

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

Senate Bill 631

BY SENATOR QUEEN

[Originating in the Committee on the Judiciary;

reported on February 20, 2023]

1 A BILL to amend and reenact §3-1-48 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §3-2-6 and §3-2-18 of said code; all relating to elections in general,
3 and specifically to the expenditure of federal appropriations from Congress to the
4 Secretary of State for purposes that further the administration of federal elections held in
5 the state, payable from the County Assistance Voting Equipment Fund; clarifying the
6 uniform statewide deadline for electronically submitted voter registration applications; and
7 changing the deadline by which county clerks must report voter participation history after
8 an election into the statewide voter registration system.

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 ~~§15304~~ 52 U.S.C. §20901, *et seq.*, provides funding so that all states will be able to implement
3 some form of electronic voting system to replace punch card and lever machines ~~by 2006~~. The
4 new voting systems must meet several requirements including notifying the voter of over votes
5 and permitting each voter to review his or her ballot and correct errors before casting the vote.
6 The limited, finite funding available to the state will not be sufficient to meet current and future
7 needs for equipment and services as equipment needs to be obtained, repaired, or replaced as
8 technology changes. It is the intent of the Legislature to maximize the available funds by
9 establishing a no-interest loan program to assist any county, regardless of its current voting
10 system, in purchasing necessary electronic voting equipment and services. As the loans are
11 repaid funds will continue to be available to meet future needs. It is not the intent of the Legislature
12 to mandate any technology for voting systems to be utilized in this state and this section is

13 intended only to establish terms and conditions for providing loan assistance to counties in
14 accordance with the provisions of this section.

15 (b) *State Election Fund.* — The special revenue account created in the State Treasury
16 and known as the State Election Fund account is continued. Expenditures from the account shall
17 be used by the Secretary of State for the administration of this chapter in accordance with the
18 provisions of ~~42 U.S.C. §15304~~ 52 U.S.C. § 20901, *et seq.*, the Help America Vote Act of 2002,
19 PL 107-252, in 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. §15304~~ 52 U.S.C. § 20901, *et seq.*,
26 or subsequent acts providing funds to states to obtain, modify, or improve voting equipment and
27 obtain necessary related services including voting systems, technology, and methods for casting
28 and counting votes; any funds appropriated by the Legislature or transferred by any public agency
29 as 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
45 system prior to November 13, 2004, is eligible to apply for matching funds under this section to
46 upgrade the system: *Provided, however,* That matching funds available for an upgrade shall not
47 exceed the amount available under §3-1-48(g)(1) of this code for the purchase of a new electronic
48 voting system under the Secretary of State’s authorized contract. The loans shall be made under
49 the 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
57 is 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
60 to 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
65 State. The form shall, in addition to requesting information necessary for processing the
66 application, state the deadline for submitting the application and the eligibility requirements for
67 obtaining a 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,
76 the 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~~ promulgate in
81 accordance with §29A-3-1 *et seq.* of this code emergency and legislative rules necessary to
82 effectuate the 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
89 to rules promulgated under this section.

90 (k) *Repayment of loans.* — The Secretary of State may, by civil action, mandamus, or
91 other judicial or administrative proceeding, compel performance by a county commission of all
92 the terms and conditions of the loan agreement between the state and that county commission
93 including 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 promulgate emergency rules setting forth
99 the criteria for the issuance of grants to the counties pursuant to the provisions of §29A-3-15 of
100 this code.

101 (m) Notwithstanding the provisions of this section relating to loan or grant procedures, the
102 State Election Commission may, with a recommendation from the HAVA Grant Board or other
103 relevant federal entity and consistent with the legislative and emergency rules of the program,
104 approve expenditures by the Secretary of State, payable from the County Assistance Voting
105 Equipment Fund, for the purchase of election equipment or security upgrades that further the
106 administration of federal elections held in the state, where such expenditures are limited to
107 election equipment, systems, infrastructure, physical and cyber security upgrades, or any other
108 lawful purpose permitted by the pertinent appropriation from Congress: *Provided*, That the State
109 Election Commission shall promulgate emergency rules setting forth the criteria governing the
110 application and approval process for these expenditures by the Secretary of State, pursuant to
111 the provisions of §29A-3-15 of this code.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-6. Time of registration application before an election.

1 (a) Voter registration before an election closes on the 21st day before the election or on
2 the first day thereafter which is not a Saturday, Sunday, or legal holiday.

