

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

Form #4

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WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

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 RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.


Authorized Signature

\$3.00

TITLE 153
LEGISLATIVE RULE
SECRETARY OF STATE

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

SECRETARY OF STATE

§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. -- _____, 2006.

1.4. Effective Date. -- _____, 2006.

§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 voting 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 the county assistance voting equipment fund (here in after "the 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 the 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 Help America Vote Act (here in after "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 November 13, 2004, is eligible to apply for matching funds to upgrade or replace the system. The loan 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 apply for 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.