

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

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2009 JUL 31 PM 4:35
SECRETARY OF STATE
STATE OF WEST VIRGINIA

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: West Virginia Secretary Of State's Office TITLE NUMBER: 153-38

CITE AUTHORITY: 3-3A-3

AMENDMENT TO AN EXISTING RULE: YES NO

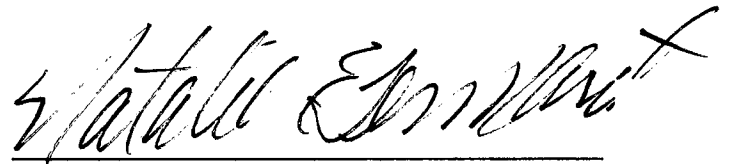
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: ³⁸ _____

TITLE OF RULE BEING PROPOSED: Vote by Mail Pilot Project Phase 1: Class IV Early Voting By Mail

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.



Authorized Signature

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: _____

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) Secretary of State
Building 1 Room 157-K
1900 Kanawha Blvd E
Charleston, WV 25305

LEGISLATIVE RULE TITLE: ~~Vote by Mail Pilot Project Phase 1: Class IV Early Voting by~~
Mail

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

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 25, 2009

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

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 27, 2009

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received _____

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

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

Dave Nichols, Manager of Elections
Building 1, Room 157-K
1900 Kanawha Blvd. E.
Charleston, WV 25305
(304)558-6000 (office) (304)558-8386 (fax)
dnichols@wvsos.com

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:

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

d. Attach findings and determinations and reasons:

Attached

Title 153 Series 38 Circumstances and Summary

Circumstances:

During the 2009 Regular Session of the West Virginia State Legislature, lawmakers passed Enrolled Committee Substitute for House Bill 3134 permitting Class IV municipalities the opportunity to conduct early voting by mail in lieu of opening a precinct.

Summary

This rule clarifies the guidelines to be used by the municipal recorder or other officer authorized by charter or ordinance provisions to conduct voting for any election held entirely within a Class IV municipality to conduct early voting by mail.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: _____

Type of Rule: Legislative Interpretive Procedural

Agency: West Virginia Secretary of State's Office

Address: Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305

Phone Number: 304-558-6000 Email: dnichols@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.

There will be no fiscal impact on the state of West Virginia.

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			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0'00

Rule Title: _____

APPENDIX B

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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			
Current Expenses			
Repairs & Alterations			
Assets			
Other			
2. Estimated Total Revenues	0.00	0.00	0'00

Rule Title: _____

Title 153
Legislative Rule
Secretary of State

SERIES 38
Vote-by-Mail Pilot Project Phase 1:
Class IV Early Voting by Mail

RECEIVED
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SECRETARY OF STATE
STATE OF WEST VIRGINIA

§ 153-38-1. General.

- 1.1. Scope. -- This rule establishes the guidelines for conducting early voting by mail which are to be used by the municipal recorder or other officer, hereafter "Clerk," authorized by charter or ordinance provisions to conduct voting for any election held entirely within a Class IV municipality.
- 1.2. Authority.- W.Va. Code § 3-3A-3.
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§ 153-38-2. Definitions.

- 1.1. For the purposes of this rule:
 - 1.1.1. "Clerk" means the municipal recorder or other officer authorized by charter or ordinance provisions to conduct voting for any election held entirely within a Class IV municipality.

§ 153-38-3. Intent to Conduct Early Voting by Mail.

- 3.1. Each Class IV municipality wishing to conduct early voting by mail shall adopt an ordinance expressing the municipality's intent to conduct early voting by mail in lieu of early in-person absentee voting.
- 3.2. Each Class IV municipality having met the provisions of 3.1 of this rule, shall notify the public as prescribed in section 4 of this rule, and, in addition, may give public notice in any other manner considered appropriate by the municipality.
- 3.3. Each Class IV municipality wishing to conduct early voting by mail shall notify the Secretary of State in writing no later than the end of business on the last day of January of the year in which the election will be held or such notice may be postmarked by midnight on the last day of January in which the election will be held.

- 3.4. Each Class IV municipality wishing to conduct early voting by mail shall attend mandatory training provided by the Secretary of State or forfeit participation in the early voting by mail program.

§ 153-38-4. Notice of Early Voting by Mail.

- 4.1. Notice of early voting by mail shall be mailed to each registered voter in the municipality no more than four weeks nor less than two weeks prior to the start of the early voting period.
- 4.2. Notice may be included in any utility or service statement or invoice mailed to every household in the municipality or by a postcard sent to all registered voters in the municipality.
- 4.3. Notice shall include:
 - 4.3.1. “ (municipality name) ordinance (ordinance reference) provides that early voting will be conducted by mail instead of voting in person at (usual early voting location).”
 - 4.3.2. The procedure for requesting an early voting by mail ballot including:
 - 4.3.2.a. Appropriate election official to be contacted to request an early voting by mail ballot.
 - 4.3.2.b. Manner(s) in which to contact the appropriate election official.
 - 4.3.2.c. Notice that voter must fill out and return an early voting by mail ballot application.
 - 4.3.3. The deadline a request for an early voting by mail ballot must be received in the office.
 - 4.3.4. The deadline for casting an early voting by mail ballot.
 - 4.3.5. Any other information necessary to request an early voting by mail ballot.

§ 153-38-5. Voting an Early Voting Ballot by Mail.

- 5.1. Upon oral or written request, the clerk shall provide to any voter of the municipality, in person, by mail, by electronic mail or by facsimile the appropriate application for voting early by mail as provided in W.Va. Code §3-3A. The voter shall complete and sign the application in his or her own handwriting or, if the voter is unable to complete the application because of

illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.

- 5.2. Completed applications for voting early by mail are to be accepted when received by the clerk in person, by mail, by electronic mail or by facsimile no more than four weeks prior to the start of early voting, nor less than six days prior to Election Day.
- 5.3. Upon acceptance of a completed application, the clerk shall determine whether the following requirements have been met:
 - 5.3.1. The application has been completed as required by law;
 - 5.3.2. The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested; and
 - 5.3.3. The applicant is not making his or her first vote after having registered by postcard registration or, if the applicant is making his or her first vote after having registered by postcard registration, the applicant is exempt from these requirements.
- 5.4. If the clerk determines that the required conditions have been met, two representatives that are registered to vote with different political party affiliations shall sign their names in the places indicated on the back of the official ballot. If the clerk determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the clerk shall give notice to the voter that the voter's early voting by mail ballot will be challenged as provided in this rule and shall enter that challenge.
- 5.5. Within one day after the clerk has both the completed application and the ballot, the clerk shall mail to the voter at the address given on the application the following items as required and as prescribed by the Secretary of State:
 - 5.5.1. One of each type of official early voting by mail ballot the voter is eligible to vote, prepared according to law;
 - 5.5.2. One envelope, unsealed, which may have no marks except the designation "Early Voter's Ballot Envelope No. 1" and printed instructions to the voter;
 - 5.5.3. One mailing envelope, unsealed, designated "Early Voter's Ballot Envelope No. 2";
 - 5.5.4. Instructions for voting early by mail including:

