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**SENATE BILL NO. 150**

Offered January 11, 2006

Prefiled January 10, 2006

*A BILL to amend and reenact § 24.2-629 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-671.1, relating to elections; electronic voting equipment and paper record requirements; post-election audits of electronic equipment.*

Patron—Deeds

Referred to Committee on Privileges and Elections

**Be it enacted by the General Assembly of Virginia:**

**1. That § 24.2-629 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-671.1 as follows:**

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

B. The provisions of this title pertaining to mechanical voting devices and ballots shall be deemed applicable to such equipment and ballots provided that (i) the counting equipment used with punchcard or mark sense ballots shall not be required to prevent a voter from voting for a greater number of candidates than he is lawfully entitled to; (ii) the provisions of this title pertaining to ballot squares shall not be applicable to punchcard or mark sense ballots; ~~and~~ (iii) any system approved pursuant to this title shall segregate ballots containing write-in votes from all others; *and (iv) any direct electronic voting device shall be equipped to provide a paper copy record of the votes cast on a contemporaneous and continuous basis as the votes are cast and accumulated on the device.*

*Any direct electronic voting device shall generate a complete paper record showing all votes cast by each voter that is visually verifiable by the voter before his vote is cast and he leaves the device. The paper record shall be in a format that protects voter privacy and is practical for supporting audits and recounts.*

*In the case of a discrepancy between the paper and electronic totals, the paper record shall take precedence in a recount unless the court finds clear and convincing evidence that there is reason to do otherwise.*

Every electronic voting system shall ensure voting in absolute secrecy, and systems requiring the voter to vote a ballot that is inserted in an electronic counting device shall provide for secrecy of the ballot and a method to conceal the voted ballot. Systems requiring the voter to vote a ballot that is inserted in an electronic counting device shall report, if possible, the number of ballots on which a voter voted for a lesser number of candidates for an office than the number he was lawfully entitled to vote and the number of ballots on which a voter voted for a greater number of candidates than the number he was lawfully entitled to vote. Electronic voting devices shall be programmable, if possible, to allow such undervoted and overvoted ballots to be separated when necessary.

B1. The system shall provide the voter with an opportunity to correct any error before a permanent record is preserved.

C. After its examination of the equipment, ballots, and other materials submitted by the vendors, the Board shall prepare and file in its office a report of its finding as to (i) the apparent capability of such equipment to accurately count, register, and report votes; (ii) whether the system can be conveniently used without undue confusion to the voter; (iii) its accessibility to voters with disabilities; (iv) whether the system can be safely used without undue potential for fraud; (v) the ease of its operation and transportation by voting equipment custodians and officers of election; (vi) the financial stability of the

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59 vendor and manufacturer; (vii) whether the system meets the requirements of this title; (viii) whether the  
60 system meets federal requirements; and (ix) whether, in the opinion of the Board, the potential for  
61 approval of such system is such as to justify further examination and testing.

62 D. If the Board determines that there is such potential and prior to its final determination as to  
63 approval or disapproval of such system, the Board shall obtain a report by an independent electronics or  
64 engineering consultant as to (i) whether the system accurately counts, registers, and reports votes; (ii)  
65 whether it is capable of storing and retaining existing votes in a permanent memory in the event of  
66 power failure during and after the election; (iii) the number of separate memory capabilities for the  
67 storage of recorded votes; (iv) its mechanical and electronic perfections and imperfections; (v) the audit  
68 trail provided by the system; (vi) the anticipated frequency of repair; (vii) the ease of repair; (viii) the  
69 anticipated life of the equipment; (ix) its potential for fraudulent use; (x) its accessibility to voters with  
70 disabilities; (xi) the ease of its programming, transportation, and operation by voting equipment  
71 custodians and officers of election; and (xii) any other matters deemed necessary by the Board. Failure  
72 by an applicant to cooperate with the consultant by furnishing information and production equipment  
73 and ballots requested shall be deemed a withdrawal of the application, but nothing in this section shall  
74 require the disclosure of trade secrets by the applicant. If such trade secrets are essential to the proper  
75 analysis of the system and are provided for that reason, the consultant shall subscribe to an oath subject  
76 to the penalty for perjury that he will neither disclose nor make use of such information except as  
77 necessary for the system analysis. The report of the consultant shall be filed in the office of the Board.

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

82 F. If, following testing, the Board approves any electronic system and its ballots for use, the Board  
83 shall so notify the electoral boards of each county and city. Systems so approved may be adopted for  
84 use at elections as herein provided. No form of electronic system and ballots not so approved shall be  
85 adopted by any county or city. Any electronic system and ballots approved for use by the Board shall  
86 be deemed to meet the requirements of this title and any applicable federal laws, and their use in any  
87 election shall be valid.

88 § 24.2-671.1. *Random audits of voter-verified paper records.*

89 *Each electoral board shall publicly conduct a random drawing to select at least five percent of the*  
90 *precincts for a postelection audit of the voter-verified paper records. The audited precincts shall include*  
91 *all years and models of the election devices producing voter-verified paper records. The drawing shall*  
92 *not occur until such time as all initial vote counts have been completed and announced publicly, but*  
93 *shall be completed with 48 hours of that time. Any candidate, person, or political party may petition the*  
94 *electoral board to include additional precincts in the audit. Immediately following the random drawing,*  
95 *the local Board shall publicly announce the time and location of the audits. Candidates and political*  
96 *parties may have representatives observe the audits.*

97 *No election results shall be certified until all audits have been completed.*

98 *If the local board finds that any of the hand counts conducted under this section show a discrepancy*  
99 *between the hand count and the initial device tally that totals more than 0.1% of the vote, the local*  
100 *board shall conduct audits at such additional precincts as it considers appropriate to ensure the*  
101 *accuracy of the results.*

102 *With respect to votes cast other than at the precinct on the date of the election or votes cast by*  
103 *provisional ballot on the date of the election that are certified and counted by the electoral board on or*  
104 *after the date of the election, including votes cast by absent uniformed services voters and overseas*  
105 *voters under the Uniformed and Overseas Citizens Absentee Voting Act, the electoral board shall count*  
106 *by hand the applicable voter-verified paper records and compare its count with the machine tally of*  
107 *those votes.*

108 *If an error is detected with a voting device during the course of an audit, the results obtained from*  
109 *hand counting the voter-verified paper records shall form the official election results.*

110 *At the conclusion of each audit, the local board shall announce and publish the results of the audit,*  
111 *and shall include in the announcement a comparison of the results of the election in the precinct as*  
112 *determined by the local board under the audit and the initial tally in the precinct as previously*  
113 *announced by the local board.*