

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2840

FISCAL
NOTE

By Delegates Clark, Riley, Smith, Ellington, Howell,

Espinosa, and Kump

[Introduced January 19, 2023; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §3-1-48 of the Code of West Virginia, 1931, as amended, relating to
 2 expenditures of federal appropriations from Congress to the Secretary of State for
 3 purposes that further the administration of federal elections held in the state, payable from
 4 the County Assistance Voting Equipment Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-48. Legislative findings; State Election Fund; loans to counties; availability of funds; repayment of loans; grants to counties for election systems; Secretary of State expenditures from County Assistance Voting Equipment Fund.

1 (a) Legislative findings. — The Help America Vote Act of 2002, PL 107-252, 42 U.S.C.
 2 §15301, *et seq.*, provides funding so that all states will be able to implement some form of
 3 electronic voting system to replace punch card and lever machines by 2006. The new voting
 4 systems must meet several requirements including notifying the voter of over votes and permitting
 5 each voter to review his or her ballot and correct errors before casting the vote. The limited, finite
 6 funding available to the state will not be sufficient to meet current and future needs for equipment
 7 and services as equipment needs to be obtained, repaired, or replaced as technology changes. It
 8 is the intent of the Legislature to maximize the available funds by establishing a no-interest loan
 9 program to assist any county, regardless of its current voting system, in purchasing necessary
 10 electronic voting equipment and services. As the loans are repaid funds will continue to be
 11 available to meet future needs. It is not the intent of the Legislature to mandate any technology for
 12 voting systems to be utilized in this state and this section is intended only to establish terms and
 13 conditions for providing loan assistance to counties in accordance with the provisions of this
 14 section.

15 (b) State Election Fund. — The special revenue account created in the State Treasury and
 16 known as the State Election Fund account is continued. Expenditures from the account shall be
 17 used by the Secretary of State for the administration of this chapter in accordance with the

18 provisions of 42 U.S.C. §15301, *et seq.*, the Help America Vote Act of 2002, PL 107-252, in
19 accordance with the provisions of §4-11-1 *et seq.* of this code.

20 (c) Establishment of special revenue account. — There is created in the State Treasury a
21 special revenue revolving fund account known as the County Assistance Voting Equipment Fund
22 which shall be an interest-bearing account. The fund shall consist of an initial transfer not to
23 exceed \$8,500,000 from the State Election Fund established under §3-1-48(b) of this code
24 pursuant to legislative appropriation; any future funds received from the federal government under
25 the Help America Vote Act of 2002, PL 107-252, 42 U.S.C. §15301, *et seq.*, or subsequent acts
26 providing funds to states to obtain, modify, or improve voting equipment and obtain necessary
27 related services including voting systems, technology, and methods for casting and counting
28 votes; any funds appropriated by the Legislature or transferred by any public agency as
29 contemplated or permitted by applicable federal or state law; and any accrued interest or other
30 return on the moneys in the fund. The balance remaining in the fund at the end of each fiscal year
31 shall remain in the fund and not revert to the State General Revenue Fund.

32 (d) Use of funds. — The money in the fund shall be used only in the manner and for the
33 purposes prescribed in this section. Notwithstanding any provision of law to the contrary, funds in
34 the County Assistance Voting Equipment Fund may not be designated or transferred for any
35 purpose other than those set forth in this section.

36 (e) Administration of the fund. — The Secretary of State shall administer the fund with the
37 approval of the State Election Commission.

38 (f) Investment of fund. — The moneys of the fund shall be invested pursuant to §12-6-1 *et*
39 *seq.* of this code and in such a manner that sufficient moneys are available as needed for loans
40 authorized under this section.

41 (g) Loans to counties. — The county assistance voting equipment fund shall be used to
42 make no-interest loans to counties to obtain, modify, or replace voting equipment, software, and
43 necessary related services including voting systems, technology, and methods for casting and

44 counting votes: *Provided*, That any county commission that purchased an electronic voting system
45 prior to November 13, 2004, is eligible to apply for matching funds under this section to upgrade
46 the system: *Provided, however*, That matching funds available for an upgrade shall not exceed the
47 amount available under §3-1-48(g)(1) of this code for the purchase of a new electronic voting
48 system under the Secretary of State's authorized contract. The loans shall be made under the
49 following terms and conditions:

50 (1) The State Election Commission shall, subject to availability of funds, loan no more than
51 50 percent of the cost of the voting equipment or services to any county commission: *Provided*,
52 That a portion or all of the county matching requirement may be waived in limited circumstances
53 as determined by the State Election Commission pursuant to this section.