- 5.5.4.a. Instructions for marking the ballot, placing it in the secrecy envelope (Envelope No. 1) and the ballot return envelope (Envelope No. 2) and signing the ballot return envelope;
- 5.5.4.b. A warning that the ballot return envelope must be signed or the ballot will not be counted;
- 5.5.4.c. A warning that signing someone else's ballot return envelope is illegal;
- 5.5.4.d. An alternative procedure for any person who is unable to sign a ballot return envelope;
- 5.5.4.e. A procedure for returning a spoiled ballot should the voter make a mistake or otherwise need a new ballot; and
- 5.5.4.f. A prominently displayed notice that each ballot must be mailed or brought to the municipal precinct by the close of the early voting period.
- 5.5.5. For electronic systems, a device for marking by electronically sensible pen or ink, as may be appropriate;
- 5.5.6. Notice of the amount of postage required to return the ballot using First Class USPS postage;
- 5.5.7. Notice that a list of write-in candidates is available upon request; and
- 5.5.8. Any other supplies required for voting in the particular voting system.
- 5.6. The voter shall mark the ballot alone: *Provided*, That the voter may have assistance in voting according to the provisions of W.Va. Code §3-3-6.
- 5.7. After the voter has voted the ballot or ballots to be returned by mail, the voter shall:
 - 5.7.1. Place the ballot or ballots in Envelope no. 1 and seal that envelope;
 - 5.7.2. Place the sealed envelope no. 1 in Envelope no. 2 and seal Envelope no. 2;
 - 5.7.3. Complete and sign the forms on Envelope no. 2; and
 - 5.7.4. Return that Envelope to the clerk.
- 5.8. Early voting by mail ballots returned by United States mail or other express shipping service are to be accepted if:

- 5.8.1. The ballot is received by the clerk no later than the close of the early voting period; or
 - 5.8.2. The ballot bears a postmark of the United States Postal Service dated no later than the close of the early voting period and the ballot is received by the clerk no later than the hour at which the board of canvassers convenes to begin the canvass.
- 5.9. Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following the election, after which time they are to be destroyed without being opened.
- 5.10. Early voting by mail ballots which are hand delivered are to be accepted if they are received by the clerk no later than the close of the early voting period: *Provided*, That no person may hand deliver more than two early voting by mail ballots in any election and any person hand delivering an early voting by mail ballot assigned to and voted by a voter, who is not the individual delivering the early voting by mail ballot, is required to certify that he or she has not examined or altered the ballot. Any person who makes a false certification violates the provisions of article nine, chapter three of West Virginia State Code and is subject to those provisions.
- 5.11. Upon receipt of the sealed envelope, the clerk shall:
- 5.11.1. Enter onto the envelope any other required information;
 - 5.11.2. Enter the challenge, if any, to the ballot;
 - 5.11.3. Enter the required information into the permanent record of persons applying for and voting an early voting by mail ballot in person; and
 - 5.11.4. Place the sealed envelope into a ballot box that is secured by two locks with a key to one lock kept by a member of the city council and a key to the other lock kept by the clerk.

§ 153-38-6. Assistance to Voter in Voting an Early Voting by Mail Ballot.

- 6.1. No voter shall receive any assistance in voting an early voting by mail ballot unless he or she makes a declaration at the time he or she applies for an early voting by mail ballot that because of blindness, disability, advanced age or inability to read or write he or she requires assistance in voting an early voting by mail ballot.
- 6.2. Upon receipt of an early voting ballot by mail, the voter who requires assistance in voting such ballot and who has indicated he or she requires such assistance

and the reasons therefor on the application may select any eligible person to assist him or her in voting.

- 6.3. The person providing assistance in voting an early voting by mail ballot shall make an affidavit on a form as provided by the Secretary of State, that he or she will not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and that he or she will not keep or make any memorandum or entry of anything occurring while assisting the voter, and that he or she will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he or she had voted, or how he or she had voted on any public question, or anything occurring while assisting the voter, except when required pursuant to law to give testimony as to such matter in a judicial proceeding.
- 6.4. The term "assistance in voting" as used in this rule shall mean assistance in physically marking the official early voting by mail ballot for a voter, or reading or directing the voter's attention to any part of the official early voting by mail ballot.

§ 153-38-7. Delivery of Early Voting by Mail Ballots to Polling Places.

- 7.1. Except as otherwise provided in this rule, in municipalities using paper ballot systems or voting machines, the early voting by mail ballots of each precinct, together with the applications for the early voting by mail ballots, the affidavits made in connection with assistance in voting and any forms, lists and records as may be designated by the Secretary of State, are to be delivered in a sealed carrier envelope to the election commissioner of the precinct at the time he or she picks up the official ballots and other election supplies as provided by W.Va. Code §3-1-24.
- 7.2. Early voting by mail ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct are to be delivered to the election commissioner of the precinct who has been designated pursuant to W.Va. Code §3-1-24, by the clerk in person or by messenger before the closing of the polls, provided the ballots are received by the official in time to make the delivery. Any ballots received by the official after the time that delivery may reasonably be made but within the time required as provided in section five of this rule are to be delivered to the board of canvassers along with the provisional ballots.

§ 153-38-8. Disposition and Counting of Early Voting by Mail Ballots.

- 8.1 Upon receipt of an early voting by mail ballot, the clerk or clerk's designee shall mark the voter's record in the poll book indicating the voter has voted in the election. The ballot shall be sorted according to precinct and shall be placed in

the ballot box designated for the precinct to be kept locked until ballots are counted after the polls close on Election Day.

