



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

7/28/2023 4:03:29 PM

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: Secretary Of State TITLE-SERIES: 153-55  
RULE TYPE: Legislative Amendment to Existing Rule: No Repeal of existing rule: No  
RULE NAME: 153-55 Election Administration, Infrastructure, and Security Minimum Standards and Reserve  
Funding

**PRIMARY CONTACT**

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CITE STATUTORY AUTHORITY: W. Va. Code 3-1A-6 and 11-22-2(c)(4)

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 Secretary of State is granted rule-making authority for guiding counties' local cyber and physical security expenditures and upgrades, as well as to provide minimum security requirements to be met before certain earmarked funds can be swept from an election security fund account to a county's general account.

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: No

(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 establishes minimum standards for election administration, infrastructure, and security, which includes standards regarding cyber and physical security, and a minimum reserve funding requirement for each county from funds transferred to the separate fund for election administration, infrastructure, and security, as required by W. Va. Code § 11-22-2.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

SB 522 (2023) relates to excise taxes on transfers of title to real estate, requiring a certain percentage of certain excise taxes be allocated to the county in which it was collected and distributed to county clerks for election related expenditures. The law authorizes the Secretary of State to propose legislative rules establishing standards for election administration, infrastructure, and security, and to provide for allocation of funds when certain minimum standards or reserve amounts are met.

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)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

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 153  
LEGISLATIVE RULE  
SECRETARY OF STATE

SERIES 55  
MINIMUM STANDARDS FOR  
ELECTION ADMINISTRATION, INFRASTRUCTURE, AND SECURITY

**§153-55-1. General.**

1.1. Scope. -- This Rule establishes minimum standards for election administration, infrastructure, and security, which includes standards regarding cyber and physical security, and a minimum reserve funding requirement for each county from funds transferred to the separate fund for election administration, infrastructure, and security, as required by W. Va. Code § 11-22-2.

1.2. Authority. -- W. Va. Code §§ 3-1A-6 and 11-22-2(c)(4).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This Rule shall terminate and have no further force or effect on August 1, 2029.

**§153-55-2. Purpose.**

2.1. Pursuant to W. Va. Code § 11-22-2, as amended in SB 522 (2023), this Rule establishes the minimum cyber and physical security standards for election administration, infrastructure, and security, which must be satisfied prior to a County Commission's transfer of the excess moneys from the county election fund into the county's general fund.

**§153-55-3. Definitions.**

3.1. "Authorized user" means a count clerk employee, temporary employee, or other individual authorized by the county clerk or Secretary of State to access and interact with an endpoint device or election technology.

3.2. "County election fund" means a county's separate account for use by the clerk of the county commission for improving election administration, infrastructure, and security, in accordance with the standards set forth in this Rule.

3.3. "Device" or "endpoint device" means any physical or virtual equipment or mechanism that connects to and exchanges information with a computer network. Examples include a desktop computer, mobile phone, or server.

3.4. "Election technology" means voter registration systems, voting systems, electronic pollbooks, election results reporting systems, and other technologies used to register, maintain, or process voters or used in the conduct of an election.

3.5. “Endpoint protection” means a software solution deployed on an endpoint device for security purposes that functions to prevent malware attacks, detect malicious activity, and provide investigation and remediation capabilities needed to respond to security incidents and alerts.

3.6. “Incident” means an event that actually or potentially jeopardizes the confidentiality, integrity, or availability of election technology or the information processed, stored, or transmitted by election technology. Common synonyms for this term include breach, hack, intrusion, exfiltration, or ransomware attack.

3.7. “Incident Response Plan” or “IRP” means a written document outlining an organization’s roles and procedural steps before, during, and after a confirmed or suspected election security incident.

3.8. “Minimum reserve funding” means the total amount of moneys in a county election fund that is equal to average statewide cost of upgrading voting equipment per precinct as provided in subsection 6.2 of this Rule multiplied by the total number of county precincts as required by W. Va. Code § 11-22-2(c).

3.9. “Primary Administrative Contact” means the county clerk or their designee who is responsible for making final decisions that affect the administration of elections in the jurisdiction.

3.10. “Primary Technical Contact” means the individual responsible for making decisions as they relate to technology that support elections. This individual is typically a county clerk’s chief information or other employee or contractor responsible for providing technical services and support to the county clerk’s office for election systems and other office technologies.

3.11. “Supported operating system” means the software that manages a device’s hardware, software, or service programs, which receive timely updates and security patches.

#### **§153-55-4. Minimum Cyber Security Standards**

4.1. The county clerk shall develop and maintain an Incident Response Plan (IRP) to follow in both response to and recovery from a cyber incident, a copy of which shall be provided to the Secretary of State’s Chief Information Officer upon request.

