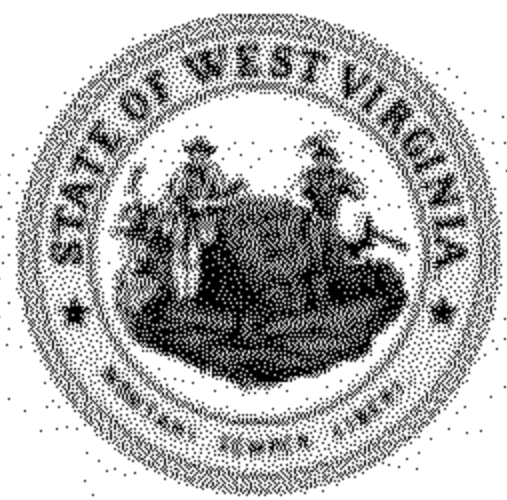




WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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

AGENCY: Secretary Of State TITLE-SERIES: 153-18
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 153-18 Procedures for Canvassing Elections

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 3-1A-6; 64-9-14

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The Secretary of State has the authority to amend legislative rules pertaining to elections under W. Va. Code 3-1A-6. The amended Rule amends the existing rule to correct outdated language, typos and inaccurate numbering.

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/28/2017

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/28/2017

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/a

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

§2.1.c.Updated to remove and the board of education, jointly, requirement in light of HB 4302 (2014).

§2.4.Added language to account for electronic voting systems as described in W. Va. Code § 3-4A-9(14).

§2.5.Moved word Code to correct typo.

§3.1.Updated to account to current 5-day requirement following every election to convene canvass (see W. Va. Code § 3-6-9(a)(1).

§3.1.a.Removed board of education because county commission was made sole body to canvass returns in HB 4302 (2014); also updated to include ballots produced by electronic voting machines that utilize screens upon which votes are recorded by means of a stylus or touch. (see W. Va. Code § 3-4A-9(14).)

§3.2.Removed language referring to joint board of canvassers in light of HB 4302 (2014).

§3.6.a & b.Added provisional to correct clear error omission.

§4.3.Removed whole provision, which refers to outdated voting systems.

§5.1.b.Changed circuit clerk to county clerk to correct clear error.

§8.1.Updated to account for requirement that only 3% precincts must be selected for random hand count, not 5% (see W. Va. Code § 3-4A-28(d).

§10.4.b.Updated to include requirement that candidates must first request certificates of election before receiving such certificates.

**Updated section numbers 8, 9, 10 and 11 to account for missing section 7. New section numbers are 7, 8, 9 and 10.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

N/a

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None.

B. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

None.

C. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2017 Increase/Decrease (use "-")	2018 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

SERIES 18
PROCEDURES FOR CANVASSING ELECTIONS

§153-18-1. General.

1.1. Scope. -- This rule details procedures for the board of canvassers for canvassing the results of elections conducted with paper ballots or electronically tabulated ballots, including optical scan ballots.

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

1.3. Filing Date. -- ~~May 7, 2007.~~

1.4. Effective Date. -- ~~May 7, 2007.~~

1.4.1. This rule shall terminate and have no further force of effect upon the expiration of _____ years from its effective date.

§153-18-2. Definitions.

2.1. "Board of canvassers" or "board" means:

2.1.a. The county commission of each county for any statewide primary, general or special election held throughout the county, and for any other election conducted in conjunction with a statewide election using the same precincts and election officials;

2.1.b. The county commission of the affected county for any special election ordered by that Commission and held throughout all or part of that county, and for any other election conducted in conjunction with that county election using the same precincts and election officials;

2.1.c. The county commission ~~and the board of education, jointly,~~ for any special levy or bond election ordered by the board of education;

2.1.d. The municipal governing body for any primary, general or special election conducted by the municipal governing body entirely within the city and not held in conjunction with any county or state election.

2.2. "Canvass" means the proceeding required by law in which the materials, equipment and results of an election are reviewed, corrected and officially recorded prior to the certification of that election.

2.3. "Election" means any statewide primary, general or special election held under the provisions of the West Virginia Code throughout the state or any of its subdivisions.

2.4. "Electronically tabulated ballots" means ballots authorized under the provisions of W. Va. Code §3-4A et seq., including those ballots referred to as ~~punch-card and~~ optical scan ballots and ballots printed by electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, which are counted by means of electronic scanners or readers.

2.5. "Paper ballots" means ballots authorized under the provisions of W. Va. Code §3-1 et seq. ~~Code~~ which are counted by hand.

§153-18-3. Preparation.

3.1. The governing body constituting the board of canvassers shall schedule the canvass to begin on ~~the Friday immediately following a primary election, and on~~ the fifth day, not counting Sunday, after a ~~general election~~ every election. If the fifth day falls on a Saturday or legal holiday, the canvass shall begin on the next business day.

