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SENATE BILL NO. 94

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections
on February 3, 2004)

(Patrons Prior to Substitute—Senators Devolites and Cuccinelli [SB 142])

A BILL to amend and reenact §§ 24.2-638 and 24.2-642 of the Code of Virginia, relating to voting equipment at the polling place.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-638 and 24.2-642 of the Code of Virginia are amended and reenacted as follows:

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

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

No voting or counting equipment shall be removed from the plain view of the officers of election or from the polling place at any time during the election and through the determination of the vote as provided in § 24.2-657. However, an electronic voting device that is so constructed as to be easily portable may be taken outside the polling place pursuant to subsection A of § 24.2-649 and to assist a voter age 65 or older or physically disabled so long as: (i) the voting device remains in the plain view of two officers of election representing two political parties or, in a primary election, two officers of election representing the party conducting the primary; (ii) the voter casts his ballot in a secret manner unless the voter requests assistance pursuant to § 24.2-649; and (iii) there remain sufficient officers of election in the polling place to meet legal requirements. After the voter has completed voting his ballot, the officers shall immediately return the voting device to its assigned location inside the polling place. In the case of an emergency that makes a polling place unusable or inaccessible, voting or counting equipment may be removed to an alternative polling place pursuant to the provisions of subsection D of § 24.2-310.

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

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

§ 24.2-642. Inoperative equipment.

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

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

C. If (i) the inoperative device cannot be repaired in time to continue using it at the election, (ii) a substitute device is needed to conduct the election but is not available for use, (iii) the supply of official paper ballots, or other official ballots that can be cast without use of the inoperative device, is not adequate, and (iv) the local electoral board approves, an officer of election may have copies of the official paper ballot reprinted or reproduced by photographic, electronic, or mechanical processes for use at the election. The voted ballot copies may be received by the officers of election and placed in the

60 ballot container and counted with the votes registered on the voting or counting devices; and the result
61 shall be declared the same as though no device has been inoperative. The voted ballot copies shall be
62 deemed official ballots for the purpose of § 24.2-665 and preserved and returned with the statement of
63 results and with a certificate setting forth how and why the same were voted. The officer of election
64 who had the ballot copies made shall provide a written statement of the number of copies made, signed
65 by him and subject to felony penalties for making false statements pursuant to § 24.2-1016, to be
66 preserved with the unused ballot copies.