4.1.1. The IRP shall include:

4.1.1.a. The full name, direct phone number(s), and official email address of the county’s designated Primary Administrative Contact and Primary Technical Contact;

4.1.1.b. A plan to restore critical services based on the type of incident if failure to restore can predictably jeopardize the normal conduct of elections. For this requirement, types of incidents include ransomware or other malicious cyber attacks that prevent an election official from accessing any election technology or endpoint device;

4.1.1.c. A communication directive to immediately notify the Secretary of State’s Chief Information Officer within 24 hours of discovering of any potential or actual cyber incident; and

4.1.1.d. A requirement for developing a Plan of Actions and Milestones (POA&M) within 48 hours of a cyber incident, which includes a description of the incident and the plan with defined deadline milestones to recover all election technology and devices affected by the incident. The POA&M shall be submitted to the Secretary of State in a secure manner upon completion.

4.1.2. The IRP may be included with or incorporated into a broader County Continuity of Operations Plan (COOP).

4.1.3. The county clerk shall review the IRP on an annual basis and make any necessary updates or revisions in a timely manner.

4.1.4. The county clerk shall immediately notify the Secretary of State's Chief Information Officer upon discovery of any potential or actual cyber incident and submit within 48 hours a Plan of Actions and Milestones that includes a description of the incident and sets forth the plan with defined deadline milestones to recover all election technology and devices affected by the incident.

4.2. Any device that accesses, is involved with, or interacts with, election technology shall:

4.2.1. Use a supported operating system that is regularly updated and patched in accordance with the vendor's cyber security recommendations, or following a notification or directive from a state, federal, or industry authority that is applicable to the specific operating system; and

4.2.2. Have current endpoint protection, including up-to-date virus and malware definitions.

4.3. The county clerk shall maintain a roster of authorized users who have access to or credentials for election technology, which shall include internal and external users such as deputy clerks and vendors. The county clerk shall review and update the roster quarterly.

4.3.1. All authorized users must complete annual training selected or provided by the Secretary of State on the principals of cybersecurity awareness, which shall include an annual email phishing campaign assessment: *Provided*, this requirement does not include poll workers or other temporary contract workers whose access to election technology is supervised or merely incidental, such as working the polls on election day or providing in-office assistance with tracking absentee ballots; and

4.3.2. The county clerk shall remove and revoke all login and access credentials to any device or election technology of any authorized users within 24 hours after that employee's or individual's authorization is revoked. Examples of revoked authorization include employment resignation or termination, or new job duties that no longer justify any purpose for the individual to access or interact with any device or election technology.

4.4. All county clerk offices must maintain membership in the Center for Internet Security's Election Infrastructure Information Sharing and Analysis Center (EI-ISAC).

4.5. Security and encryption policies around the storage or transmission of sensitive or protected data, unless otherwise specified by a unique transaction, must be compliant with standards enumerated by the National Institute of Standards and Technology (NIST).

4.6. Password policies around accessing election technology, unless otherwise specified by the platform host, must be compliant with standards enumerated by NIST.

4.7. A full- or part-time county clerk employee shall use only county or state issued email accounts for all election administration related conduct and communications: *Provided*, that this requirement shall not include pollworkers or other temporary contracted workers, such as ballot commissioners. Additionally, out-of-band email communications used in response to a cybersecurity event shall be exempt.

4.8. County clerk offices that utilize social media accounts for official election-related public communications shall protect the account using multifactor authentication, if available.

4.9. County clerk offices must enroll in an external vulnerability scanning program and conduct at a minimum an annual vulnerability scan to assess the security of public-facing IP address ranges, websites, and web applications hosted by the county or county clerk for use in election administration.

4.9.1. The vulnerability scanning program scope may vary depending on the type of program and assessment. *Provided*, that this requirement does not include election technology that does not connect to any network.

4.9.2. Counties shall remediate all critical or high-risk vulnerabilities identified by any assessment. The timeline for remediation will vary based on the type and severity of vulnerability. Follow all NIST industry standards for remediation timeline.

4.10. Counties who identify or suspect an actual or possible election security cyber incident shall report same to the Secretary of State's Chief Information Officer, Elections Director, Chief of Staff, or General Counsel, within 24 hours of the actual or possible incident.

**§153-55-5. Physical Security Requirements.**

5.1. Voting equipment, including ballot marking devices, tabulators, and computers running election management system software, shall be:

5.1.1. Located in a room containing no other equipment or supplies or otherwise physically segregated by walls or fences that prevent unauthorized access to the equipment, which room is located inside an access-controlled secure location and accessible only by the county clerk and individuals granted access by the county clerk whose names appear on the roster required by subsection 4.3. The room shall have a sign-in sheet located in the interior of the room that shall be completed by each individual who enters the room on every occasion, which sheet shall include the individual's name, date, time of entry and departure from the room, and the reason for accessing the room.