- 8.2 In municipalities using paper ballots, all early voting by mail ballots shall be processed as follows:
 - 8.2.1. The ballot boxes containing the early voting by mail ballots shall be opened in the presence of the clerk and two representatives of opposite political parties;
 - 8.2.2. The ballots shall be separated by precincts as stated on the sealed envelopes containing the ballots; and
 - 8.2.3. Early voting by mail ballots shall be delivered to the polls to be opened and counted in accordance with W.Va. Code §§ 3-1-33, 3-5-15, and 3-6-6. Disclosure of any results before the voting has been closed and the precinct returns posted on the door of the polling place shall be a *per se* violation of the oath taken by the counting board. In all other municipalities, counting is to begin immediately after closing of the polls.
- 8.3. In municipalities using optical scan systems, the early voting by mail ballots shall be processed as follows:
 - 8.3.1. On election day, the ballot boxes containing the early voting by mail ballots shall be delivered to the central counting center and opened in the presence of the clerk and two representatives of opposite political parties; and
 - 8.3.2. The early voting by mail ballots shall be counted in accordance with W.Va. Code §3-4A-27.
- 8.4. In municipalities using direct recording elections systems, the early voting by mail ballots shall be counted as follows:
 - 8.4.1. On election day, the ballot boxes containing the paper early voting by mail ballots shall be delivered to the central counting center and opened in the presence of the clerk and two representatives of opposite political parties; and
 - 8.4.2. Each early voting by mail ballot shall be recorded on a direct recording voting terminal designated by the clerk as the terminal for early voting by mail tabulations, after being read aloud by a separate team of two representatives of opposite political parties;
 - 8.4.3. The ballot shall be verified by both teams as being accurately printed on the paper receipt before the ballot is tabulated; and

- 8.4.4. The appropriate election officials shall follow the procedures set out in W.Va. Code § 3-4A-27(a), (b), (d), and (e) and W.Va. Code § 3-4A-27 (c)(3-6).
- 8.5. The provisional ballots shall be deposited in a provisional ballot envelope and delivered to the board of canvassers.
- 8.6. Any election official who determines a person has voted an early voting by mail ballot and has also voted at the polls on election day must report the fact to the prosecuting attorney of the county in which the votes were cast.

§ 153-38-9. Voting in Person After Having Received and After Having Voted an Early Voting by Mail Ballot.

- 9.1. Any person who has applied for and received an early voting by mail ballot but has not voted and returned the same to the clerk may vote in person at the polls on election day, provided he or she returns the early voting by mail ballot to the election commissioners at the polling place. Upon return of the early voting by mail ballot, the election commissioners shall destroy the ballot in the presence of the voter, and one of the poll clerks shall make a notation of this fact as directed by instructions issued by the Secretary of State. In the event the person does not return the early voting by mail ballot, he or she will have his or her vote challenged by one or more of the election commissioners or poll clerks.
- 9.2. No person who has voted an early voting by mail ballot may vote in person on the day of the election.

§ 153-38-10. Challenging of Early Voting by Mail ballots.

- 10.1. The clerk may challenge an early voting by mail ballot on any of the following grounds:
- 10.1.1 That the application for an early voting by mail ballot has not been completed as required by law;
- 10.1.2. That any statement or declaration contained in the application for an early voting by mail ballot is not true;
- 10.1.3. That the applicant for an early voting by mail ballot is not registered to vote in the precinct of his or her residence as provided by law;
- 10.1.4. That the person voting an early voting by mail ballot by personal appearance in his or her office had assistance in voting the ballot when the person was not qualified for voting assistance because: (A) The affidavit of the person who received assistance does not indicate a legally

sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this rule; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she is not so physically disabled as to have been unable to see or mark the absent voter's ballot; and

- 10.1.5. That the person who voted an early voting by mail ballot by mail and received assistance in voting the ballot was not qualified under the provisions of this rule for assistance.
- 10.2. Any one or more of the election commissioners or poll clerks in a precinct may challenge an early voting by mail ballot on any of the following grounds:
- 10.2.1. That the application for an early voting by mail ballot was not completed as required by law;
 - 10.2.2. That any statement or declaration contained in the application for an early voting by mail ballot is not true;
 - 10.2.3. That the person voting an early voting by mail ballot is not registered to vote in the precinct of his or her residence as provided by law;
 - 10.2.4. That the signatures of the person voting an early voting by mail ballot as they appear on his or her registration record, his or her application for an early voting by mail ballot, and the early voting by mail ballot envelope are not in the same handwriting;
 - 10.2.5. That the person voting an early voting by mail ballot by personal appearance had assistance in voting the ballot when the person was not qualified for assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she was not so physically disabled as to have been unable to see or mark the early voting by mail ballot;
 - 10.2.6. That the person voted an early voting by mail ballot by mail and received assistance in voting the ballot when not qualified under the provisions of this rule for assistance;
 - 10.2.7. That the person who voted the early voting by mail ballot voted in person at the polls on election day; and
 - 10.2.8. On any other ground or for any reason for which the ballot of a voter voting in person at the polls on election day may be challenged.

- 10.3. Forms for, and the manner of, challenging an early voting by mail ballot under the provisions of this rule are to be prescribed by the Secretary of State.
- 10.4. Early voting by mail ballots challenged by the clerk under the provisions of this rule are to be transmitted by the clerk directly to the board of canvassers. The early voting by mail ballots challenged by the election commissioners and poll clerks under the provisions of this rule may not be counted by the election officials but are to be transmitted by them to the board of canvassers. Action by the board of canvassers on challenged early voting by mail ballots is to be governed by the provisions of W.Va. Code § 3-1-41.

§ 153-38-11. Secretary of State Authority to Conduct Pilot Program

- 11.1. The Secretary of State, pursuant to West Virginia Code §3-3A-3, has been given the authority to implement Phase One of the Vote by Mail Pilot Program; therefore, it is the duty of all officials designated to supervise and conduct the vote by mail program, other municipal officials, and all election commissioners and poll clerks to abide by the Secretary of State's rules, orders and instructions and to use the forms, lists and records prescribed by the Secretary of State.

David Nichols

From: Hedda Haning [haning2@verizon.net]
Sent: Monday, July 06, 2009 11:10 AM
To: David Nichols
Subject: Re: mail voting

Dave,

I was heartened to hear of a trial on mail-in voting here in WV.

My exploration of Oregon's experience has been generally positive, without evidence of significant dishonesty, and with lower cost and higher participation.

My one disappointment, is that perfectly good voter completed ballots would be entered into computerized DREs thus rendering the outcome uncertain in terms of security. I know that is the approach used in DRE counties on absentee ballots, a system which should be changed not emulated.

Thank you for your speedy reply.

Sincerely,

Hedda L. Haning
 1031 Forest Rd
 Charleston, WV 25314
 304-344-0472

----- Original Message -----

From: David Nichols
To: 'Hedda Haning'
Sent: Monday, July 06, 2009 7:46 AM
Subject: RE: mail voting

Hedda,

For whatever reason, the Gazette chose not to include the links we sent them. There are actually two rules and here are the links to them: [Phase 1](#) & [Phase 2](#).

When making a public comment, all that is required is to send me (either my USPS or email) a letter outlining any proposed changes or areas of deficiency that may need corrected.

I hope this helps.

Thanks,
 -dave

Dave Nichols

Manager of Elections
 WV Secretary of State
 Bldg 1 Rm 157-K
 1900 Kanawha Blvd. E
 Charleston, WV 25305
 (304)558-6000
 (304)951-2675

From: Hedda Haning [mailto:haning2@verizon.net]
Sent: Sunday, July 05, 2009 3:25 PM
To: David Nichols
Subject: mail voting

Dave,

There was a short article in the paper about limited voting by mail. The article advised that there is an opportunity to comment on the WWSOS site. I could not locate that and would like to comment.

