

049521268

HOUSE BILL NO. 1200

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 24.2-629 of the Code of Virginia, relating to electronic voting systems.

Patron—Cline

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:**1. That § 24.2-629 of the Code of Virginia is amended and reenacted as follows:**

§ 24.2-629. Authorized use of electronic systems and ballots.

A. Any person, firm, or corporation hereinafter referred to as the "vendor," manufacturing, owning, or offering for sale any electronic voting or counting system and ballots designed to be used with such equipment may apply to the State Board, in the manner prescribed by the Board, to have examined a production model of such equipment and the ballots used with it. The Board may require the vendor to pay a reasonable application fee when he files his request for testing or certification of new or upgraded voting equipment. Receipts from such fees shall be credited to the Board for reimbursement of testing and certification expenses. In addition to any other materials ~~which~~*that* may be required, a current statement of the financial status of the vendor, including any assets and liabilities, shall be filed with the Board; if the vendor is not the manufacturer of the equipment for which application is made, such a statement shall also be filed for the manufacturer. These statements shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The Board shall also require, at a site of its choosing, a demonstration of such system and ballots and may require that a production model of the system and a supply of ballots be provided to the Board for testing purposes.

B. The provisions of this title pertaining to mechanical voting devices and ballots shall be deemed applicable to such equipment and ballots provided that (i) the counting equipment used with punchcard or mark sense ballots shall not be required to prevent a voter from voting for a greater number of candidates than he is lawfully entitled to; (ii) the provisions of this title pertaining to ballot squares shall not be applicable to punchcard or mark sense ballots; ~~and~~ (iii) any system approved pursuant to this title shall segregate ballots containing write-in votes from all others; ~~and~~ (iv) *on and after January 1, 2006, any direct electronic voting device shall be equipped to provide a paper copy record of the votes cast on a contemporaneous and continuous basis as the votes are cast and accumulated on the device.* Every electronic voting system shall ensure voting in absolute secrecy, and systems requiring the voter to vote a ballot ~~which~~*that* is inserted in an electronic counting device shall provide for secrecy of the ballot and a method to conceal the voted ballot. Systems requiring the voter to vote a ballot that is inserted in an electronic counting device shall report, if possible, the number of ballots on which a voter voted for a lesser number of candidates for an office than the number he was lawfully entitled to vote and the number of ballots on which a voter voted for a greater number of candidates than the number he was lawfully entitled to vote. Electronic voting devices shall be programmable, if possible, to allow such undervoted and overvoted ballots to be separated when necessary.

C. After its examination of the equipment, ballots, and other materials submitted by the vendors, the Board shall prepare and file in its office a report of its finding as to (i) the apparent capability of such equipment to accurately count, register, and report votes; (ii) whether the system can be conveniently used without undue confusion to the voter; (iii) its accessibility to voters with disabilities; (iv) whether the system can be safely used without undue potential for fraud; (v) the ease of its operation and transportation by voting equipment custodians and officers of election; (vi) the financial stability of the vendor and manufacturer; (vii) whether the system meets the requirements of this title; and (viii) whether, in the opinion of the Board, the potential for approval of such system is such as to justify further examination and testing.

D. If the Board determines that there is such potential and prior to its final determination as to approval or disapproval of such system, the Board shall obtain a report by an independent electronics or engineering consultant as to (i) whether the system accurately counts, registers, and reports votes; (ii) whether it is capable of storing and retaining existing votes in a permanent memory in the event of power failure during and after the election; (iii) the number of separate memory capabilities for the storage of recorded votes; (iv) its mechanical and electronic perfections and imperfections; (v) the audit trail provided by the system; (vi) the anticipated frequency of repair; (vii) the ease of repair; (viii) the anticipated life of the equipment; (ix) its potential for fraudulent use; (x) its accessibility to voters with disabilities; (xi) the ease of its programming, transportation, and operation by voting equipment

INTRODUCED

HB1200

59 custodians and officers of election; and (xii) any other matters deemed necessary by the Board. Failure
60 by an applicant to cooperate with the consultant by furnishing information and production equipment
61 and ballots requested shall be deemed a withdrawal of the application, but nothing in this section shall
62 require the disclosure of trade secrets by the applicant. If such trade secrets are essential to the proper
63 analysis of the system and are provided for that reason, the consultant shall subscribe to an oath subject
64 to the penalty for perjury that he will neither disclose nor make use of such information except as
65 necessary for the system analysis. The report of the consultant shall be filed in the office of the Board.

66 E. If the Board determines that there is potential for approval of the system and prior to its final
67 determination, the Board shall also require that the system be tested in an actual election in one or more
68 counties or cities. Its use at such election shall be as valid for all purposes as if it had been legally
69 approved by the Board and adopted by the counties or cities.

70 F. If, following testing, the Board approves any electronic system and its ballots for use, the Board
71 shall so notify the electoral boards of each county and city. Systems so approved may be adopted for
72 use at elections as herein provided. No form of electronic system and ballots not so approved shall be
73 adopted by any county or city. Any electronic system and ballots approved for use by the Board shall
74 be deemed to meet the requirements of this title, and their use in any election shall be valid.