

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

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

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, FOLLOWING REVIEW BY THE LEGISLATIVE RULE  
MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT  
BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE  
FILED WITH THE SECRETARY OF STATE.

*Ken Hechler*

3-80

TITLE 153  
PROCEDURAL RULES  
SECRETARY OF STATE

FILED

JAN 24 8 56 AM '96

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

§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.

~~2.2.~~ 2.1. "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.

~~2.6.~~ 2.2. "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.~~ 2.3. "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.

~~2.1.~~ 2.4. "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.

2.5. "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.

~~2.4.~~ 2.6. The "proper location for entering a write-in vote" shall mean:

~~2.4.1.~~ 2.6.1. for punch card systems, in any position on the inside of the grey secrecy envelope; and

~~2.4.2~~ 2.6.2. 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.

~~2.10~~ 2.7. "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, and determining whether the ballot must be duplicated or hand counted in order to tabulate the ballot accurately.

~~2.3~~ 2.8. "Valid write-in vote" means a vote cast for an official write-in candidate by permitted means which includes the following elements:

~~2.3.1~~ 2.8.1. a punch or mark in the voting position specified for write-in votes for the office;

~~2.3.2~~ 2.8.2. 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~~ 2.8.3. for punch card systems, an entry of the name of the office for which the write-in vote is cast in the proper location.

2.9. "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.

~~2.8~~ 2.10. "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.

### **§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.

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 or 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. Each team shall 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. (under step 5.3.3.b 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 subsection 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.



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West Virginia Legislature
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Room NB47-State Capitol
Charleston, West Virginia 25305
(304) 347-4840

Senator Mike Ross, Co-Chair
Delegate Vicki Douglas, Co-Chair

December 12, 1995

Debra A. Graham, Counsel
Joe Altizer, Associate Counsel
Marie Nickerson, Admr. Assistant

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Ken Hechler
Secretary of State
Capitol Complex
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: Procedures for Handling Ballots and Counting Write In
Votes in Counties Using Punch Card or Optical Scan Ballots

The Legislative Rule-Making Review Committee recommends that the West Virginia
Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
(a) as originally filed
(b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative
rule; a statement of reasons for such recommendation is
attached.
3. Authorize the agency to promulgate the Legislative rule
with certain amendments; amendments and a statement of
reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule
as modified with certain amendments; amendments and a
statement of reasons for such recommendation is attached.
5. Recommends that the rule be withdrawn; a statement of
reasons for such recommendation is attached.

Pursuant to Code 29A-3-11(c), this notice has been filed in the State
Register and with the agency proposing the rule.

cc: Mary Ratliff
Deputy Sec. of State

153-27