Please help.

Thanks,
 Hedda Haning
 304-344-0472

David Nichols

From: Hayes_Theiling@mail.MPL.com
Sent: Tuesday, July 07, 2009 9:13 AM
To: Elections Support Email
Subject: Support for mail-in ballots

Dear Sir or Madam,

I am writing in support of the plan to allow mail-in balloting in WV. I think this would increase voter participation and reduce expenses. I hope we'll at least test it out here. Thank you for your consideration in this matter.

Sincerely,

Hayes Theiling
800-B Charles Avenue
Morgantown, WV 26505

7/31/2009

David Nichols

From: smelenri@access.k12.wv.us
Sent: Wednesday, July 08, 2009 5:05 PM
To: Elections Support Email
Subject: vote-by-mail

I am very much against the vote-by-mail law. Our country is based on a secret vote. Voting from home makes it possible for one family member to vote for another family member, husbands for wives, sons/daughters for elderly family members. I hope this will be reconsidered.

I AM DEFINITELY FOR VOTE-BY
MAIL FOR FUTURE ELECTIONS! THE
SET-UP NOW MEANS RIDICULOUS
EXPENSE FOR THE CITY/COUNTY AND
LONG, BORING DAYS FOR THE POLL-
WORKERS - CONSIDERING THE LOW
TURNOUT OF VOTERS. CHANGE THE
SYSTEM. I'LL VOTE BY MAIL.

FORMER POLLWORKER,
PATTI L. CURRY
421 LAWNVIEW DR.
MORGANTOWN, WV 26505

7-11-09

The time has come to modern-
ize our election methods. I am
74 years old and voting by mail makes
sense.

Shirley M. Curry
421 - Rowanville,
Morgantown, W. Va.

David Nichols

From: Judy Cooper
Sent: Monday, July 20, 2009 8:58 AM
To: David Nichols
Subject: FW: early voting by mail

From: george's email [mailto:kline12@verizon.net]
Sent: July 17, 2009 11:18 PM
To: WV Secretary of State
Subject: early voting by mail

Dear Natalie Tennant:

I am totally against voting by mail in any form. Early voting is bad enough.

Voter fraud has been going on for years and years in WV. You are just inviting more fraud by allowing "voting by mail".

Thank you
George W. Wilsman Jr.
3811 Broad Street
Parkersburg, Wv.
26104

I am using the Free version of SPAMfighter.
We are a community of 6 million users fighting spam.
SPAMfighter has removed 371 of my spam emails to date.
The Professional version does not have this message.

KANAWHA COUNTY COMMISSION

Post Office Box 3627
Charleston, West Virginia 25336



Telephone (304) 357-0101
Fax (304) 357-0788
www.kanawha.us

Henry C. Shores
Commissioner

W. Kent Carper
Commissioner

David J. "Dave" Hardy
Commissioner

July 24, 2009

Dave Nichols, Manager of Elections
West Virginia Secretary of State
State Capitol Building 1, Suite 157-K
Charleston, WV 25305-0770

Dear Secretary Tennant:

The passage of House Bill 3134, during the 2009 Legislative Session, was a progressive step in making voting effortless and convenient for voters. I commend the Secretary Tennant and her office on the proposed rules open for public comment. I believe these rules will provide security of the ballots and more voting opportunities for the public.

Vote-By-Mail programs have proven to be successful and cost effective in other states. For example, in Oregon, counties have saved up to \$1 million by conducting primary and general elections by mail. Furthermore, in the 2004 Election, Oregon attributed record turnout to their Vote-By-Mail system. Washington State is another state that has seen successful results with their Vote-By-Mail program. Currently, 38 counties of the 39 in Washington are conducting voting by mail.

In the past, there have been critics of Vote-By-Mail systems. However, I believe the rules proposed by the Secretary of State's Office provide critical security and protection against voter fraud. Most importantly, this will increase voter turnout. Again, I commend Secretary Tennant and her office on making voting more accessible for West Virginia residents.

Sincerely,


W. Kent Carper

WKC/cc



James V. Watson
105 Amber Ln.
Fairmont, WV 26554-8667

CHARLESTON WV 263

23 JUL 2009 PM 2 L



Dave Neihals
Election Manager
Building 1, Suite 157-K
1900 Kanawha Blvd.
E. Charleston, WV
5365

7-09

Dear Mr. Nichols,

I would like to comment on the secretary of state's proposed vote-by-mail.

I am against the whole idea. It is not something we should even consider.

1. The postal service is not reliable. My personal mail is often already opened - not by accident. For important mail you pay extra to send it registered or return receipt to make sure it gets there. You would never know for sure that your ballot arrived or was not tampered with on the way.

2. If it is the cost you are looking at - cut one of your many programs to the

non-working class) instead.
Taxpayers - people who are
working - should be able to
utilize some of their taxes by
having the polls open on
election day. Maybe it's getting
more expensive because you
are trying to put too much
into "early" voting.

3. If you are too lazy to get
out and vote on election day,
then you shouldn't vote. Don't
tell me there are older people
who have a hard time getting
out. They manage to get out
& go whenever they want - to get
their hair done, go shopping,
go to the senior center, wherever.
They find a way to get there.

Cut out the early voting and
keep the polls open on election
day. No vote-by-mail!

Thank you.

Mary E. Watson

COMMENTS CONCERNING the Proposed VOTE-by-MAIL PILOT PROJECT Phase 1: Class IV Early Voting by Mail

- 1) Why? We already have "no excuses" early voting for almost three weeks prior to an election in a controlled location, namely the respective county courthouse.
- 2) To the extent of our limited funds, the Constitution Party of West Virginia has recently purchased some select voter registration lists for use in statewide mailings and door-to-door ballot access petitioning. My personal experience with this is that up to one third of voter mailing addresses are **undeliverable**. Additionally, when people move, they tend not to inform the county clerk, so many addresses list several previous residents as still being active voters. This condition is particularly amplified in apartment units. Also, Berkeley, and some other counties allow voter registration to PO boxes which can suddenly close and then be reopened to new persons.
 - a) There is going to be a tremendous waste of postage, materials, and labor – specifically under §153-38-4.1 Notice of Early Voting by Mail to every voter.
 - b) There will be a serious **security problem** regarding the **extra ballots** mailed to households as well as those placed in closed PO boxes which will be accessible to new boxholders. Are postal employees to be held liable for resultant voter fraud?
 - c) Concerning §153-38-4.2: It is most likely unlawful to comingle government documents with utility bills. In any event, this section seems ridiculously impractical and costly.
- 3) §153-38-5.3.3 looks confusing which could lead to voter disenfranchisement
- 4) §153-38-5.5.6: Under current 3-3-5(e)(3), absentee ballots are mailed with postage paid return envelopes. How are delays and voter disenfranchisement caused by **insufficient postage** now going to be handled?
- 5) §153-38-5.5.7: The **list of official write-in candidates** shouldn't be by request. It should be automatically included with the ballot package just as it is now with absentee ballots.
- 6) §153-38-5.8: How will the **post office and their employees** be secured against election fraud?
- 7) §153-38-5.4, 8.2.1, and 8.3.1, etc: Are minor "third" parties permitted to participate in these **verification activities** or is this limited only to Republicans and Democrats?
- 8) §153-38-8.3: This is absolutely the most ridiculous thing I have ever read. Taking paper ballots and **converting them to electronic format** where they are then susceptible to hacking and manipulation is extremely irresponsible!

SIGNATURE: _____

STATE OF WEST VIRGINIA, COUNTY OF Berkeley

The foregoing instrument was acknowledged before me this 24th day of July, 2009

By Jeffrey C. Becker

My commission expires 7/30/10

Laura Campbell
(Notary Public)



Jeffrey C. Becker
116 G and E Cir.
Inwood, WV 25428-5395



OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
LAURA CAMPBELL
2081 DOMINION ROAD
GERRAROSTOWN, WV 25420
My Commission Expires July 30, 2017

David Nichols

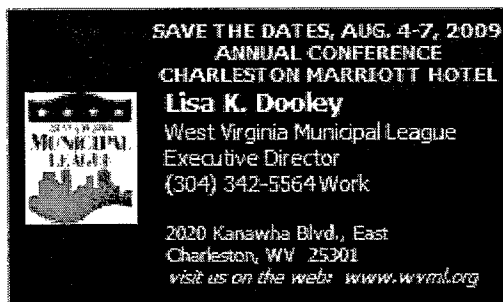
From: Lisa Dooley [wvml@wvml.org]
Sent: Wednesday, July 22, 2009 9:14 AM
To: David Nichols
Subject: RE: VBM rules
Attachments: Vote-by-Mail Phase 2 (Series 39)(non draft).doc; Vote-by-Mail Phase 1 (Series 38)non draft).doc

David,

Here are my grammatical markups. I will resend to the clerks. They had no problems with the class IV early voting. Not sure they have seen the pilot rules.

Thanks, I will let you know what I hear.

Lisa



Disclaimer: The content of this reply is provided as a general informational service to you as participating member of the West Virginia Municipal League. The information contained herein does not constitute legal advice and does not create an attorney-client relationship between you and WVML Programs or the WV Municipal League. You should not act or refrain from acting based upon this information without first consulting your city attorney or other legal counsel. This reply is a confidential communication and shall be treated as an internal memoranda or letter received by a public body exempt from disclosure. This communication and any files transmitted with it are intended solely for the use of the individual(s) to whom it is addressed. Please notify the sender immediately if you have received this communication by mistake. If you are not the intended recipient you are hereby notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

From: David Nichols [mailto:DNichols@wvsos.com]
Sent: Wednesday, July 22, 2009 7:45 AM
To: 'Lisa Dooley'
Subject: RE: VBM rules

Lisa,

I just wanted to send a quick reminder that the Vote by Mail rules are open for public comment until 10:00am on July 27. At this point I haven't heard anything from anyone regarding these rules. If possible, I would like to get some input before the deadline so any potential issues can be addressed. I've attached copies of both rules for easy reference.

Thanks,
-dave

Dave Nichols

Manager of Elections
WV Secretary of State

7/27/2009

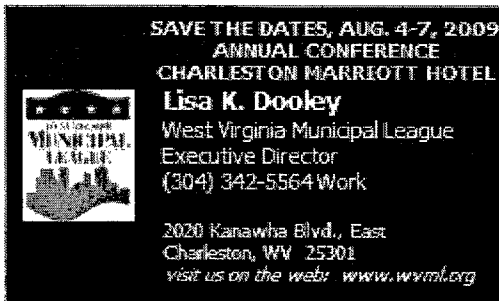
Bldg 1 Rm 157-K
1900 Kanawha Blvd. E
Charleston, WV 25305
(304)558-6000
(304)951-2675

If a person is unclear concerning election law provisions, the Election Division can be used as an interpretive resource. However, where your legal rights are concerned, you must consult with your own attorney to be fully and properly advised.

From: Lisa Dooley [mailto:wvml@wvml.org]
Sent: Friday, June 26, 2009 12:12 PM
To: David Nichols
Subject: RE: VBM rules

Thanks Dave,

Lisa



Disclaimer: The content of this reply is provided as a general informational service to you as participating member of the West Virginia Municipal League. The information contained herein does not constitute legal advice and does not create an attorney-client relationship between you and WVML Programs or the WV Municipal League. You should not act or refrain from acting based upon this information without first consulting your city attorney or other legal counsel. This reply is a confidential communication and shall be treated as an internal memoranda or letter received by a public body exempt from disclosure. This communication and any files transmitted with it are intended solely for the use of the individual(s) to whom it is addressed. Please notify the sender immediately if you have received this communication by mistake. If you are not the intended recipient you are hereby notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

From: David Nichols [mailto:DNichols@wvsos.com]
Sent: Friday, June 26, 2009 11:45 AM
To: 'Lisa Dooley'
Subject: VBM rules

Lisa,

The Vote by Mail rules have been filed for public comment. They will be on our website soon, but I've attached a copy for your reference and for you to send to whomever may have interest.

-dave

Dave Nichols

Manager of Elections
WV Secretary of State
Bldg 1 Rm 157-K
1900 Kanawha Blvd. E
Charleston, WV 25305

7/27/2009

(304)558-6000
(304)951-2675

Title 153
Legislative Rule
Secretary of State

SERIES 38
Vote-by-Mail Pilot Project Phase 1:
Class IV Early Voting by Mail

§ 153-38-1. General.

- 1.1. Scope. -- This rule establishes the guidelines for conducting early voting by mail which are to be used by the municipal recorder or other officer, hereafter "Clerk," authorized by charter or ordinance provisions to conduct voting for any election held entirely within a Class IV municipality.
- 1.2. Authority.- W.Va. Code § 3-3A-3.
- 1.3. Filing Date. --
- 1.4. Effective Date. --

§ 153-38-2. Definitions.

- 1.1. For the purposes of this rule:
 - 1.1.1. "Clerk" means the municipal clerk, recorder or other officer authorized by charter or ordinance provisions to conduct voting for any election held entirely within a Class IV municipality.

§ 153-38-3. Intent to Conduct Early Voting by Mail.

- 3.1. Each Class IV municipality ~~choosing, wishing~~ to conduct early voting by mail shall adopt an ordinance expressing the municipality's intent to conduct early voting by mail in lieu of early in-person absentee voting. Formatted: Strikethrough
- 3.2. Each Class IV municipality having met the provisions of 3.1 of this rule, shall notify the public as prescribed in section 4 of this rule, and, in addition, may give public notice in any other manner considered appropriate by the municipality.
- 3.3. Each Class IV municipality ~~choosing, wishing~~ to conduct early voting by mail shall notify the Secretary of State in writing no later than the end of business on the last day of January of the year in which the election will be held or such notice may be postmarked by midnight on the last day of January in which the election will be held. Formatted: Strikethrough

- 3.4. Each Class IV municipality ~~choosing wishing~~ to conduct early voting by mail shall attend mandatory training provided by the Secretary of State or forfeit participation in the early voting by mail program.

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§ 153-38-4. Notice of Early Voting by Mail.

- 4.1. Notice of early voting by mail shall be mailed to each registered voter in the municipality no more than four weeks nor less than two weeks prior to the start of the early voting period.
- 4.2. Notice may be included in any utility or service statement or invoice mailed to every household in the municipality or by a postcard sent to all registered voters in the municipality.

4.3. Notice shall include:

- 4.3.1. “ (municipality name) ’s ordinance (ordinance reference) provides that early voting will be conducted by mail instead of voting in person at (usual early voting location).”

4.3.2. The procedure for requesting an early voting by mail ballot including:

4.3.2.a. Appropriate election official to be contacted to request an early voting by mail ballot.

4.3.2.b. Manner(s) in which to contact the appropriate election official.

4.3.2.c. Notice that voter must fill out and return an early voting by mail ballot application.

- 4.3.3. The deadline of when a request for an early voting by mail ballot must be received in the office.

4.3.4. The deadline for casting an early voting by mail ballot.

- 4.3.5 Any other information deemed necessary to request an early voting by mail ballot.

§ 153-38-5. Voting an Early Voting Ballot by Mail.

- 5.1. Upon oral or written request, the clerk shall provide to any voter of the municipality, in person, by mail, by electronic mail or by facsimile the appropriate application for voting early by mail as provided in W.Va. Code §3-3A. The voter shall complete and sign the application in his or her own handwriting or, if the voter is unable to complete the application because of

illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided.

- 5.2. Completed applications for voting early by mail are to be accepted when received by the clerk in person, by mail, by electronic mail or by facsimile no more than four weeks prior to the start of early voting, nor less than six days prior to Election Day.
- 5.3. Upon acceptance of a completed application, the clerk shall determine whether the following requirements have been met:
 - 5.3.1. The application has been completed as required by law;
 - 5.3.2. The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested; and
 - 5.3.3. The applicant is not making his or her first vote after having registered by postcard registration or, if the applicant is making his or her first vote after having registered by postcard registration, the applicant is exempt from these requirements.
- 5.4. If the clerk determines that the required conditions have been met, two representatives that are registered to vote with different political party affiliations shall sign their names in the places indicated on the back of the official ballot. If the clerk determines the required conditions have not been met, or has evidence that any of the information contained in the application is not true, the clerk shall give notice to the voter that the voter's early voting by mail ballot will be challenged as provided in this rule and shall enter that challenge.
- 5.5. Within one day after the clerk has both the completed application and the ballot, the clerk shall mail to the voter at the address given on the application the following items as required and as prescribed by the Secretary of State:
 - 5.5.1. One of each type of official early voting by mail ballot the voter is eligible to vote, prepared according to law;
 - 5.5.2. One envelope, unsealed, which may have no marks except the designation "Early Voter's Ballot Envelope No. 1" and printed instructions to the voter;
 - 5.5.3. One mailing envelope, unsealed, designated "Early Voter's Ballot Envelope No. 2";
 - 5.5.4. Instructions for voting early by mail including:

- 5.5.4.a. Instructions for marking the ballot, placing it in the secrecy envelope (Envelope No. 1) and the ballot return envelope (Envelope No. 2) and signing the ballot return envelope;
- 5.5.4.b. A warning that the ballot return envelope must be signed or the ballot will not be counted;
- 5.5.4.c. A warning that signing someone else's ballot return envelope is illegal;
- 5.5.4.d. An alternative procedure for any person who is unable to sign a ballot return envelope;
- 5.5.4.e. A procedure for returning a spoiled ballot should the voter make a mistake or otherwise need a new ballot; and
- 5.5.4.f. A prominently displayed notice that each ballot must be mailed or brought to the municipal precinct by the close of the early voting period.
- 5.5.5. For electronic systems, a device for marking by electronically sensible pen or ink, as may be appropriate;
- 5.5.6. Notice of the amount of postage required to return the ballot using First Class USPS postage;
- 5.5.7. Notice that a list of write-in candidates is available upon request; and
- 5.5.8. Any other supplies required for voting in the particular voting system.
- 5.6. The voter shall mark the ballot alone: *Provided*, That the voter may have assistance in voting according to the provisions of W.Va. Code §3-3-6.
- 5.7. After the voter has voted the ballot or ballots to be returned by mail, the voter shall:
 - 5.7.1. Place the ballot or ballots in Envelope no. 1 and seal that envelope;
 - 5.7.2. Place the sealed envelope no. 1 in Envelope no. 2 and seal Envelope no. 2;
 - 5.7.3. Complete and sign the forms on Envelope no. 2; and
 - 5.7.4. Return that Envelope to the clerk.
- 5.8. Early voting by mail ballots returned by United States mail or other express shipping service are to be accepted if:

- 5.8.1. The ballot is received by the clerk no later than the close of the early voting period; or
- 5.8.2. The ballot bears a postmark of the United States Postal Service dated no later than the close of the early voting period and the ballot is received by the clerk no later than the hour at which the board of canvassers convenes to begin the canvass.
- 5.9. Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for twenty-two months following the election, after which time they are to be destroyed without being opened.
- 5.10. Early voting by mail ballots which are hand delivered are to be accepted if they are received by the clerk no later than the close of the early voting period: *Provided*, That no person may hand deliver more than two early voting by mail ballots in any election and any person hand delivering an early voting by mail ballot assigned to and voted by a voter, who is not the individual delivering the early voting by mail ballot, is required to certify that he or she has not examined or altered the ballot. Any person who makes a false certification violates the provisions of article nine, chapter three of West Virginia State Code and is subject to those provisions.
- 5.11. Upon receipt of the sealed envelope, the clerk shall:
 - 5.11.1. Enter onto the envelope any other required information;
 - 5.11.2. Enter the challenge, if any, to the ballot;
 - 5.11.3. Enter the required information into the permanent record of persons applying for and voting an early voting by mail ballot in person; and
 - 5.11.4. Place the sealed envelope into a ballot box that is secured by two locks with a key to one lock kept by a member of the city council and a key to the other lock kept by the clerk.

§ 153-38-6. Assistance to Voter in Voting an Early Voting by Mail Ballot.