54 (2) The county commission shall provide sufficient documentation to establish to the
55 satisfaction of the State Election Commission that the county commission has at least 50 percent
56 of the money necessary to obtain the voting equipment, software, or services for which the loan is
57 sought.

58 (3) The county commission shall enter into a contract with the State Election Commission
59 for the repayment of the loan over a period not to exceed five years or the length of the contract to
60 obtain the equipment, software, or services, whichever is less.

61 (4) The county commission shall use the loan for voting equipment and services certified
62 by the State Election Commission pursuant to the provisions of §3-4a-1 *et seq.* of this code and
63 authorized for use by the Secretary of State.

64 (5) A county commission may apply for a loan on a form provided by the Secretary of State.
65 The form shall, in addition to requesting information necessary for processing the application,
66 state the deadline for submitting the application and the eligibility requirements for obtaining a
67 loan.

68 (6) The State Election Commission may waive a portion or all of the matching money
69 required by this subsection for a county commission that can establish that it has exercised due

70 diligence in raising its share of the costs but has been unable to do so. On forms provided by the
71 Secretary of State the county commission shall request a waiver and shall make a full financial
72 disclosure of its assets and liabilities as well as potential for future income when applying for a
73 waiver. The county commission shall demonstrate, to the satisfaction of the State Election
74 Commission, its inability to meet the matching requirements of this subsection and its ability to
75 repay the loan in a timely manner. Notwithstanding the provisions of §3-1-48(g)(3) of this code, the
76 State Election Commission may extend the repayment period on a year-to-year basis for a
77 repayment period not to exceed five additional years.

78 (h) Application. — An application for a loan shall be approved by the State Election
79 Commission if the requirements of this section have been met.

80 (i) Rulemaking. — The Secretary of State shall propose for promulgation in accordance
81 with §29A-3-1 *et seq.* of this code emergency and legislative rules necessary to effectuate the
82 purposes of this section.

83 (j) Availability of loans. — The State Election Commission may not approve a loan under
84 this section until final standards for electronic voting equipment with a voter verified paper ballot
85 have been established by the Secretary of State or the national institute for standards and
86 technology. The State Election Commission may not approve a loan for the purchase, lease,
87 rental, or other similar transaction to obtain electronic voting equipment, software, or necessary
88 related services unless obtained under a contract authorized by the Secretary of State pursuant to
89 rules promulgated under this section.

90 (k) Repayment of loans. — The Secretary of State may, by civil action, mandamus, or other
91 judicial or administrative proceeding, compel performance by a county commission of all the terms
92 and conditions of the loan agreement between the state and that county commission including
93 periodic reduction of any moneys due the county from the state.

94 (l) Notwithstanding the provisions of this section relating to loan procedures, the State
95 Election Commission may, with a recommendation from the HAVA Grant Board, and consistent

96 with the legislative rules of the program, approve a grant to a county for the purchase of election
97 systems, or election system upgrades, payable from the County Assistance Voting Equipment
98 Fund: Provided, That the Secretary of State shall issue emergency rules setting forth the criteria
99 for the issuance of grants to the counties.

100 (m) Notwithstanding the provisions of this section relating to loan or grant procedures, the
101 State Election Commission may, with a recommendation from the HAVA Grant Board, and
102 consistent with the legislative rules of the program, approve expenditures by the Secretary of
103 State, payable from the County Assistance Voting Equipment Fund, upon application, for the
104 purchase of election equipment or security upgrades that further the administration of federal
105 elections held in the state, which expenditures are limited to election equipment, systems,
106 infrastructure, physical and cyber security upgrades, and any other lawful purpose permitted by
107 the appropriation from Congress: *Provided*, The State Election Commission shall issue
108 emergency rules setting forth the criteria for the application and approval of these expenditures by
109 the Secretary of State.

NOTE: The purpose of this bill is to expend federal appropriations from Congress to the Secretary of State for purposes that further the administration of federal elections held in the state, payable from the County Assistance Voting Equipment Fund.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.