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HOUSE BILL NO. 1175

Offered January 11, 2006

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A BILL to amend and reenact §§ 24.2-671, 24.2-679, and 24.2-802 of the Code of Virginia, relating to elections; certification of results; recounts.

Patrons—Rapp; Senator: Norment

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-671, 24.2-679, and 24.2-802 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-671. Electoral board to meet and ascertain results; conclusiveness of results.

Each electoral board shall meet at the clerk's or general registrar's office of the county or city for which they are appointed at or before 5:00 p.m. on the day after any election. The board may adjourn to another room of sufficient size in a public building to ascertain the results, and may adjourn from day to day as needed, not to exceed seven calendar days from the date of the election. Written directions to the location of any room other than the clerk's or general registrar's office where the board will meet shall be posted at the doors of the clerk's and general registrar's offices prior to the beginning of the meeting.

The board shall open the returns delivered by the officers.

If the electoral board has exercised the option provided by § 24.2-668 for delivery of the election materials to the office of the general registrar on the night of the election, the electoral board shall meet at the office of the general registrar at or before 5:00 p.m. on the day after any election.

The board shall ascertain from the returns the total votes in the county or city, or town in a town election, for each candidate and for and against each question and complete the abstract of votes cast at such election, as provided for in § 24.2-675. For any office in which no person was elected by write-in votes, and for which the total number of write-in votes for that office is less than (i) five percent of the total number of votes cast for that office and (ii) the total number of votes cast for the candidate receiving the most votes, the electoral board shall ascertain the total votes for each write-in candidate for the office within one week following the election. For offices for which the electoral board issues the certificate of election, the result so ascertained, signed and attested, shall be conclusive and shall not thereafter be subject to challenge except as specifically provided in Chapter 8 (§ 24.2-800 et seq.) of this title.

Once the result is so ascertained, the secretary of the electoral board shall deliver one copy of each statement of results to the general registrar to be available for inspection when his office is open for business. The secretary shall then return all pollbooks, any printed inspection and return sheets, and one copy of each statement of results to the clerk.

The electoral board shall forward to the State Board a report of any changes made by it to the election returns from the officers of election, and the State Board shall post on the Internet notice of those changes.

§ 24.2-679. State Board to meet and make statement as to number of votes.

A. The State Board shall meet on the fourth Monday in November to ascertain the results of the November election. If a majority of the Board is not present or if, for any other reason, the Board is unable to ascertain the results on that day, the meeting shall stand adjourned from day to day for not more than three days until a quorum is present and the Board has ascertained the results as provided in this section.

The Board shall examine the certified abstracts on file in its office and make statements of the whole number of votes given at any such election for members of the General Assembly, Governor, Lieutenant Governor and Attorney General, members of the United States Congress and electors of President and Vice President of the United States, and any officer shared by more than one county or city, or any combination thereof, or for so many of such officers as have been voted for at the election.

The statement shall show, for each office and each county, city, and election district, the whole number of votes given to each candidate and to any other person elected to office. The Board members shall certify the statements to be correct and sign the statements. The Board shall then determine those persons who received the greatest number of votes and have been duly elected to each office. The Board members shall endorse and subscribe on such statements a certificate of their determination. The Board shall record each certified statement and determination in a suitable book to be kept by it in its office.

B. The State Board shall meet as soon as possible after it receives the returns for any special election

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59 held at a time other than the November general election to ascertain the results of the special election in
60 the manner prescribed in subsection A. If the returns have not been received within seven days of the
61 election, the Board shall meet and adjourn from day to day until it receives the returns, ascertains the
62 results, and makes its determination.

63 *C. The State Board shall post on the Internet notice of any changes made by it to the certified*
64 *abstracts of the vote received from the local electoral boards.*

65 § 24.2-802. Procedure for recount.

66 A. The State Board of Elections shall promulgate standards for (i) the proper handling and security
67 of voting and counting devices, ballots, and other materials required for a recount, (ii) accurate
68 determination of votes based upon objective evidence and taking into account the counting device and
69 form of ballots approved for use in the Commonwealth, and (iii) any other matters that will promote a
70 timely and accurate resolution of the recount. The chief judge of the circuit court or the full recount
71 court may, consistent with State Board of Elections standards, resolve disputes over the application of
72 the standards and direct all other appropriate measures to ensure the proper conduct of the recount.

73 The recount procedures to be followed throughout the election district shall be as uniform as
74 practicable, taking into account the types of ballots and voting devices in use in the election district.

