



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

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

AGENCY: Election Commission TITLE-SERIES: 146-07

RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: 146-07 Application and Approval Process for Secretary of State Expenditures from the
County Assistance Voting Equipment Fund

PRIMARY CONTACT

NAME: Donald Kersey

ADDRESS: State Capitol Bldg 1 Ste 157 K
Charleston, WV 25305

EMAIL: dkersey@wvsos.gov

PHONE NUMBER: 304-558-6000

CITE STATUTORY AUTHORITY: W. Va. Code 3-1-48(m)

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The State Election Commission has broad authority to promulgate legislative rules concerning the Secretary of State's authority and procedure to apply for federal grants under the Help America Vote Act.

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/27/2023

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/27/2023

COMMENTS RECEIVED: Yes

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

N/a

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

-- This Rule provides the criteria governing the application and approval process for these expenditures by the Secretary of State from the County Assistance Voting Equipment Fund, for the purchase of election equipment or security upgrades that further the administration of federal elections held in the state, where such expenditures are limited to election equipment, systems, infrastructure, physical and cyber security upgrades, or any other lawful purpose permitted by the pertinent appropriation from Congress.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

SB 631 (2023) amended state law to authorize the Secretary of State to apply for federal grants to purchase election equipment or make security upgrades. This rule established the application and approval procedures.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/a

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Donald Kersey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 146
LEGISLATIVE RULE
ELECTION COMMISSION

SERIES 7

APPLICATION AND APPROVAL PROCESS FOR SECRETARY OF STATE EXPENDITURES
FROM THE COUNTY ASSISTANCE VOTING EQUIPMENT FUND

§146-7-1. General.

1.1. Scope. -- This Rule provides the criteria governing the application and approval process for these expenditures by the Secretary of State from the County Assistance Voting Equipment Fund, for the purchase of election equipment or security upgrades that further the administration of federal elections held in the state, where such expenditures are limited to election equipment, systems, infrastructure, physical and cyber security upgrades, or any other lawful purpose permitted by the pertinent appropriation from Congress.

1.2. Authority. -- W. Va. Code § 3-1-48(m).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect August 1, 2028.

§146-7-2. Definitions.

2.1. "Approved" means authorization granted by the State Election Commission or the EAC.

2.2. "Election system" means any mechanical device, hardware, software, or combination thereof designed to work or operate in conjunction with, secure, maintain, or improve any part of the voting process or systems, including but not limited to accessible electronic voting systems and e-pollbooks.

2.3. "Electronic pollbook" or "e-pollbook" means an approved electronic device containing voter registration information for the purpose of facilitating voting at the precinct.

2.4. "Electronic voting system" means one or more approved accessible integrated devices that utilize an electronic component for the following functions: ballot presentation, vote capture, vote recording, or vote tabulation.

2.5. The "fund" means the County Assistance Voting Equipment Fund bearing the designation "1615" by the State.

2.6. "Grant" means a sum of money authorized for disbursement by the State Election Commission to a county subgrantee from the Fund to improve the administration of elections for Federal office, including to enhance election technology and make election security improvements, such as electronic voting system upgrades, cybersecurity enhancements, physical security upgrades, and e-pollbooks.

2.7. "HAVA" means the Help America Vote Act, 52 U.S.C. §20901, et seq.

2.8. "HAVA Grant Board" means a body authorized by W. Va. Code §3-1-48 for the purpose of making recommendations to the State Election Commission to issue grants from the Fund consistent with this Rule and 153 CSR 10.

2.9. "Physical security" means equipment and techniques employed to securely administer a federal election, such as to protect hardware, software, networks and data from physical actions, tampering, and events that could cause loss or damage to election systems due to burglary, theft, vandalism, terrorism, fire, flood, or natural disaster. The term also includes the addition of necessary and reasonable resources and staff to protect the integrity of a federal election, such as unanticipated increases in election materials and supplies, cleaning or sanitization supplies, temporary staff, and other items or expenditures permitted by federal law.

§146-7-3. Secretary of State Application for Grant Funding for the Purchase of Election Equipment or Security Upgrades.

3.1. The Secretary of State may apply to the State Election Commission for approval of a grant from the Fund to purchase of election equipment or security upgrades that further the administration of federal elections held in West Virginia: *Provided*, that such expenditures shall be limited to election equipment, systems, infrastructure, physical and cyber security upgrades, or any other lawful purpose permitted by the pertinent appropriation from Congress.

3.2. The Secretary of State's request for approval to the State Election Commission shall be by written application, which shall include the following information:

3.2.1. The amount of grant money requested;

3.2.2. The proposed use of funds, including type of equipment, software, and services to be purchased and the quantity thereof, if applicable;

3.2.3. A description of the circumstances or justifications that require the Secretary of State, rather than individual counties, to seek a grant from the Fund for the proposed use(s); and

3.2.4. A statement that the Secretary of State has the authority to make the proposed purchases through lawful purchasing procedures; and

3.3. Upon receipt of an application from the Secretary of State, the State Election Commission shall refer the application to the HAVA Grant Board for its review and recommendation.

3.4. The HAVA Grant Board shall convene no later than 30 days after receipt of a referral from the State Election Commission for the purpose of reviewing the application.

3.4.1. The Director of the Elections Division of the Secretary of State's office shall not participate in any deliberations concerning an application by the Secretary of State, and shall be prohibited from participating in the vote or other formal decision regarding the application.

3.4.2. The Vice Chair of the HAVA Grant Board shall conduct the meeting. If no Vice Chair has been previously appointed, the HAVA Grant Board shall appoint a Chair for the purposes of conducting the meeting: *Provided*, that nothing in this Rule shall remove the authority of the Director of the Elections Division from serving as Chairperson of the HAVA Grant Board for all other applications by counties for grants from the Fund under 153 CSR 10.

3.4.3. At the conclusion of the meeting, the HAVA Grant Board shall issue its written recommendation to the State Election Commission.

3.5. No later than 10 days after the HAVA Grant Board issues its final recommendation, the State Election Commission shall meet to consider the recommendations of the HAVA Grant Board. The State Election Commission shall review and decide upon the recommendations of the HAVA Grant Board. Unless the decision of the HAVA Grant Board is arbitrary and capricious, the recommendations should be adopted by the State Election Commission: *Provided*, That is the Secretary of State's application is denied by the HAVA Grant Board, the Secretary of State or designee may appear and present good cause to the State Election Commission as to why their application should be granted.

3.6. Grants may be approved by the State Election Commission, upon a recommendation by the HAVA Grant Board, only for the purchase of election equipment or security upgrades that further the administration of federal elections held in the state, where such expenditures are limited to election equipment, systems, infrastructure, physical and cyber security upgrades, or any other lawful purpose permitted by the pertinent appropriation from Congress. Furthermore, the State Election Commission shall consider any outstanding applications for grants by counties from the Fund, especially where approval of Secretary of State's application would result in a denial of a county application due to lack of sufficient funds.

3.7. The decision of the State Election Commission shall be full and final.