3.1.a. For a canvass conducted by the county commission ~~or a joint canvass conducted by the county commission and board of education~~, the canvass shall be held at the county courthouse; ~~except that, for an election conducted with lever voting machines, the canvass shall be convened at the place of storage of the voting machines in order to perform the review required under section 7.~~

3.1.b. For a canvass conducted by a municipal governing body, the canvass shall be held at city hall.

3.2. A quorum of the governing body constituting the board of canvassers, ~~or in the case of a joint board of canvassers as prescribed in 2.1.e., a quorum of each governing body~~, must be present to conduct the canvass.

3.2.a. If a quorum of the governing body, or each governing body, is not present, the meeting will stand adjourned until the next business day.

3.2.b. If the canvass cannot be completed in one day, the board of canvassers may adjourn until the next day, and so on from day to day until the canvass is completed and the results declared.

3.3. The board of canvassers may utilize regular or temporary personnel to assist with the canvass, but all procedures must be conducted under the supervision of a quorum of the board.

3.4. The presiding officer of the governing body shall act as the presiding officer of the board of canvassers.

3.5. The clerk of the county commission for canvasses conducted by the county commission, or the municipal clerk or recorder for canvasses conducted by the municipal governing body, shall assist the board of canvassers.

3.6. The officers having custody of the materials and equipment of the election shall bring it before the board at the proper time, as follows:

3.6.a. When paper ballots were used, the ballot boxes, all packages of voted, unused, spoiled, provisional and challenged ballots, the pollbooks, tally sheets, precinct return certificates, official registration records, and cumulative returns;

3.6.b. For canvasses of electronically tabulated ballot elections, the ballot boxes, all packages of tabulated, spoiled, provisional, challenged and any unused ballots, the pollbooks, official registration records, voting devices, tabulating equipment, and computer printouts of the unofficial tabulation of the ballots for each precinct and any supplementary tabulations such as tally sheets of hand counted ballots with write-in votes prepared on election night; and

§153-18-4. Order of Canvassing Procedures by Voting System.

4.1. For canvasses of elections conducted with paper ballots, the board of canvassers shall proceed with steps outlined in sections 5, 6, 9, 10 and 11, in that order.

4.2. For canvasses of elections conducted with electronically tabulated ballots, the board of canvassers shall proceed with steps outlined in sections 5, 6, 8, 9, 10 and 11, in that order.

~~4.3. For canvasses of elections conducted with lever voting machines, the board of canvassers shall proceed with steps outlined in sections 7, 5, 6, 9, 10 and 11, in that order.~~

§153-18-5. Receiving the Absentee Ballots for All Voting Systems.

5.1. The clerk responsible for absentee voting for the election shall deliver to the board of canvassers all absentee ballots, lists and other documentation as follows:

5.1.a. All absentee ballots postmarked on or before election day but received after delivery to the polls, along with the original applications and a precinct list of those ballots, to be delivered in packets labeled with the precinct number;

5.1.b. All absentee ballots challenged by the ~~circuit clerk~~ county clerk, along with the original applications and a precinct list of those ballots, to be delivered in packets by precinct; and

5.1.c. All absentee ballots not postmarked by election day and received after the polls are closed, along with the original applications and a list of those ballots, to be delivered in a single packet.

5.1.d. Certification by the clerk responsible for absentee voting that the voter registration records for each absentee voter have been examined and that all unchallenged absentee ballots were cast by voters properly registered.

5.2. The board of canvassers shall open the packet of absentee ballots with late or missing postmarks received after the polls have closed, as described in subdivision 5.1.c. The board shall then:

5.2.a. Examine each absentee envelope for the postmark;

5.2.b. Count and record in the record of the canvass the number of ballot envelopes found with a late or missing postmark, return the envelopes to the packet and hold them to be sealed after the precincts have been processed; and

5.2.c. Place any ballot envelopes found to contain a postmark dated on or before election day with the materials from the proper precinct to be processed utilizing the step procedures issued by the Secretary of State according to subsection 6.1.

§153-18-6. Canvassing Each Precinct.

6.1. At least once annually, and not less than 15 days before the first election held in that calendar year, the Secretary of State shall provide a step procedures manual for canvassing individual precincts to each governing body responsible for canvassing the returns of that election.

6.1.a. The manual shall include detailed descriptions of the steps required to verify the accuracy of the "Statement of Ballots Used", the steps required for processing absentee ballots as provided in subsections 5.1.a. and 5.2.c., and the steps required for determining the disposition of the challenged ballots.

6.1.b. The manual shall include worksheets for the board of canvassers to record the findings relating to each precinct and to enter the tallies of challenged or absentee ballots counted by the board of canvassers and added to the unofficial results.

6.2. In canvassing the precincts, the board of canvassers shall perform the step procedures and complete the worksheets for each precinct, considering one precinct at a time.

~~§153-18-8~~ §153-18-7. Special Canvassing Procedures for Elections Conducted with Electronically Tabulated Ballots; Hand Counting ~~Five~~ Three Percent (~~5~~ 3%) of Precincts.

~~8.1~~ 7.1. The board of canvassers shall tally by hand the ballots of a number of precincts equal to ~~five~~ three percent of the total number of precincts in the jurisdiction, not fewer than one precinct, and with fractions rounded to the nearest whole number, as in the following table.

