

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #3

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2005 JUL 29 P 2:46

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: Secretary of State TITLE NUMBER: 153

CITE AUTHORITY: §3-1-48

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 10

TITLE OF RULE BEING PROPOSED: Loan Program for Purchase of Voting Equipment,
Software & Services

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Authorized Signature

PROPOSED LEGISLATIVE RULE §153-10

Loan Program for Purchase of Voting Equipment, Software & Services

Brief Summary

This proposed rule is promulgated pursuant to SB 3002, 3rd Special Legislative Session, 2004.

It sets forth the requirements under which counties may borrow money at zero per cent interest from the "County Assistance Voting Equipment Fund", a special revenue revolving loan fund created in the state treasury, to purchase, maintain, or upgrade voting systems hardware and software, and also to procure various services required by the Help America Vote Act of 2002.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Loan Program for Purchase of Voting Equipment, Software & Services

Type of Rule: Legislative Interpretive Procedural

Agency: Secretary of State

Address: 157 Kanawha Boulevard E.
Charleston WV 25305-0770

Phone Number: (304) 558-6000 Email: wvsos@wvsos.com

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

N/A All mandated HAVA costs will be borne by federal funding. There will be no extraordinary cost to the state.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	FISCAL YEAR		Fiscal Year (Upon Full Implementation)
	current Increase/Decrease (use "-")	next Increase/Decrease (use "-")	
1. Estimated Total Cost	-0-	-0-	-0-
Personal Services			
Current Expenses			
Repairs & Alterations			
Assets			
Equipment			
Other			
2. Estimated Total Revenues	-0-	-0-	-0-

Rule Title: Loan Program for Purchase of Voting Equipment, Software & Services

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

N/A

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule would not have a fiscal impact, and/or any special issues not captured elsewhere on this form.

N/A

Date: 6/28/05

Signature of Agency Head or Authorized Representative

John A. Filand

**TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE**

**SERIES 10
LOAN PROGRAM FOR PURCHASE OF VOTING EQUIPMENT, SOFTWARE AND
SERVICES**

§153-10-1. General.

1.1. Scope. -- To establish guidelines for the administration of the loan program established by S.B. 3002 (2004).

1.2. Authority. -- W. Va. Code §3-1-48.

1.3. Filing Date. -- _____, 2005.

1.4. Effective Date. -- _____, 2005.

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§153-10-2. Request for loan.

County commissions may request a loan from the Secretary of State for the purpose of obtaining, modifying or replacing voting equipment, software and necessary related services including voting systems, technology and methods for casting and counting votes.

§153-10-3. Application.

3.1. Any county commission requesting a loan, shall file an application with the Secretary of State.

3.2. The application shall be on a form provided by the Secretary of State and shall contain the following information:

3.2.a. Name of County

3.2.b. Amount of loan requested

3.2.c. Proposed use of funds including type of equipment, software and/or services and quantity, if applicable

3.2.d. Statement that county has obtained at least fifty percent (50%) of the cost of the equipment, software and/or service

3.2.e. Date of application

3.2.f. Signature of county commissioners

3.2.g. Such other information deemed necessary by the Secretary of State

3.3. In addition to the application, the county commission shall provide to the Secretary of State a copy of the resolution passed by the county commission authorizing the county to purchase or lease the equipment, software and/or services and to enter into the loan agreement.

§153-10-4. Matching Funds.

4.1 County commissions must obtain at least fifty percent (50%) of the cost of the equipment, software and/or services and may only obtain a loan for up to fifty percent (50%) of the cost.

4.2. The State Election Commission may waive a portion or all of the fifty percent matching funds required by a county commission if the county commission demonstrates to the satisfaction of the State Election Commission that it has exercised due diligence to raise the matching funds; it is unable to obtain the matching funds; and that it has the ability to pay the installments on the loan when due.

4.3. County commissions may request a waiver of the matching funds by filing an application with the State Election Commission.

4.4. The application for waiver of matching funds shall be on a form provided by the Secretary of State and it shall include the following information:

4.4.a. Name of county

4.4.b. Amount that county commission has raised toward the matching fund

4.4.c. Amount of waiver requested

4.4.d. An explanation of the efforts of the county commission to raise the entire matching funds

4.4.e. Full financial disclosure of the assets and liabilities of the county

4.4.f. Potential for future income and its ability to pay the installments on the loan when due

4.4.g. Date of application

4.4.h. Signature of county commissioners

4.4.i. Such other information deemed necessary by the Secretary of State

§153-10-5. Authorized Equipment, Software and Services.