- 6.1. No voter shall receive any assistance in voting an early voting by mail ballot unless he or she makes a declaration at the time he or she applies for an early voting by mail ballot that because of blindness, disability, advanced age or inability to read or write he or she requires assistance in voting an early voting by mail ballot.
- 6.2. Upon receipt of an early voting ballot by mail, the voter who requires assistance in voting such ballot and who has indicated he or she requires such assistance

and the reasons therefor on the application may select any eligible person to assist him or her in voting.

- 6.3. The person providing assistance in voting an early voting by mail ballot shall make an affidavit on a form as provided by the Secretary of State, that he or she will not in any manner request, or seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question, and that he or she will not keep or make any memorandum or entry of anything occurring while assisting the voter, and that he or she will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, or which ticket he or she had voted, or how he or she had voted on any public question, or anything occurring while assisting the voter, except when required pursuant to law to give testimony as to such matter in a judicial proceeding.
- 6.4. The term "assistance in voting" as used in this rule shall mean assistance in physically marking the official early voting by mail ballot for a voter, or reading or directing the voter's attention to any part of the official early voting by mail ballot.

§ 153-38-7. Delivery of Early Voting by Mail Ballots to Polling Places.

- 7.1. Except as otherwise provided in this rule, in municipalities using paper ballot systems or voting machines, the early voting by mail ballots of each precinct, together with the applications for the early voting by mail ballots, the affidavits made in connection with assistance in voting and any forms, lists and records as may be designated by the Secretary of State, are to be delivered in a sealed carrier envelope to the election commissioner of the precinct at the time he or she picks up the official ballots and other election supplies as provided by W.Va. Code §3-1-24.
- 7.2. Early voting by mail ballots received after the election commissioner has picked up the official ballots and other election supplies for the precinct are to be delivered to the election commissioner of the precinct who has been designated pursuant to W.Va. Code §3-1-24, by the clerk in person or by messenger before the closing of the polls, provided the ballots are received by the official in time to make the delivery. Any ballots received by the official after the time that delivery may reasonably be made but within the time required as provided in section five of this rule are to be delivered to the board of canvassers along with the provisional ballots.

§ 153-38-8. Disposition and Counting of Early Voting by Mail Ballots.

- 8.1 The clerk or clerk's designee shall mark the voter's record in the poll book indicating the voter has voted in the election. The ballot shall be sorted according to precinct and shall be placed in the ballot box designated for the

precinct to be kept locked until ballots are counted after the polls close on Election Day.

- 8.2 In municipalities using paper ballots, all early voting by mail ballots shall be processed as follows:
 - 8.1.1. The ballot boxes containing the early voting by mail ballots shall be opened in the presence of the clerk and two representatives of opposite political parties;
 - 8.1.2. The ballots shall be separated by precincts as stated on the sealed envelopes containing the ballots; and
 - 8.1.3. Early voting by mail ballots shall be delivered to the polls to be opened and counted in accordance with W.Va. Code §§ 3-1-33, 3-5-15, and 3-6-6. Disclosure of any results before the voting has been closed and the precinct returns posted on the door of the polling place shall be a *per se* violation of the oath taken by the counting board. In all other municipalities, counting is to begin immediately after closing of the polls.
- 8.2. In municipalities using optical scan systems, the early voting by mail ballots shall be processed as follows:
 - 8.2.1. On election day, the ballot boxes containing the early voting by mail ballots shall be delivered to the central counting center and opened in the presence of the clerk and two representatives of opposite political parties; and
 - 8.2.2. The early voting by mail ballots shall be counted in accordance with W.Va. Code §3-4A-27.
- 8.3. In municipalities using direct recording elections systems, the early voting by mail ballots shall be counted as follows:
 - 8.3.1. On election day, the ballot boxes containing the paper early voting by mail ballots shall be delivered to the central counting center and opened in the presence of the clerk and two representatives of opposite political parties; and
 - 8.3.2. Each early voting by mail ballot shall be recorded on a direct recording voting terminal designated by the clerk as the terminal for early voting by mail tabulations, after being read aloud by a separate team of two representatives of opposite political parties;
 - 8.3.3. The ballot shall be verified by both teams as being accurately printed on the paper receipt before the ballot is tabulated; and

- 8.3.4. The appropriate election officials shall follow the procedures set out in W.Va. Code § 3-4A-27(a), (b), (d), and (e) and W.Va. Code § 3-4A-27(c)(3-6).
- 8.4. The provisional ballots shall be deposited in a provisional ballot envelope and delivered to the board of canvassers.
- 8.5. Any election official who determines a person has voted an early voting by mail ballot and has also voted at the polls on election day must report the fact to the prosecuting attorney of the county in which the votes were cast. Are both ballots thrown out? Do either count in the election?

§ 153-38-9. Voting in Person After Having Received and After Having Voted an Early Voting by Mail Ballot.

- 9.1. Any person who has applied for and received an early voting by mail ballot but has not voted and returned the same to the clerk may vote in person at the polls on election day, provided he or she returns the early voting by mail ballot to the election commissioners at the polling place. Upon return of the early voting by mail ballot, the election commissioners shall destroy the ballot in the presence of the voter, and one of the poll clerks shall make a notation of this fact as directed by instructions issued by the Secretary of State. In the event the person does not return the early voting by mail ballot, he or she will have his or her vote challenged by one or more of the election commissioners or poll clerks.
- 9.2. No person who has voted an early voting by mail ballot may vote in person on the day of the election.

§ 153-38-10. Challenging of Early Voting by Mail ballots.

- 10.1. The clerk may challenge an early voting by mail ballot on any of the following grounds:
- 10.1.1 That the application for an early voting by mail ballot has not been completed as required by law;
- 10.1.2. That any statement or declaration contained in the application for an early voting by mail ballot is not true;
- 10.1.3. That the applicant for an early voting by mail ballot is not registered to vote in the precinct of his or her residence as provided by law;
- 10.1.4. That the person voting an early voting by mail ballot by personal appearance in his or her office had assistance in voting the ballot when the person was not qualified for voting assistance because: (A) The

affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this rule; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she is not so physically disabled as to have been unable to see or mark the absent voter's ballot; and

- 10.1.5. That the person who voted an early voting by mail ballot by mail and received assistance in voting the ballot was not qualified under the provisions of this rule for assistance.
- 10.2. Any one or more of the election commissioners or poll clerks in a precinct may challenge an early voting by mail ballot on any of the following grounds:
 - 10.2.1. That the application for an early voting by mail ballot was not completed as required by law;
 - 10.2.2. That any statement or declaration contained in the application for an early voting by mail ballot is not true;
 - 10.2.3. That the person voting an early voting by mail ballot is not registered to vote in the precinct of his or her residence as provided by law;
 - 10.2.4. That the signatures of the person voting an early voting by mail ballot as they appear on his or her registration record, his or her application for an early voting by mail ballot, and the early voting by mail ballot envelope are not in the same handwriting;
 - 10.2.5. That the person voting an early voting by mail ballot by personal appearance had assistance in voting the ballot when the person was not qualified for assistance because: (A) The affidavit of the person who received assistance does not indicate a legally sufficient reason for assistance; or (B) the person who received assistance did not make an affidavit as required by this article; or (C) the person who received assistance is not so illiterate as to have been unable to read the names on the ballot or that he or she was not so physically disabled as to have been unable to see or mark the early voting by mail ballot;
 - 10.2.6. That the person voted an early voting by mail ballot by mail and received assistance in voting the ballot when not qualified under the provisions of this rule for assistance;
 - 10.2.7. That the person who voted the early voting by mail ballot voted in person at the polls on election day; and

