WEST VIRGINIA CODE: §3-1-48

§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.

(a) Legislative findings. — The Help America Vote Act of 2002, PL 107-252, 52 U.S.C. §20901 *et seq*., provides funding so that all states will be able to implement some form of electronic voting system to replace punch card and lever machines. The new voting systems must meet several requirements including notifying the voter of over votes and permitting each voter to review his or her ballot and correct errors before casting the vote. The limited, finite funding available to the state will not be sufficient to meet current and future needs for equipment and services as equipment needs to be obtained, repaired, or replaced as technology changes. It is the intent of the Legislature to maximize the available funds by establishing a no-interest loan program to assist any county, regardless of its current voting system, in purchasing necessary electronic voting equipment and services. As the loans are repaid funds will continue to be available to meet future needs. It is not the intent of the Legislature to mandate any technology for voting systems to be utilized in this state and this section is intended only to establish terms and conditions for providing loan assistance to counties in accordance with the provisions of this section.

(b) State Election Fund. — The special revenue account created in the State Treasury and known as the State Election Fund account is continued. Expenditures from the account shall be used by the Secretary of State for the administration of this chapter in accordance with the provisions of 52 U.S.C. § 20901 *et seq*., the Help America Vote Act of 2002, PL 107-252, in accordance with the provisions of §4-11-1 *et seq*. of this code.

(c) Establishment of special revenue account. — There is created in the State Treasury a special revenue revolving fund account known as the County Assistance Voting Equipment Fund which shall be an interest-bearing account. The fund shall consist of an initial transfer not to exceed $8,500,000 from the State Election Fund established under §3-1-48(b) of this code pursuant to legislative appropriation; any future funds received from the federal government under the Help America Vote Act of 2002, PL 107-252, 52 U.S.C. § 20901, *et seq*., or subsequent acts providing funds to states to obtain, modify, or improve voting equipment and obtain necessary related services including voting systems, technology, and methods for casting and counting votes; any funds appropriated by the Legislature or transferred by any public agency as contemplated or permitted by applicable federal or state law; and any accrued interest or other return on the moneys in the fund. The balance remaining in the fund at the end of each fiscal year shall remain in the fund and not revert to the State General Revenue Fund.

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

WV Legislature

for any purpose other than those set forth in this section.

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

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

(g) Loans to counties. — The county assistance voting equipment fund shall be used to make no-interest loans to counties to obtain, modify, or replace voting equipment, software, and necessary related services including voting systems, technology, and methods for casting and counting votes: *Provided*, That any county commission that purchased an electronic voting system prior to November 13, 2004, is eligible to apply for matching funds under this section to upgrade the system: *Provided, however*, That matching funds available for an upgrade shall not exceed the amount available under §3-1-48(g)(1) of this code for the purchase of a new electronic voting system under the Secretary of State's authorized contract. The loans shall be made under the following terms and conditions:

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

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

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

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

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

(6) The State Election Commission may waive a portion or all of the matching money required by this subsection for a county commission that can establish that it has exercised due diligence in raising its share of the costs but has been unable to do so. On forms

WV Legislature

provided by the Secretary of State the county commission shall request a waiver and shall make a full financial disclosure of its assets and liabilities as well as potential for future income when applying for a waiver. The county commission shall demonstrate, to the satisfaction of the State Election Commission, its inability to meet the matching requirements of this subsection and its ability to repay the loan in a timely manner. Notwithstanding the provisions of §3-1-48(g)(3) of this code, the State Election Commission may extend the repayment period on a year-to-year basis for a repayment period not to exceed five additional years.

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

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

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

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

(l) Notwithstanding the provisions of this section relating to loan procedures, the State Election Commission may, with a recommendation from the HAVA Grant Board, and consistent with the legislative rules of the program, approve a grant to a county for the purchase of election systems, or election system upgrades, payable from the County Assistance Voting Equipment Fund: *Provided*, That the Secretary of State shall promulgate emergency rules setting forth the criteria for the issuance of grants to the counties pursuant to the provisions of §29A-3-15 of this code.

(m) Notwithstanding the provisions of this section relating to loan or grant procedures, the State Election Commission may, with a recommendation from the HAVA Grant Board or other relevant federal entity and consistent with the legislative and emergency rules of the program, approve expenditures by the Secretary of State, payable from the County Assistance Voting Equipment Fund, for the purchase of election equipment or security upgrades that further the administration of federal elections held in the state, where such expenditures are limited to election equipment, systems, infrastructure, physical and cyber security upgrades, or any other lawful purpose permitted by the pertinent appropriation

WV Legislature

from Congress: *Provided*, That the State Election Commission shall promulgate emergency rules setting forth the criteria governing the application and approval process for these expenditures by the Secretary of State, pursuant to the provisions of §29A-3-15 of this code.

WV Legislature