

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4540**

BY DELEGATE HANSHAW

[Introduced February 13, 2018; Referred  
to the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §3-1-48 of the Code of West Virginia, 1931, as amended, relating  
 2 to implementing a process for counties to obtain grants from an existing federal fund  
 3 designated the "Help America Vote Act Fund" or HAVA Fund" consistent with the HAVA  
 4 State Plan as amended.

*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.**

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  
 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 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 article eleven, chapter four 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 subsection (b) of this section  
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 article six,  
39 chapter twelve of this code and in such a manner that sufficient moneys are available as needed  
40 for loans 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 subdivision (1) of this subsection for the purchase of a new  
48 electronic voting system under the Secretary of State's authorized contract. The loans shall be  
49 made under the following terms and conditions:

50 (1) The State Election Commission shall, subject to availability of funds, loan no more than  
51 fifty 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  
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 article four-a of this chapter 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 subdivision (3) of this  
76 subsection, the State Election Commission may extend the repayment period on a year-to-year  
77 basis for a 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 article three, chapter twenty-nine-a of this code emergency and legislative rules necessary  
82 to 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 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.

1 (l) Notwithstanding the provisions of this section relating to loan procedures, the State  
2 Election Commission may, with a recommendation from the HAVA Grant Board, and consistent  
3 with the legislative rules of the program, approve a grant to a county for the purchase of election

- 4 systems, or election system upgrades, payable from the “county assistance voting equipment  
5 fund”.

NOTE: The purpose of this bill is to provide for a county grant program in addition to the existing loan program consistent with the HAVA State Plan.

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