- 10.2.8. On any other ground or for any reason for which the ballot of a voter voting in person at the polls on election day may be challenged.
- 10.3. Forms for, and the manner of, challenging an early voting by mail ballot under the provisions of this rule are to be prescribed by the Secretary of State.
- 10.4. Early voting by mail ballots challenged by the clerk under the provisions of this rule are to be transmitted by the clerk directly to the board of canvassers. The early voting by mail ballots challenged by the election commissioners and poll clerks under the provisions of this rule may not be counted by the election officials but are to be transmitted by them to the board of canvassers. Action by the board of canvassers on challenged early voting by mail ballots is to be governed by the provisions of W.Va. Code § 3-1-41.

§ 153-38-11. Secretary of State Authority to Conduct Pilot Program

- 11.1. The Secretary of State, pursuant to West Virginia Code §3-3A-3, has been given the authority to implement Phase One of the Vote by Mail Pilot Program; therefore, it is the duty of all officials designated to supervise and conduct the vote by mail program, other municipal officials, and all election commissioners and poll clerks to abide by the Secretary of State's rules, orders and instructions and to use the forms, lists and records prescribed by the Secretary of State.

July 27, 2009

Mr. David Nicols
Election Manager, WV Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305

Re: Comments on Rules for Vote-by-Mail Pilot Project, Phase 1 & Phase 2

Dear Mr. Nicols,

We appreciate the opportunity to comment on the rules for Phase 1 and Phase 2 of the vote-by-mail pilot project. We applaud the passage of HB 3134 and appreciate the support of the Secretary of State for this and other measures aimed at increasing participation in our elections.

Below are our comments on, and suggested changes to, the proposed rules.

Phase 1 – Class IV Early Voting by Mail

§153-38-5 – Voting an Early Voting Ballot by Mail

- Section 5.3.3 is confusing and should be rewritten. Upon acceptance of a completed early voting by mail application, the clerk shall determine whether certain requirements have been met. One of these requirements is “The applicant is not making his or her first vote after having registered by post card registration...” However, “if an applicant is making his or her first vote after having registered by postcard registration, the applicant is exempt from these requirements.” Is the intent of this exemption to prohibit newly registered voters from voting early by mail? If this is not the intent, perhaps section 5.3.3 should simply be deleted for clarity. Newly registered voters should be allowed to vote early by mail provided the requirements in 5.3.1 and 5.3.2 are met.
- Subsequent sections refer to precincts on ballot envelopes; however, it is unclear at what point the precinct numbers are placed on the ballot envelopes. Does this happen prior to the vote by mail ballot and other materials being mailed to the voter, or after the sealed envelope is returned to the clerk by the voter? This should be clarified.

§153-38-8 – Disposition of Early Voting By Mail Ballots

- There is more than one section 8.2 and some subsections are misnumbered.
- The first sentence in section 8.1 should be amended as follows:

Upon receipt of an early voting by mail ballot, the clerk or clerk's designee shall mark the voter's record in the poll book indicating the voter has voted in the election.

- Is separating ballots by precinct upon receipt a requirement for all voting systems or are there exemptions? This needs to be clarified. Specifically, there are inconsistencies between the requirements in section 8.1 and 8.2. If ballots are placed in boxes designated for each precinct when they are initially received (section 8.1), why would the ballot boxes in municipalities using paper ballots need to be opened and ballots separated by precinct prior to being delivered to the polls (section 8.2)? Any exemptions to the requirement that ballot boxes be kept locked until "after the polls close on Election Day," as in the case of municipalities using paper ballots, should also be clarified.

§153-38-10 – Challenging of Early Voting by Mail Ballots

- The phrase "by personal appearance" in sections 10.1.4 and 10.2.5 does not seem applicable to voting-by-mail.
- Phase 2 outlines specific criteria for reviewing all initially rejected signatures. These criteria should be included in Phase 1.

Phase 2 – Voting by Mail

§153-39-2 – Definitions

- Section 2.1.6 should be amended as follows:

"Non Affiliated Voter" or "NAV" means a properly registered voter who is not registered as a member of any political party ~~on a partisan election ballot in a partisan municipal election.~~

- Section 2.1.7 should be amended as follows:

"Program" means Phase 2 of the Vote by Mail Pilot Program as authorized by ~~article three A §3-3A-3~~ of W.Va. State Code ~~§3-3A-3~~.

§153-39-7 – Ballot Reception, Signature Verification and Sorting

- Section 7.3 should be amended as follows:

If, during a scheduled election, the voter returns a return identification ballot envelope ~~during a scheduled election cycle~~ for a previous election date the clerk shall make a reasonable attempt to notify the voter that the ballot cannot be processed unless the ballot is placed in the proper envelope prior to 8:00p.m. on election day. The clerk may:

§153-39-9 – Opening Ballot Return Envelopes

- Section 9.4 should be amended as follows:

Ballot envelopes received after 5:00p.m., but no later than 8:00p.m., on election day shall be accepted or rejected pursuant to provisions of section seven of this rule. Accepted ballot envelopes shall be processed by the Counting Board or Boards and the folded and unread ballots shall be placed in the appropriate ballot box.

§153-39-10 - 12 – Ballot Counting Procedures

- Section 10.1 should be amended as follows:

After all ballots determined to have been received by the clerk by 8:00p.m. on election day, they shall be accepted or rejected pursuant to provisions of section seven of this rule. Accepted ballots shall be processed as outlined in 9.3 of this rule. The ballot box or boxes shall then be opened separately and all votes shall be tallied in the presence of the entire election board.

- Sections 11.1 and 12.1 should be amended as follows:

After all ballots determined to have been received by the clerk by 8:00p.m. on election day, they shall be accepted or rejected pursuant to provisions of section seven of this rule. Accepted ballots shall be processed as outlined in 9.3 of this rule, except that the ballots shall not be folded. The ballot box or boxes shall then be opened separately and all votes shall be tallied in the presence of the entire election board.

Again, thank you for the opportunity to comment. Should you have any questions regarding our recommendations, please contact me.

Sincerely,

Julie Archer
Project Manager
WV Citizen Action Group
1500 Dixie Street
Charleston, WV 25311
(304) 346-5891
julie@wvcag.org