

SB 3002

FILED

2004 DEC -2 P 4: 37

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
3rd EXTRAORDINARY SESSION, 2004

ENROLLED

SENATE BILL NO. 3002

(By Senators Tomblin, Mr. President and Sprouse)
By Request of the EXECUTIVE)

PASSED November 16, 2004

In Effect from Passage

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Senate Bill No. 3002

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed November 16, 2004; in effect from passage.]

AN ACT to amend and reenact §3-1-48 of the code of West Virginia, 1931, as amended, relating to facilitating implementation of the "Help America Vote Act of 2002"; implementing electronic voting systems; providing legislative findings; continuing the state election fund; establishing special revenue account; specifying criteria for obtaining a loan; providing for investment of fund moneys; allowing loans to counties for electronic voting systems and for upgrades of previously purchased electronic voting systems; specifying eligibility requirements for loans; giving authority to state election commission to waive matching moneys; authorizing emergency and legislative rules; limiting availability of loans; specifying duties of secretary of state; and authorizing methods for compelling repayment of loans.

Be it enacted by the Legislature of West Virginia:

That §3-1-48 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. LIMITS AND JURISDICTION.

§3-1-48. Legislative findings; state election fund; loans to counties; availability of funds; repayment of loans.

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

23 (b) *State election fund.* – The special revenue account
24 created in the state treasury and known as the “State
25 Election Fund” account is continued. Expenditures from
26 the account shall be used by the secretary of state for the
27 administration of this chapter in accordance with the
28 provisions of 42 U. S. C. §15301, *et seq.*, the Help America
29 Vote Act of 2002, PL 107-252, in accordance with the
30 provisions of article eleven, chapter four of this code.

31 (c) *Establishment of special revenue account.* – There is
32 created in the state treasury a special revenue revolving
33 fund account known as the “county assistance voting
34 equipment fund” which shall be an interest bearing
35 account. The fund shall consist of an initial transfer not to
36 exceed eight million five hundred thousand dollars from
37 the state election fund established under subsection (b) of
38 this section pursuant to legislative appropriation; any
39 future funds received from the federal government under
40 the “Help America Vote Act of 2002”, PL 107-252, 42 U. S.
41 C. §15301, *et seq.*, or subsequent acts providing funds to
42 states to obtain, modify or improve voting equipment and
43 obtain necessary related services including voting systems,
44 technology and methods for casting and counting votes;
45 any funds appropriated by the Legislature or transferred
46 by any public agency as contemplated or permitted by
47 applicable federal or state law; and any accrued interest or
48 other return on the moneys in the fund. The balance
49 remaining in the fund at the end of each fiscal year shall
50 remain in the fund and not revert to the state general
51 revenue fund.

52 (d) *Use of funds.* – The money in the fund shall be used
53 only in the manner and for the purposes prescribed in this
54 section. Notwithstanding any provision of law to the
55 contrary, funds in the county assistance voting equipment
56 fund may not be designated or transferred for any purpose
57 other than those set forth in this section.

58 (e) *Administration of the fund.* – The secretary of state
59 shall administer the fund with the approval of the state
60 election commission.

61 (f) *Investment of fund.* – The moneys of the fund shall be
62 invested pursuant to article six, chapter twelve of this code
63 and in such a manner that sufficient moneys are available
64 as needed for loans authorized under this section.

65 (g) *Loans to counties.* – The county assistance voting
66 equipment fund shall be used to make no interest loans to

67 counties to obtain, modify or replace voting equipment,
68 software and necessary related services including voting
69 systems, technology and methods for casting and counting
70 votes: *Provided*, That any county commission that pur-
71 chased an electronic voting system prior to the thirteenth
72 day of November, two thousand four, is eligible to apply
73 for matching funds under this section to upgrade the
74 system: *Provided, however*, That matching funds available
75 for an upgrade shall not exceed the amount available
76 under subdivision (1) of this subsection for the purchase of
77 a new electronic voting system under the secretary of
78 state's authorized contract. The loans shall be made under
79 the following terms and conditions:

80 (1) The state election commission shall, subject to
81 availability of funds, loan no more than fifty percent of the
82 cost of the voting equipment or services to any county
83 commission: *Provided*, That a portion or all of the county
84 matching requirement may be waived in limited circum-
85 stances as determined by the state election commission
86 pursuant to this section.

87 (2) The county commission shall provide sufficient
88 documentation to establish to the satisfaction of the state
89 election commission that the county commission has at
90 least fifty percent of the money necessary to obtain the
91 voting equipment, software or services for which the loan
92 is sought.

93 (3) The county commission shall enter into a contract
94 with the state election commission for the repayment of
95 the loan over a period not to exceed five years or the
96 length of the contract to obtain the equipment, software or
97 services, whichever is less.

98 (4) The county commission shall use the loan for voting
99 equipment and services certified by the state election
100 commission pursuant to the provisions of article four-a of
101 this chapter and authorized for use by the secretary of
102 state.

103 (5) A county commission may apply for a loan on a form
104 provided by the secretary of state. The form shall, in
105 addition to requesting information necessary for process-
106 ing the application, state the deadline for submitting the
107 application and the eligibility requirements for obtaining
108 a loan.

109 (6) The state election commission may waive a portion
110 or all of the matching money required by this subsection
111 for a county commission that can establish that it has
112 exercised due diligence in raising its share of the costs but
113 has been unable to do so. On forms provided by the
114 secretary of state the county commission shall request a
115 waiver and shall make a full financial disclosure of its
116 assets and liabilities as well as potential for future income
117 when applying for a waiver. The county commission shall
118 demonstrate, to the satisfaction of the state election
119 commission, its inability to meet the matching require-
120 ments of this subsection and its ability to repay the loan in
121 a timely manner. Notwithstanding the provisions of
122 subdivision (3) of this subsection, the state election
123 commission may extend the repayment period on a year-
124 to-year basis for a repayment period not to exceed five
125 additional years.

126 (h) *Application.* – An application for a loan shall be
127 approved by the state election commission if the require-
128 ments of this section have been met.

129 (i) *Rulemaking.* – The secretary of state shall propose
130 for promulgation in accordance with article three, chapter
131 twenty-nine-a of this code emergency and legislative rules
132 necessary to effectuate the purposes of this section.

133 (j) *Availability of loans.* – The state election commission
134 may not approve a loan under this section until final
135 standards for electronic voting equipment with a voter
136 verified paper ballot have been established by the secre-
137 tary of state or the national institute for standards and
138 technology. The state election commission may not

139 approve a loan for the purchase, lease, rental or other
140 similar transaction to obtain electronic voting equipment,
141 software or necessary related services unless obtained
142 under a contract authorized by the secretary of state
143 pursuant to rules promulgated under this section.

144 (k) *Repayment of loans.* – The secretary of state may, by
145 civil action, mandamus or other judicial or administrative
146 proceeding, compel performance by a county commission
147 of all the terms and conditions of the loan agreement
148 between the state and that county commission including
149 periodic reduction of any moneys due the county from the
150 state.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved..... this the *2nd*
Day of *December*....., 2004.

[Signature]
.....
Governor

PRESENTED TO
THE GOVERNOR

DATE 11/19/64

TIME 4:20 pm