write-in candidates shall be posted for public inspection.

§153-27-5. Procedures for Optical Scan Ballots.

5.1. The clerk of the county commission shall appoint the following teams of persons to process ballots at the central counting center:

5.1.1. As many inspection teams as are needed to efficiently sort the incoming ballots and complete the procedures for all precincts in the county;

5.1.2. As many write-in counting team as are needed to efficiently review the ballots containing attempted write-in votes and to complete the procedures for all precincts in the county.

5.1.3. One more resolution teams as needed to efficiently complete the procedures and prevent delays in completing the tabulation for all precincts in the county.

5.2. Each inspection team shall handle the ballots of only one precinct at a time, so as not to intermingle the ballots of various precincts, remove the ballots from the ballot box, sort the ballots into stacks of ballots with write-in votes and ballots without write-in votes, and complete any other procedures required or directed by the clerk of the county commission.

5.3. Each write-in counting team shall proceed as follows:

5.3.1. They shall handle the ballots of only one precinct at a time.

5.3.2. They shall examine the ballots containing attempted write-in votes one by one in order to determine whether the write-in vote shall be counted and whether any temporary alteration or duplication of the ballot is necessary.

a. They shall determine whether any official write-in candidates have filed for offices on the ballot in the precinct under consideration. If there are official candidates, they shall proceed to the next step, 5.3.2b. If not, the ballot shall be reviewed as an invalid write-in, step 5.3.3b or c.

b. They shall examine the attempted write-in vote to determine whether the name of an office to be filled in that election is given. If not, the attempted vote shall be disregarded, and the ballot placed in the stack to be tabulated. If an office to be filled is named, they shall proceed to the next step, 5.3.2c.

c. They shall then determine if the vote is entered in the proper place for write-in votes. If the name is entered in the proper location, they shall proceed to the next step, 5.3.3. If not, the ballot shall be reviewed as an invalid write-in, step 5.3.3b or c.

5.3.3. They shall examine the write-in vote to determine if it is a valid write-in vote, as defined in section 2.3 of this rule.

a. If the counting team finds the entry is a valid write-in vote, they shall then examine the ballot to determine whether the voter has overvoted for the office for which the write-in vote was cast.

A. If there is no overvote, a tally mark shall be entered on the write-in record sheet for the precinct, and the ballot placed in the stack to be tabulated.

B. If there is an overvote, no tally mark shall be entered, and the ballot placed in the stack to be tabulated.

b. If the counting team finds the write-in position was marked but the name entered is not an official write-in candidate, they shall place the ballot placed in the stack to be tabulated.

c. If the counting team finds the write-in position was not marked, they shall then examine the ballot to determine whether the voter's intention for the office is clear.

A. If the attempted write-in would not have caused an overvote had it been a valid vote and the ballot contains no straight ticket vote, the voter's intention is clear. The ballot shall be placed in the stack to be tabulated.

B. If the attempted write-in would have caused an overvote or would have caused a straight ticket vote to be rejected for that office had the vote been a valid write-in, the voter's intention is not clear. The write-in team shall place a black sticker over the write-in position or duplicate the ballot according to the provisions of West Virginia Code §3-4A-27(d), and mark the write-in position so as to cause the tabulator to reject the overvote or straight ticket vote. [Note: If the straight ticket party has a vacancy on the ballot for the write-in office which meant the write-in would not have caused an overvote, or if the straight ticket party has no nominee for the office, the ballot may be counted by the electronic tabulator without alteration or duplication.] The duplicate ballot shall be placed in the stack to be tabulated, or held in a separate stack until the group to be tabulated is complete.

5.4. A ballot shall be duplicated only if there is a mark which makes correct tabulation impossible, or the ballot is so badly damaged it will not go through the scanner;

5.4.1. All duplicated ballots shall be numbered in red ink corresponding to the original ballot beginning with one (1) and continuing in sequence (for example, if there are five (5) ballots to be duplicated for a precinct, the numbers assigned would begin with one (1) and end with five (5).);

5.4.2. When any ballot is duplicated, the original ballot shall be retained with the duplicate.

5.5. For each precinct, a careful tally of write-in votes and all other votes counted manually under this procedure shall be kept by each deputized person designated to count ballots containing write-in votes;

5.6. Once all the ballots are stacked for the tabulator and all valid write-in votes tallied, the ballots shall be delivered as directed by the clerk to the team in charge of the tabulator.

5.7. One resolution team shall be present at the tabulator to review any ballots isolated by the tabulator.

5.7.1. The resolution team shall begin the review of isolated ballots immediately, and shall complete the review and any necessary temporary alteration or duplication according to the procedures of section 5.4. in order to reflect the voter's intention and shall return the ballots for tabulation.

5.7.2. The results of the precinct tabulation shall not be posted until the resolution team has completed its work and all ballots from the precinct have been tabulated.

5.8. As soon as practical after the tabulation of the precinct, the tally of all tabulated and write-in votes for announced write-in candidates shall be posted for public inspection.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

STEPHEN N. REED
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SECRETARY OF STATE

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(Plus all the volunteer
help we can get)

JULY 26, 1995

NO COMMENTS WERE RECEIVED, THEREFORE NO CHANGES WERE MADE