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HOUSE BILL NO. 799

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 24.2-628 and 24.2-629 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-629.1, relating to approval and review of voting devices and systems.

Patrons—Petersen, Callahan, Dillard, Hull, Plum, Rust and Scott, J.M.; Senators: Howell, Saslaw and Ticer

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-628 and 24.2-629 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 24.2-629.1, as follows:

§ 24.2-628. Authorized use of mechanical voting devices.

A. Any person, firm, or corporation manufacturing, owning, or offering for sale any mechanical voting device may apply to the State Board, in the manner prescribed by the Board, to examine and approve such device. The Board shall make, or have made, a report on the capacity of the device accurately to register and count votes, and in respect to its mechanical perfections and imperfections, and whether it meets the requirements prescribed in this chapter. The report shall be filed in the office of the Board and shall state whether the kind of device so examined can be safely and conveniently used at elections. If the Board determines that the device can be so used, and meets the requirements prescribed in this chapter, the Board shall approve the device for use at elections. No form of voting device not so approved shall be used at any election. *The State Board shall provide for an expert review of the devices approved pursuant to this section in accordance with the provisions of § 24.2-629.1.*

B. Any kind of mechanical voting device may be approved by the Board ~~which~~*that* meets the following requirements:

1. It shall provide facilities for voting for all candidates of as many political parties as may make nominations at any election; on as many questions as may be submitted at any election; and at all general or special elections, permit the voter to vote for all of the candidates of one party or in part for the candidates of one or more parties. It shall enable the voter to vote for as many persons for an office as lawfully permitted, but no more; prevent the voter from voting for the same person more than once for the same office; and enable the voter to vote on any question he is lawfully permitted to vote on, but no other.

2. For use at primary elections, it shall be equipped so that all rows except those of the voter's party can be locked out by the officers of election by means of an adjustment on the outside of the device.

3. It shall correctly register or record, and accurately count all votes cast for candidates and on questions.

4. It shall be provided with a "protective counter" whereby any operation of the device before or after the election will be detected.

5. It shall be provided with a counter which shall show at all times during an election how many persons have voted.

6. It shall be provided with a mechanical model, illustrating the manner of voting and suitable for the instruction of voters.

7. It shall enable each voter to vote for all the presidential electors of one party by one operation. It shall have a ballot containing the words "Electors For" preceded by the name of the party or other authorized designation and the names of its candidates for the offices of President and Vice-President and a mechanism which registers the collective vote cast for such electors.

8. It shall ensure voting in absolute secrecy.

§ 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 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

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58 the vendor is not the manufacturer of the equipment for which application is made, such a statement
59 shall also be filed for the manufacturer. These statements shall be exempt from the provisions of the
60 Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The Board shall also require, at a site of its
61 choosing, a demonstration of such system and ballots and may require that a production model of the
62 system and a supply of ballots be provided to the Board for testing purposes.

63 B. The provisions of this title pertaining to mechanical voting devices and ballots shall be deemed
64 applicable to such equipment and ballots provided that (i) the counting equipment used with punchcard
65 or mark sense ballots shall not be required to prevent a voter from voting for a greater number of
66 candidates than he is lawfully entitled to; (ii) the provisions of this title pertaining to ballot squares shall
67 not be applicable to punchcard or mark sense ballots; and (iii) any system approved pursuant to this title
68 shall segregate ballots containing write-in votes from all others. Every electronic voting system shall
69 ensure voting in absolute secrecy, and systems requiring the voter to vote a ballot ~~which~~that is inserted
70 in an electronic counting device shall provide for secrecy of the ballot and a method to conceal the
71 voted ballot. Systems requiring the voter to vote a ballot that is inserted in an electronic counting device
72 shall report, if possible, the number of ballots on which a voter voted for a lesser number of candidates
73 for an office than the number he was lawfully entitled to vote and the number of ballots on which a
74 voter voted for a greater number of candidates than the number he was lawfully entitled to vote.
75 Electronic voting devices shall be programmable, if possible, to allow such undervoted and overvoted
76 ballots to be separated when necessary.

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

86 D. If the Board determines that there is such potential and prior to its final determination as to
87 approval or disapproval of such system, the Board shall obtain a report by an independent electronics or
88 engineering consultant as to (i) whether the system accurately counts, registers, and reports votes; (ii)
89 whether it is capable of storing and retaining existing votes in a permanent memory in the event of
90 power failure during and after the election; (iii) the number of separate memory capabilities for the
91 storage of recorded votes; (iv) its mechanical and electronic perfections and imperfections; (v) the audit
92 trail provided by the system; (vi) the anticipated frequency of repair; (vii) the ease of repair; (viii) the
93 anticipated life of the equipment; (ix) its potential for fraudulent use; (x) its accessibility to voters with
94 disabilities; (xi) the ease of its programming, transportation, and operation by voting equipment
95 custodians and officers of election; and (xii) any other matters deemed necessary by the Board. Failure
96 by an applicant to cooperate with the consultant by furnishing information and production equipment
97 and ballots requested shall be deemed a withdrawal of the application, but nothing in this section shall
98 require the disclosure of trade secrets by the applicant. If such trade secrets are essential to the proper
99 analysis of the system and are provided for that reason, the consultant shall subscribe to an oath subject
100 to the penalty for perjury that he will neither disclose nor make use of such information except as
101 necessary for the system analysis. The report of the consultant shall be filed in the office of the Board.
102 *The State Board shall provide for an expert review of the systems approved pursuant to this section in*
103 *accordance with the provisions of § 24.2-629.1.*

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

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

113 *§ 24.2-629.1. Expert review of voting devices and systems.*

114 *The State Board shall appoint an expert panel to conduct a review, and report the results of its*
115 *review, of voting devices and systems approved pursuant to §§ 24.2-628 and 24.2-629 and in use in the*
116 *Commonwealth and of voting devices and systems proposed for approval for use in the Commonwealth.*
117 *The panel shall include experts knowledgeable in the fields of voting equipment, computer security, and*
118 *computer operations. The review of, and report on, voting devices and systems in use in the*
119 *Commonwealth on July 1, 2004, shall be completed by January 1, 2005. The report of the panel shall*

120 *be filed in the office of the Board. No voting devices or systems proposed for approval after July 1,*
121 *2004, shall be approved for use in the Commonwealth prior to the receipt by the State Board of a*
122 *report on the device or system from the expert panel.*

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