

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 548

BY SENATORS JEFFRIES, BALDWIN, BEACH, DRENNAN,

FACEMIRE, GAUNCH, OJEDA, PLYMALE, PREZIOSO,

ROMANO, SMITH, STOLLINGS, SWOPE, AND CLINE

[Originating in the Committee on Government

Organization; Reported on February 23, 2018]

1 A BILL to amend and reenact §3-1-44 and §3-1-48 of the Code of West Virginia, 1931, as
2 amended, all relating generally to the conduct of elections; authorizing compensation for
3 election officials be fixed by county commission; requiring all election officials within a
4 classification to be paid the same amount within each county; authorizing Secretary of
5 State to set maximum compensation rates in certain elections where costs are determined
6 to be obligations of the state; declaring compensation above maximum compensation set
7 by Secretary of State in certain elections to be county obligation; permitting State Election
8 Commission, with recommendation from HAVA Grant Board and consistent with
9 legislative rules of the program, approve grant to a county for the purchase of election
10 systems or upgrades from the county assistance voting equipment fund; and directing
11 Secretary of State issue emergency rules setting criteria for issuance of grants.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-44. Compensation of election officials; expenses.

1 (a) Each ballot commissioner is to be paid a sum, to be fixed by the county commission,
2 ~~not exceeding \$125~~ for each day he or she serves as ballot commissioner, but in no case may a
3 ballot commissioner receive allowance for more than 10 days' services for any one primary,
4 general, or special election.

5 (b) Each commissioner of election and poll clerk is to be paid a sum, to be fixed by the
6 county commission, ~~not exceeding \$125~~ for one day's services for attending the school of
7 instruction for election officials if the commissioner or poll clerk provides at least one day's service
8 during an election and a sum ~~not exceeding \$175~~ for his or her services at any one election:
9 *Provided*, That each commissioner of election and poll clerk is to be paid a sum ~~not exceeding~~
10 ~~\$175~~ for his or her services at any of the three special elections described in §3-1-44(f) of this
11 code.

12 (c) Each alternate commissioner of election and poll clerk may be paid a sum, to be fixed
13 by the county commission, ~~not exceeding \$50~~ for one day's services for attending the school of
14 instruction for election officials: *Provided*, That no alternate may be eligible for compensation for
15 election training unless the alternate is subsequently appointed as an election official or is
16 instructed to attend and actually attends training as an alternate and is available to serve on
17 election day.

18 (d) The commissioners of election or poll clerks obtaining and delivering the election
19 supplies, as provided in §3-1-24 of this code, and returning them, as provided in §3-5-1 *et seq.*
20 and §3-6-1 *et seq.* of this code, are to be paid an additional sum, fixed by the county commission,
21 ~~not exceeding \$125~~ for his or her services pursuant to this subsection at any one election. In
22 addition, he or she is to be paid mileage up to the rate of reimbursement authorized by the travel
23 management rule of the Department of Administration for each mile necessarily traveled in the
24 performance of his or her services.

25 (e) The compensation of election officers, cost of printing ballots and all other expenses
26 incurred in holding and making the return of elections, other than the three special elections
27 described in §3-1-44(f) of this code, are to be audited by the county commission and paid out of
28 the county treasury.

29 (f) All persons within a class of election officials, as classified in this section, shall be paid
30 the same amount within the county.

31 (g) The compensation of election officers, cost of printing ballots, and all other reasonable
32 and necessary expenses in holding and making the return of a special election for the purpose of
33 taking the sense of the voters on the question of calling a constitutional convention, of a special
34 election to elect members of a constitutional convention, and of a special election to ratify or reject
35 the proposals, acts, and ordinances of a constitutional convention are obligations of the state
36 incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county
37 commissions, and county commissions of the various counties as agents of the state. All

38 expenses of these special elections are to be audited by the Secretary of State. The Secretary of
39 State shall prepare and transmit to the county commissions forms on which the county
40 commissions shall certify all expenses of these special elections to the Secretary of State. If
41 satisfied that the expenses as certified by the county commissions are reasonable and were
42 necessarily incurred, the Secretary of State shall requisition the necessary warrants from the
43 Auditor of the state to be drawn on the state Treasurer and shall mail the warrants directly to the
44 vendors of the special election services, supplies, and facilities.

45 (h) Notwithstanding the authority granted to county commissions to set compensation for
46 election officials in this section, the Secretary of State may set maximum rates of compensation
47 of the election officials identified in this section at any election for which the obligations incurred
48 by the ballot commissioners, clerks of the county commissions, and county commissions of the
49 various counties are determined to be obligations of the state.

**§3-1-48. Legislative findings; State Election Fund; loans to counties; availability of funds;
repayment of loans; grants to counties for election systems.**

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.
8 It 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
12 for voting systems to be utilized in this state and this section is intended only to establish terms

13 and 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
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. §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
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 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
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 emergency rules setting forth the criteria
99 for the issuance of grants to the counties.