When the total precincts equal:	Count the ballots of:
1 - 29 <u>33</u>	One precinct
30 - 49 <u>34 - 66</u>	Two precincts
50 - 69 <u>67 - 100</u>	Three precincts
70 - 89 <u>101 - 133</u>	Four precincts
90 - 109 <u>134 - 166</u>	Five precincts
110 - 129 <u>167 - 200</u>	Six precincts
130 - 149	Seven precincts
150 - 169	Eight precincts
170 - 189	Nine precincts

~~8.2~~ 7.2. The board shall identify the precincts to be counted by random selection, such as by drawing, and may not arbitrarily select.

~~8.3~~ 7.3. In order to reduce the potential for error, the tally should be made with two persons reading out the votes cast on each ballot, and two other should separately record the votes read.

~~8.4~~ 7.4. After the hand count of each precinct is recorded, the board shall compare the recorded tallies with the tabulated results of the same precincts.

~~8.5~~ 7.5. If the difference between the tabulated results of the randomly selected precincts and the hand counted results of the same ballots is more than 1% of the total votes cast, all precincts must be hand counted.

~~§153-18-9~~ §153-18-8. Declaring the Results.

~~9.1.~~ 8.1. After the canvassing procedures have been completed for all precincts, the board shall re-total the votes cast for each candidate and for or against every issue. The board shall then declare the resulting totals and enter each total into the record of the canvass.

~~9.2.~~ 8.2. The board shall also announce the place and time, which shall be scheduled at least forty-eight (48) hours after the declaration, of the meeting at which the results will be certified if no recount is requested, and shall then adjourn until that time.

~~§153-18-10.~~ §153-18-9. Certifying the Results.

~~10.1.~~ 9.1. If no recount is demanded according to the requirements of law, the board shall prepare duplicate certificates for a primary election for each office and each party, and for the general election for each office and ballot issue, with the total votes for each candidate or question entered in words and numbers on the certificates. In the general election, the certificates for federal, statewide, legislative and judicial offices shall be prepared in triplicate originals.

~~10.2.~~ 9.2. The board shall take official action to certify the results of the election, and each member of the canvassing board shall sign each certificate.

~~10.3.~~ 9.3. The board of canvassers shall transmit certificates for a primary election within thirty (30) days from the election, or within thirty (30) days from the completion of a recount if one is requested, as follows:

~~10.3.a.~~ 9.3.a. One of each original shall be filed with the election records of the county commission, or of the municipal governing board for a municipal primary election.

~~10.3.b.~~ 9.3.b. For candidates on the ballot only within the county, including single county districts, county offices and county executive committee, one of each original shall be filed with the clerk of the circuit court, and one copy of each shall be filed with the Secretary of State.

~~10.3.c.~~ 9.3.c. For candidates on the ballot in more than one county, one of each original shall be filed with the Secretary of State.

~~10.3.d.~~ 9.3.d. For issues on the ballot, one of each original shall be filed with the Secretary of State.

~~10.3.e.~~ 9.3.e. Upon request of the chairman of the political party executive committee of the county, a certificate showing the number of votes received by each of the candidates of the party in the county or any magisterial district therein.

~~10.3.f.~~ 9.3.f. For municipal elections, one of each original shall be filed with the municipal recorder or clerk.

~~10.4.~~ 9.4. The board of canvassers shall transmit certificates for a general election within thirty (30) days from the election, or within thirty (30) days from the completion of a recount if one is requested, as follows:

~~10.4.a.~~ 9.4.a. One of each original shall be filed with the election records of the county commission, or of the municipal governing board for a municipal primary election.

~~10.4.b.~~ 9.4.b. One certificate shall be mailed upon request to each candidate voted for on the ballot.

~~10.4.c.~~ 9.4.c. For candidates for President and Vice President, United States Senator, United States House of Representatives, Justice of the Supreme Court of Appeals, and judge of circuit court shall be filed with the Governor, and one copy of each shall be filed with the Secretary of State.

~~10.4.d.~~ 9.4.d. For candidates for statewide office, except Justice of the Supreme Court of Appeals, and candidates for State Senate and House of Delegates, one of each original shall be filed with the Secretary of State.

~~10.4.e.~~ 9.4.e. For issues on the ballot, one of each original shall be filed with the Secretary of

State.

~~§153-18-11~~ §153-18-10. Preparing for a Recount.

~~11.1.~~ 10.1. If a recount is requested by any candidate, the board of canvassers shall proceed to certify the results for all offices and issues not subject to the recount request.

~~11.2.~~ 10.2. For any office in which a recount has been properly requested and a bond posted, the board shall immediately schedule a date for the recount to begin, which shall be no earlier than three days after the notices are served.

~~11.3.~~ 10.3. The board shall prepare the proper notices for the recount proceeding and make arrangements with the sheriff to serve the notices on each of the other candidates in the race in which the recount has been requested within twenty-four (24) hours following the meeting held for the purpose of certifying the election.