5.1.2. Monitored 24/7 in one or more of the following manners: (1) closed-circuit surveillance cameras that store video files for a minimum of 60 days; (2) security personnel or guards; (3) security alarm; or (4) electronic or restricted access locking mechanisms that digitally log all physical entries into all necessary access points.

5.1.3. Equipped with emergency management devices such as a fire suppression system and flood detection device.

5.2. County clerks shall maintain a log of the chain of custody of all voting equipment each time the equipment is removed from its secure location, which shall contain at a minimum the individual(s) name, date, purpose for removing the equipment, full list of the equipment removed, the time that custody of the equipment was taken and returned, location of return, and the identity the individual to whom custody was transferred to another individual or attestation that it was returned to the secure location.

5.3. County clerks shall maintain a log of all individuals, including authorized staff and vendors, who turn on or use a computer running election management system software, which log shall include the individual(s) name, date, purpose for accessing the computer, and the time of use.

5.4. After discovery of any unauthorized access or attempts to gain access to any voting equipment, the secure location where voting equipment is stored, or any county clerk facilities, the county clerk shall notify the Secretary of State's Chief Information Officer, Elections Director, Chief of Staff, or General Counsel within 24 hours.

**§153-55-6. Minimum Required Reserve Funding for Election Administration, Infrastructure, and Security.**

6.1. The amount of money in the county election fund required to meet the minimum reserve funding shall not be required to exceed the cost of upgrading voting equipment at the statewide average price to upgrade a voting system by precinct. Counties seeking to transfer funds from the county election fund

must first meet the minimum reserve fund amount based on the formula provided in subsection 3.8 of this Rule.

6.2. Based on figures calculated at the time of the enacting legislation, SB 522 (2023), the statewide average price to upgrade voting equipment is \$20,760.11 per precinct. This average price per precinct is subject to change each rule-making cycle based on market prices and contracts executed within the state. The following table reflects the figures relied upon for generating the current statewide average:

County	Last cost of upgrades	Precincts	Cost per precinct	Statewide avg cost per precinct	Estimated cost for all precincts at state avg
BARBOUR	\$311,429.34	13	\$23,956.10	\$20,760.11	\$269,881.42
BERKELEY	\$2,135,705.00	81	\$26,366.73	\$20,760.11	\$1,681,568.83
BOONE	\$457,522.67	27	\$16,945.28	\$20,760.11	\$560,522.94
BRAXTON	\$306,945.00	18	\$17,052.50	\$20,760.11	\$373,681.96
BROOKE	\$513,860.00	23	\$22,341.74	\$20,760.11	\$477,482.51
CABELL	\$1,613,679.00	69	\$23,386.65	\$20,760.11	\$1,432,447.52
CALHOUN	\$223,225.00	10	\$22,322.50	\$20,760.11	\$207,601.09
CLAY	\$205,337.00	12	\$17,111.42	\$20,760.11	\$249,121.31
DODDRIDGE	\$231,392.67	13	\$17,799.44	\$20,760.11	\$269,881.42
FAYETTE	\$593,025.00	40	\$14,825.63	\$20,760.11	\$830,404.36
GILMER	\$150,000.00	10	\$15,000.00	\$20,760.11	\$207,601.09
GRANT	\$212,962.00	14	\$15,211.57	\$20,760.11	\$290,641.53
GREENBRIER	\$749,785.00	28	\$26,778.04	\$20,760.11	\$581,283.05
HAMPSHIRE	\$316,547.67	25	\$12,661.91	\$20,760.11	\$519,002.73
HANCOCK	\$446,688.00	25	\$17,867.52	\$20,760.11	\$519,002.73
HARDY	\$200,000.00	20	\$10,000.00	\$20,760.11	\$415,202.18
HARRISON	\$1,600,000.00	65	\$24,615.38	\$20,760.11	\$1,349,407.09
JACKSON	\$593,000.00	31	\$19,129.03	\$20,760.11	\$643,563.38
JEFFERSON	\$1,000,000.00	32	\$31,250.00	\$20,760.11	\$664,323.49
KANAWHA	\$4,000,000.00	194	\$20,618.56	\$20,760.11	\$4,027,461.15
LEWIS	\$200,000.00	24	\$8,333.33	\$20,760.11	\$498,242.62
LINCOLN	\$414,112.00	15	\$27,607.47	\$20,760.11	\$311,401.64
LOGAN	\$537,802.00	38	\$14,152.68	\$20,760.11	\$788,884.14
MARION	\$1,549,218.00	78	\$19,861.77	\$20,760.11	\$1,619,288.50
MARSHALL	\$991,790.00	37	\$26,805.14	\$20,760.11	\$768,124.03
MASON	\$564,542.67	31	\$18,211.05	\$20,760.11	\$643,563.38
MCDOWELL	\$567,136.00	39	\$14,541.95	\$20,760.11	\$809,644.25