3 (b) An application for voter registration, transfer of registration, change of name, or change
4 of political party affiliation submitted by an eligible voter by the close of voter registration is
5 effective for any subsequent primary, general, or special election if the following conditions are
6 met:

7 (1) The application contains the information required by §3-2-5(c) of this code. Incomplete
8 applications for registration containing information which are submitted within the required time
9 may be corrected within four business days after the close of registration if the applicant provides
10 the required information; and

11 (2) The application is received by the appropriate clerk of the county commission no later
12 than the hour of the close of registration or is otherwise submitted by the following deadlines:

13 (A) If mailed, the application shall be addressed to the appropriate clerk of the county
14 commission and is postmarked by the postal service no later than the date of the close of
15 registration. If the postmark is missing or illegible, the application is presumed to have been mailed
16 no later than the close of registration if it is received by the appropriate clerk of the county
17 commission no later than the third day following the close of registration;

18 (B) If accepted by a designated agency or motor vehicle licensing office, the application is
19 received by that agency or office no later than the close of registration;

20 (C) If accepted through a registration outreach program, the application is received by the
21 clerk, deputy clerk, or registrar no later than the close of registration;

22 (D) If accepted through an approved electronic voter registration system, the application
23 is received by the clerk of the county commission or other entity designated by the Secretary of
24 State no later than ~~the close of business~~ by 11:59 p.m. on the final day of registration; and

25 (3) The verification notice required by the provisions of §3-2-16 of this code mailed to the
26 voter at the residence indicated on the application is not returned as undeliverable.

§3-2-18. Registration records; active, inactive, canceled, pending and rejected registration files; procedure; voting records.

1 (a) For the purposes of this article:

2 (1) "Original voter registration record" means all records submitted or entered in writing or
3 electronically, where permitted by law, for voter registration purposes, including:

4 (A) Any original application or notice submitted by any person for registration or
5 reinstatement, change of address, change of name, change of party affiliation, correction of
6 records, cancellation, confirmation of voter information, or other request or notice for voter
7 registration purposes; and

8 (B) Any original entry made on any voters' registration record at the polling place or made
9 or received by the clerk of the county commission relating to any voters' registration such as
10 records of voting, presentation of identification and proof of age, challenge of registration, notice
11 of death or obituary notice, notice of disqualifying conviction or ruling of mental incompetence, or
12 other original document which may affect the status of any person's voter registration.

13 (2) "Active voter registration records" means the registration records, whether on paper or
14 in electronic format, containing the names, addresses, birth dates, and other required information
15 for all persons within a county who are registered to vote and whose registration has not been
16 designated as inactive or canceled pursuant to the provisions of this article.

17 (3) "Inactive voter registration records" means the registration records, whether on paper
18 or in electronic format, containing the names, addresses, birth dates, and other required
19 information for all persons designated inactive pursuant to the provisions of §3-2-27 of this code
20 following the return of the prescribed notices as undeliverable at the address provided by the
21 United States Postal Service or entered on the voter registration, or for failure of the contacted
22 voter to return a completed confirmation notice within 30 days of the mailing.

23 (4) "Canceled voter registration records" means the records containing all required
24 information for all persons who have been removed from the active and inactive voter registration
25 records and who are no longer registered to vote within the county.

26 (5) "Pending application records" means the temporary records containing all information
27 submitted on a voter registration application, pending the expiration of the verification period.

28 (6) "Rejected application records" means the records containing all information submitted
29 on a voter registration application which was rejected for reasons as described in this article.

30 (7) "Confirmation pending records" means the records containing all required information
31 for persons who have been identified to be included in the next succeeding mailing of address
32 confirmation notices as set forth by the National Voter Registration Act of 1993 (42 U.S. C. §
33 1973gg *et seq.*).

34 (b) For the purposes of this chapter or of any other provisions of this code relating to
35 elections conducted under the provisions of this chapter, whenever a requirement is based on the
36 number of registered voters, including, but not limited to, the number of ballots to be printed, the
37 limitations on the size of a precinct, or the number of petition signatures required for election
38 purposes, only those registrations included on the active voter registration files shall be counted
39 and voter registrations included on the inactive voter registration files, as defined in this
40 subdivision, ~~shall not be~~ are not to be counted.

41 (c) Active voter registration records, confirmation pending records, and inactive voter
42 registration records may be maintained in the same physical location, providing the records are
43 coded, marked, or arranged in such a way as to make the status of the registration immediately
44 obvious. Canceled voter registration records, pending application records, and rejected
45 application records may be maintained in separate physical locations. However, all such records
46 shall be maintained in the statewide voter registration database, subject to this article.

47 (d) The effective date of any action affecting any voter's registration status shall be entered
48 on the voter record, including the effective date of registration, change of name, address or party

49 affiliation or correction of the record, effective date of transfer to inactive status, return to active
50 status, or cancellation. When any registration is designated inactive or is canceled, the reason for
51 the designation or cancellation and any reference notation necessary to locate the original
52 documentation related to the change shall be entered on the voter record.

53 (e) Within ~~one hundred twenty~~ 80 days after each primary, general, municipal, or special
54 election, the clerk of the county commission shall enter the voting records into the statewide voter
55 registration database.