75 B. Within seven calendar days of the filing of the petition for a recount of any election other than an
76 election for presidential electors, or within five calendar days of the filing of a petition for a recount of
77 an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing
78 at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to
79 review by the full court. As part of the preliminary hearing, the chief judge may permit the petitioner
80 and his counsel, together with each other party and his counsel and at least two members of the
81 electoral board and the custodians, to examine any mechanical or direct electronic voting device of the
82 type that prints returns when the print-out sheets are not clearly legible. The petitioner and his counsel
83 and each other party and their counsel under supervision of the electoral board and its agents shall also
84 have access to pollbooks and other materials used in the election for examination purposes, provided
85 that individual ballots cast in the election shall not be examined at the preliminary hearing. The chief
86 judge during the preliminary hearing shall review all security measures taken for all ballots and voting
87 devices and direct, as he deems necessary, all appropriate measures to ensure proper security to conduct
88 the recount.

89 The chief judge, subject to review by the full court, may set the place or places for the recount and
90 may order the delivery of election materials to a central location and the transportation of voting devices
91 to a central location in each county or city under appropriate safeguards.

92 After the full court is appointed under § 24.2-801 or § 24.2-801.1, it shall call a hearing at which all
93 motions shall be disposed of and the rules of procedure shall be fixed finally. The court shall call for
94 the advice and cooperation of the State Board or any local electoral board, as appropriate, and such
95 boards shall have the duty and authority to assist the court. The court shall fix procedures that shall
96 provide for the accurate determination of votes in the election.

97 The determination of the votes in a recount shall be based on votes cast in the election and shall not
98 take into account (i) any absentee ballots or provisional ballots sought to be cast but ruled invalid and
99 not cast in the election, (ii) ballots cast only for administrative or test purposes and voided by the
100 officers of election, or (iii) ballots spoiled by a voter and replaced with a new ballot.

101 The eligibility of any voter to have voted shall not be an issue in a recount. Commencing upon the
102 filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be
103 used pursuant to § 24.2-803 in contesting the results of an election.

104 C. The court shall permit each candidate, or petitioner and governing body or chief executive officer,
105 to select an equal number of the officers of election to be recount officials and to count ballots, or in
106 the case of mechanical or direct electronic voting devices to redetermine the vote. The number shall be
107 fixed by the court and be sufficient to conduct the recount within a reasonable period. The court may
108 permit each party to the recount to submit a list of alternate officials in the number the court directs.
109 There shall be at least one team of recount officials to recount paper ballots and to redetermine the vote
110 cast on mechanical or direct electronic devices of the type that prints returns for the election district at
111 large in which the recount is being held. There shall be at least one team from each locality in the
112 election district to redetermine the vote on other types of mechanical voting devices. There shall be at
113 least one team from each locality using electronic counting devices to insert the ballots into one or more
114 counting devices. The counting devices shall be programmed to count only votes cast for parties to the
115 recount or for or against the question in a referendum recount. Each team shall be composed of one
116 representative of each party.

117 The court may provide that if, at the time of the recount, any recount official fails to appear, the
118 remaining recount officials present shall appoint substitute recount officials who shall possess the same
119 qualifications as the recount officials for whom they substitute. The court may select pairs of recount
120 coordinators to serve for each county or city in the election district who shall be members of the county

or city electoral board and represent different political parties. The court shall have authority to summon such officials and coordinators. On the request of any party to the recount, the court shall allow each that party to appoint one representative observer for each team of recount officials. The representative observers shall have an unobstructed view of the work of the recount officials. The expenses of its representatives shall be borne by each party.

D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used and any or all ballots cast at the election, or may assume supervision thereof through the recount coordinators and officials.

The redetermination of the vote in a recount shall be conducted as follows:

1. For paper ballots, the recount officials shall hand count the ballots using the standards promulgated by the State Board pursuant to subsection A.

2. For mechanical lever machines without printouts, the recount officials shall open the machines and read the counters.

3. For mechanical lever machines with printouts and direct recording electronic machines (DREs), the recount officials shall open the envelopes with the printouts and read the results from the printouts. If the printout is not clear, or on the request of the court *for good cause shown*, the recount officials shall rerun the printout from the machine or examine the counters as appropriate.