Loans may only be approved by the State Election Commission for the purchase or lease of equipment, software and/or services if certified by the State Election Commission if applicable, and if authorized by the Secretary of State under a contract awarded through the state purchasing procedure.

§153-10-6. Ownership.

All equipment, software and services acquired through this loan program shall be purchased by the Secretary of State from the vendor under the contract referred to in section 5 of this rule and shall

be immediately turned over to the county and the equipment shall be solely owned by the county.

§153-10-7. Approval.

7.1. Upon receipt of a complete application for a loan or application for a waiver of the matching funds, the State Election Commission shall review and approve the application, deny the application or request additional information within forty-five days of receipt. Any denial shall include a letter setting forth the reason(s) for the denial. Any county commission receiving a denial shall have thirty days to amend its original application in order to comply with any necessary changes required by the State Election Commission.

7.2. Once a county commission has met all of the requirements of this rule, the State Election Commission shall approve the loan; provided that funds are available.

7.3. Upon approval, the county commission and the State Election Commission shall enter into a contract for the repayment of the loan by equal monthly or annual payments for a period not to exceed five years or the length of the contract to obtain the equipment, software and/or services, whichever is less.

7.4. Upon written request by the county commission, the State Election Commission may extend the repayment of the loan on a year-to-year basis for a repayment period not to exceed five additional years. Nothing in this section should be construed to allow loan continuation for a period of more than ten years total from the date of the signing of the agreement.

7.5. Unanimous approval shall be required by the State Election Commission when a county commission applies for a subsequent loan from this fund while such county commission currently has an outstanding loan from the fund.

§153-10-8. Maximum Amount of Loan Funds Available.

The maximum amount that any county may borrow from this fund under any one request, will be limited to a pro rata fraction of loan funds available at the time of the request, the numerator of the fraction shall be the number of registered voters in that county as of the most recently passed federal presidential election, and the denominator of the fraction shall be the total number of registered voters in the state as of the most recently passed federal presidential election; Provided, That, for the initial purchase or lease of an electronic voting system in order to meet the January 1, 2006 HAVA requirement, the provisions of this section shall not apply to those counties that meet the criteria of section 9 of this rule.

§153-10-9. Equipment Purchased or Leased Before November 13, 2004.

Any county commission that purchased or leased an electronic voting system prior to the thirteenth day of November, two thousand four, is eligible to apply for matching funds to upgrade or replace the system. Such matching funds shall not exceed the amount available to purchase a new electronic voting system under the Secretary of State's authorized contract.

§153-10-10. Replacement of Punch Card and Lever Voting Systems.

Any county commission that makes the choice after January 1, 2006 to replace its punch card or

lever voting system, shall be eligible to borrow funds from this loan program for the purpose of replacing its voting system with a HAVA-compliant system; Provided that the maximum aggregate amount of loan proceeds that will be available to such counties under this loan program according to section 8 of this rule shall be reduced by the amount of federal funding that was forfeited and returned to the federal government as a result of such county's failure to replace its punch card or lever system by January 1, 2006.

§153-10-11. Repayment of Loans

11.1. No county commission may apply for and receive a loan if that county commission currently has an outstanding loan from this fund which is in default.

11.2. Upon nonpayment of the loan installments by the county commission or other breach of the loan agreement, the Secretary of State may institute a civil action, mandamus or other judicial or administrative proceeding to compel performance by the county commission.

11.3. Nonpayment of the loan installments shall mean a nonpayment of two consecutive monthly payments or nonpayment of an annual payment in excess of thirty days beyond the scheduled payment date.

11.4. Any legal action will cease upon full payment of the default amount by the county. The defaulting county commission shall be liable for any legal costs incurred by the Secretary of State in order to obtain compliance.

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: 7/29/2005

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* Secretary of State Betty Ireland
1900 Kanawha Blvd E
Charleston WV 25305
304-558-6000

LEGISLATIVE RULE TITLE: Loan Program for Purchase of Voting Equipment Software & Services

1. Authorizing statute(s) citation §3-1-48

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
6/29/2005

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:
6/29/2005

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received x

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

7/29/2005

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Betty Ireland

Secretary of State

1900 Kanawha Blvd E

Charleston WV

558-6000 phone

558-0900 fax

wvsos@wvsos.com

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached
