

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 24.2-638 and 24.2-642 of the Code of Virginia, relating to voting*
 3 *equipment at the polling place.*

4 [S 94]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 24.2-638 and 24.2-642 of the Code of Virginia are amended and reenacted as follows:**

8 § 24.2-638. Voting equipment to be in plain view; officers and others not permitted to see actual
 9 voting; unlocking counter compartment of equipment, etc.

10 During the election, the exterior of the voting and counting equipment and every part of the polling
 11 place shall be in plain view of the officers of election.

12 *No voting or counting equipment shall be removed from the plain view of the officers of election or*
 13 *from the polling place at any time during the election and through the determination of the vote as*
 14 *provided in § 24.2-657. However, an electronic voting device that is so constructed as to be easily*
 15 *portable may be taken outside the polling place pursuant to subsection A of § 24.2-649 and to assist a*
 16 *voter age 65 or older or physically disabled so long as: (i) the voting device remains in the plain view*
 17 *of two officers of election representing two political parties or, in a primary election, two officers of*
 18 *election representing the party conducting the primary, provided that if the use of two officers for this*
 19 *purpose would result in too few officers remaining in the polling place to meet legal requirements, the*
 20 *equipment shall remain in plain view of one officer who shall be either the chief officer or the assistant*
 21 *chief officer; and (ii) the voter casts his ballot in a secret manner unless the voter requests assistance*
 22 *pursuant to this section. After the voter has completed voting his ballot, the officer or officers shall*
 23 *immediately return the voting device to its assigned location inside the polling place. The machine*
 24 *number, the time that the machine was removed and the time that it was returned, the number on the*
 25 *machine's public counter before the machine was removed and the number on the same counter when it*
 26 *was returned, and the name or names of the officer or officers who accompanied the machine shall be*
 27 *recorded on the statement of results. In the case of an emergency that makes a polling place unusable*
 28 *or inaccessible, voting or counting equipment may be removed to an alternative polling place pursuant*
 29 *to the provisions of subsection D of § 24.2-310.*

30 The equipment shall be placed at least four feet from any table where an officer of election is
 31 working or seated. The officers of election shall not themselves be, or permit any other person to be, in
 32 any position or near any position that will permit them to observe how a voter votes or has voted.

33 One of the officers shall inspect the face of the voting device after each voter has cast his vote and
 34 verify that the ballots on the face of the device are in their proper places and that the device has not
 35 been damaged. During an election the door or other covering of the counter compartment of the voting
 36 or counting device shall not be unlocked or open or the counters exposed except for good and sufficient
 37 reasons, a statement of which shall be made and signed by the officers of election and attached to the
 38 statement of results. No person shall be permitted in or about the polling place except the voting
 39 equipment custodian and other persons authorized by this title.

40 § 24.2-642. Inoperative equipment.

41 A. When any voting or counting device becomes inoperative in whole or in part while the polls are
 42 open, the officers of election shall immediately notify the electoral board. If possible, the electoral board
 43 shall substitute a device in good order for the inoperative device, and at the close of the polls the record
 44 of both devices shall be taken, and the votes shown on their counters shall be added together in
 45 ascertaining the results of the election. *No voting or counting equipment, including inoperative*
 46 *equipment, shall be removed from the plain view of the officers of election or from the polling place at*
 47 *any time during the election and through the determination of the vote as provided in § 24.2-657 except*
 48 *as explicitly provided pursuant to the provisions of this title.*

49 B. In any precinct that uses a ballot that can be marked without the use of the counting device, if the
 50 counting device becomes inoperative and there is no other available counting device, the uncounted
 51 ballots shall be placed in a ballot container or compartment ~~which~~ *that* is used exclusively for uncounted
 52 ballots. If an operative counting device is available in the polling place after the polls have closed, such
 53 uncounted ballots shall be removed from the container and fed into the counting device, one at a time,
 54 by an officer of election in the presence of all persons who may be lawfully present at that time but
 55 before the votes are determined pursuant to § 24.2-657. If such device is not available, the ballots may
 56 be counted manually or as directed by the electoral board.

57 C. If (i) the inoperative device cannot be repaired in time to continue using it at the election, (ii) a
58 substitute device is needed to conduct the election but is not available for use, (iii) the supply of official
59 paper ballots, or other official ballots that can be cast without use of the inoperative device, is not
60 adequate, and (iv) the local electoral board approves, an officer of election may have copies of the
61 official paper ballot reprinted or reproduced by photographic, electronic, or mechanical processes for use
62 at the election. The voted ballot copies may be received by the officers of election and placed in the
63 ballot container and counted with the votes registered on the voting or counting devices; and the result
64 shall be declared the same as though no device has been inoperative. The voted ballot copies shall be
65 deemed official ballots for the purpose of § 24.2-665 and preserved and returned with the statement of
66 results and with a certificate setting forth how and why the same were voted. The officer of election
67 who had the ballot copies made shall provide a written statement of the number of copies made, signed
68 by him and subject to felony penalties for making false statements pursuant to § 24.2-1016, to be
69 preserved with the unused ballot copies.