4. For optical scan tabulators, the recount officials shall first examine the printout to redetermine the vote. Only if the printout is not clear, or on the request of the court *for good cause shown*, the recount officials shall rerun all the ballots through a tabulator programmed to count only the votes for the office or issue in question in the recount and to set aside all ballots containing write-in votes, overvotes, and undervotes. The ballots that are set aside and any ballots not accepted by the tabulator shall be hand counted using the standards promulgated by the State Board pursuant to subsection A.

5. For punchcard tabulators, the recount officials shall first examine the printout to redetermine the vote. Only if the printout is not clear, or on the request of the court *for good cause shown*, the recount officials shall rerun all the ballots through a tabulator programmed to count only the votes for the office or issue in question in the recount and to set aside all ballots containing write-in votes and, if possible, overvotes and undervotes. The ballots that are set aside and any ballots not accepted by the tabulator shall be hand counted using the standards promulgated by the State Board pursuant to subsection A and the standards set forth in this subdivision. The following standards shall apply in determining whether a ballot has been properly voted and should be counted. A chad is the small piece of a punch card ballot that, when removed by the voter in the voting process, leaves a hole that is recognizable by a ballot tabulator. A ballot on which the chad indicating the selection of a candidate or position on an issue is broken or separated from the card at two or more corners shall be deemed a vote and counted; a chad on which only one corner is broken or separated from the card shall not be considered a vote. No other depression, dimple, or other mark on the ballot shall be counted as a vote. On any ballot on which two or more corners of the chad indicating the selection of a candidate or position have been broken or separated from the card and the voter has also cast a vote for another candidate for the same office or position on the same issue, the partially punched chad also shall be deemed a vote and, if the voter has cast more votes than the number for which he was lawfully entitled to vote, the ballot shall be deemed an overvote and shall not be counted with respect to that office or issue.

There shall be only one redetermination of the vote in each precinct.

At the conclusion of the recount of each precinct, the recount officials shall write down the number of valid ballots cast, this number being obtained from the ballots cast in the precinct, or from the ballots cast as shown on the statement of results if the ballots cannot be found, for each of the two candidates or for and against the question. They shall submit the ballots or the statement of results used, as to the validity of which questions exist, to the court. The written statement of any one recount official challenging a ballot shall be sufficient to require its submission to the court. If, on all mechanical or direct electronic voting devices, the number of persons voting in the election, or the number of votes cast for the office or on the question, totals more than the number of names on the pollbooks of persons voting on the devices, the figures recorded by the devices shall be accepted as correct.

At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned ballots, and after hearing arguments, the court shall rule on the validity of all questioned ballots and votes. After determining all matters pertaining to the recount and redetermination of the vote as raised by the parties, the court shall certify to the State Board and the electoral board or boards (a) the vote for each party to the recount and declare the person who received the higher number of votes to be nominated or elected, as appropriate, or (b) the votes for and against the question and declare the outcome of the referendum. *The State Board shall post on the Internet any and all changes made during the recount to the results as previously certified by it pursuant to § 24.2-679.*

E. Costs of the recount shall be assessed against the counties and cities comprising the election district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a

182 recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated
183 or elected and the candidate petitioning for the recount a difference of not more than one-half of one
184 percent of the total vote cast for the two such candidates as determined by the State Board or electoral
185 board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate
186 petitioning for the recount or the petitioners in a recount of a referendum. If more than one candidate
187 petitions for a recount, the court may assess costs in an equitable manner between the counties and
188 cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date
189 shall be assessed against any candidate or petitioner who defaults or withdraws his petition.

190 F. The court shall determine the costs of the recount subject to the following limitations: (i) no per
191 diem payment shall be assessed for salaried election officials; (ii) no per diem payment to officers of
192 election serving as recount officials shall exceed two-thirds of the per diem paid such officers by the
193 county or city for service on election day; and (iii) per diem payments to alternates shall be allowed
194 only if they serve.

195 G. Any petitioner who may be assessed with costs under subsection E shall post a bond with surety
196 with the court in the amount of \$10 per precinct in the area subject to recount. If the petitioner wins the
197 recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond shall be forfeit only to
198 the extent of the assessed costs. If the assessed costs exceed the bond, he shall be liable for such excess.

199 H. The recount proceeding shall be final and not subject to appeal.

200 I. For the purposes of this section:

201 "Overvote" means a ballot on which a voter casts a vote for a greater number of candidates or
202 positions than the number for which he was lawfully entitled to vote and no vote shall be counted with
203 respect to that office or issue.

204 "Undervote" means a ballot on which a voter casts a vote for a lesser number of candidates or
205 positions than the number for which he was lawfully entitled to vote.