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HOUSE BILL NO. 410

Offered January 14, 2004

Prefiled January 13, 2004

A BILL to amend and reenact §§ 24.2-659 and 24.2-668 of the Code of Virginia, relating to post-election procedures and securing of election equipment and materials.

Patron—Welch (By Request)

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:**1. That §§ 24.2-659 and 24.2-668 of the Code of Virginia are amended and reenacted as follows:**

§ 24.2-659. Locking voting and counting devices after election and delivering keys to clerk; printed returns as evidence.

A. If the voting or counting device is secured by the use of equipment keys, after the officers of election lock and seal each voting and counting device, the equipment keys shall be enclosed in an envelope which shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct, the number of each device, the number on the seal, and the number of the protective counter, if one, on the device. The sealed envelope shall be delivered by one of the officers of the election to the clerk of the circuit court where the election was held. The custodians of the voting equipment shall enclose and seal in an envelope, properly endorsed, all other keys to all voting equipment in their jurisdictions and deliver the envelope to the clerk of the circuit court by noon on the day following the election.

If the voting or counting device is secured by removal of the memory card, cartridge, or other data storage medium used in that election, the officers shall remove the memory card, cartridge, or other data storage medium and proceed to lock and seal each voting and counting device. The memory card, cartridge, or other data storage medium shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct, the number of each device, the number on the seal, and the number of the protective counter, if one, on the device. The sealed envelope shall be delivered by one of the officers of the election to the clerk of the circuit court where the election was held or to the electoral board as specified in § 24.2-660. The equipment keys used at the polls shall be sealed in a different envelope and delivered to the clerk who shall release them to the electoral board upon request or at the expiration of the time specified by this section.

The voting and counting devices shall remain locked and sealed for the period of 15 days after the results of the election have been ascertained and, if any contest or recount is pending thereafter, until it has been concluded. The devices shall be opened and all data examined only (i) on the order of a court of competent jurisdiction or (ii) on the request of an authorized representative of the State Board or the electoral board at the direction of the State Board in order to ensure the accuracy of the returns.

When recounts occur in precincts using mechanical or direct electronic voting devices with printed return sheets, the printed return sheets delivered to the clerk may be used as the official evidence of the results.

When the required time has expired, the clerk of the circuit court shall return all voting equipment keys to the electoral board.

B. The local electoral board may direct that the officers of election and custodians, in lieu of conveying the sealed equipment keys to the clerk of the circuit court as provided in subsection A of this section, shall convey them to the principal office of the general registrar on the night of the election. The general registrar shall secure and retain the sealed equipment keys *and any other electronic locking devices* in his office and shall convey them to the clerk of the court by noon of the day following the election ~~ascertainment of the results of the election by the electoral board.~~

§ 24.2-668. Pollbooks, statements of results, and ballots to be sealed and delivered to clerk or general registrar.

A. After ascertaining the results and before adjourning, the officers shall put the pollbooks, the duplicate statements of results, and any printed inspection and return sheets in the envelopes provided by the State Board. The officers shall seal the envelopes and direct them to the clerk of the circuit court for the county or city. The pollbooks, statements, and sheets thus sealed and directed, the sealed counted ballots envelope or container, and the unused, defaced, spoiled and set aside ballots properly accounted for, packaged and sealed, shall be conveyed by one of the officers to be determined by lot, if they cannot otherwise agree, to the clerk of court by noon on the day following the election.

The clerk shall retain custody of the pollbooks until the time has expired for initiating a recount,

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59 contest, or other proceeding in which the pollbooks may be needed as evidence and there is no
60 proceeding pending. After that time the clerk shall deliver the pollbooks to the general registrar who
61 shall return the pollbooks or transfer a copy of the electronic data to the State Board as directed by
62 § 24.2-114 for voting credit purposes. After the pollbooks are returned by the State Board, the general
63 registrar shall retain the pollbooks in his principal office for two years from the date of the election. The
64 clerk shall retain the statement of results and any printed inspection and return sheets for two years and
65 may then destroy them.

66 B. The local electoral board may direct that the officers of election, in lieu of conveying the
67 materials to the clerk of the circuit court as provided in subsection A of this section, shall convey the
68 materials to the principal office of the general registrar on the night of the election or the morning
69 following the election as the board directs. The general registrar shall secure and retain the materials in
70 his office and shall convey to the clerk of the court, by noon of the day following the election
71 *ascertainment of the results of the election by the electoral board*, all of the election materials, ~~except~~
72 ~~the envelopes containing the "Conditional Votes," and the envelopes containing the pollbooks, the~~
73 ~~statements of results and, if mechanical voting machines are used, one copy of the printed return sheet~~
74 ~~from each machine. Following the ascertainment of the results of the election by the electoral board, the~~
75 ~~The~~ general registrar shall retain for public inspection one copy of the statement of results and shall
76 immediately convey to the clerk sealed envelopes containing all remaining election materials.

77 C. If an electronic pollbook is used, the data disc or cartridge containing the electronic records of the
78 election, or, alternately, a printed copy of the pollbook records of those who voted, shall be transmitted,
79 sealed and retained as required by this section, and otherwise treated as the pollbook for that election for
80 all purposes subsequent to the election. Nothing in this title shall be construed to require that the
81 equipment or software used to produce the electronic pollbook be sealed or retained along with the
82 pollbook, provided that the records for the election have been transferred or printed according to the
83 instructions of the State Board.