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MERCER	\$986,065.00	46	\$21,436.20	\$20,760.11	\$954,965.02
MINERAL	\$300,540.00	25	\$12,021.60	\$20,760.11	\$519,002.73
MINGO	\$558,048.00	29	\$19,243.03	\$20,760.11	\$602,043.16
MONONGALIA	\$1,353,850.00	44	\$30,769.32	\$20,760.11	\$913,444.80
MONROE	\$308,157.00	12	\$25,679.75	\$20,760.11	\$249,121.31
MORGAN	\$468,875.00	14	\$33,491.07	\$20,760.11	\$290,641.53
NICHOLAS	\$260,000.00	31	\$8,387.10	\$20,760.11	\$643,563.38
OHIO	\$1,175,484.00	47	\$25,010.30	\$20,760.11	\$975,725.12
PENDLETON	\$218,587.00	9	\$24,287.44	\$20,760.11	\$186,840.98
PLEASANTS	\$210,665.00	11	\$19,151.36	\$20,760.11	\$228,361.20
POCAHONTAS	\$269,107.67	17	\$15,829.86	\$20,760.11	\$352,921.85
PRESTON	\$680,267.67	36	\$18,896.32	\$20,760.11	\$747,363.93
PUTNAM	\$961,130.00	47	\$20,449.57	\$20,760.11	\$975,725.12
RALEIGH	\$1,943,700.00	61	\$31,863.93	\$20,760.11	\$1,266,366.65
RANDOLPH	\$563,496.00	28	\$20,124.86	\$20,760.11	\$581,283.05
RITCHIE	\$277,000.00	10	\$27,700.00	\$20,760.11	\$207,601.09
ROANE	\$380,145.00	18	\$21,119.17	\$20,760.11	\$373,681.96
SUMMERS	\$291,572.67	16	\$18,223.29	\$20,760.11	\$332,161.74
TAYLOR	\$178,925.00	17	\$10,525.00	\$20,760.11	\$352,921.85
TUCKER	\$141,745.00	11	\$12,885.91	\$20,760.11	\$228,361.20
TYLER	\$226,000.00	10	\$22,600.00	\$20,760.11	\$207,601.09
UPSHUR	\$384,609.00	20	\$19,230.45	\$20,760.11	\$415,202.18
WAYNE	\$600,000.00	39	\$15,384.62	\$20,760.11	\$809,644.25
WEBSTER	\$175,000.00	12	\$14,583.33	\$20,760.11	\$249,121.31
WETZEL	\$500,000.00	21	\$23,809.52	\$20,760.11	\$435,962.29
WIRT	\$135,000.00	11	\$12,272.73	\$20,760.11	\$228,361.20
WOOD	\$1,556,495.00	71	\$21,922.46	\$20,760.11	\$1,473,967.74
WYOMING	\$581,543.00	27	\$21,538.63	\$20,760.11	\$560,522.94
<b>Total</b>	<b>\$36,371,711.03</b>	<b>1752</b>		<b>\$20,760.11</b>	

6.3. The total precinct numbers reflected in the table above are provided for information purposes and shall not control the minimum reserve funding calculation. When calculating the minimum reserve funding, a county shall consider the statewide average cost to upgrade voting equipment as provided in subsection 6.2 of this Rule and the number of precincts in the county at the time the application is submitted.

**§153-55-7. County Commission Application for Secretary of State Compliance Review to Authorize Transfer of Election Funds to County General Fund.**

7.1. Pursuant to W. Va. Code § 11-22-2(b)(4), the County Commission must apply to the Secretary of State for a determination that the county has permission to transfer any funds in excess of the minimum reserve funding from the county election fund. An application is required for each desired transfer.

7.2. The application shall be in writing to the Secretary of State, and include the following information:

7.2.1. The name of the county;

7.2.2. The account balance of the county election fund and sufficient documentation in the form of a bank statement or the equivalent from a financial institution that was issued no more than 60 days prior to the date of the application submission;

7.2.3. The current number of county precincts;

7.2.4. The amount of the requested transfer from the county election fund; and

7.2.5. An attestation that the county has satisfied the minimum cyber and physical security requirements set forth in sections 4 and 5 of this Rule, as well as sufficient documentation and relevant materials including but not limited to documentation of physical security protections, current contracts with cyber and physical security providers, and a copy of the IRP.

7.3. Upon receipt of an application, the Secretary of State shall make a written determination within 10 business days, which shall include the grounds upon which any rejection is based.

7.4. The county commission may seek reconsideration if an application is rejected by submitting its request in writing to the Secretary of State within 30 days of receipt of the initial determination, along with any additional or new information that supports the county commission's request.

7.5. The Secretary of State shall issue a final written determination on reconsideration within 10 days following receipt of the application.