

075564105

HOUSE BILL NO. 2354

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact §§ 24.2-668 and 24.2-802 of the Code of Virginia, relating to elections; securing of election materials before and during recount procedures.

Patron—Cosgrove

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:**1. That §§ 24.2-668 and 24.2-802 of the Code of Virginia are amended and reenacted as follows:**

§ 24.2-668. Pollbooks, statements of results, and ballots to be sealed and delivered to clerk or general registrar.

A. After ascertaining the results and before adjourning, the officers shall put the pollbooks, the duplicate statements of results, and any printed inspection and return sheets in the envelopes provided by the State Board. The officers shall seal the envelopes and direct them to the clerk of the circuit court for the county or city. The pollbooks, statements, and sheets thus sealed and directed, the sealed counted ballots envelope or container, and the unused, defaced, spoiled and set aside ballots properly accounted for, packaged and sealed, shall be conveyed by one of the officers to be determined by lot, if they cannot otherwise agree, to the clerk of court by noon on the day following the election.

The clerk shall retain custody of the pollbooks, *paper ballots, and other elections materials* until the time has expired for initiating a recount, contest, or other proceeding in which the pollbooks, *paper ballots, and other elections materials* may be needed as evidence and there is no proceeding pending. *The clerk shall (i) secure all pollbooks, paper ballots and other election materials in sealed boxes; (ii) place all of the sealed boxes in a vault or room not open to the public or to anyone other than the clerk and his staff; (iii) cause such vault or room to be securely locked except when access is necessary for the clerk and his staff; and (iv) upon the initiation of a recount, certify that these security measures have been taken in whatever form is deemed appropriate by the chief judge.*

After that time the clerk shall deliver the pollbooks to the general registrar who shall return the pollbooks or transfer a copy of the electronic data to the State Board as directed by § 24.2-114 for voting credit purposes. After the pollbooks are returned by the State Board, the general registrar shall retain the pollbooks in his principal office for two years from the date of the election. The clerk shall retain the statement of results and any printed inspection and return sheets for two years and may then destroy them.

B. The local electoral board may direct that the officers of election, in lieu of conveying the materials to the clerk of the circuit court as provided in subsection A of this section, shall convey the materials to the principal office of the general registrar on the night of the election or the morning following the election as the board directs. The general registrar shall secure and retain the materials in his office and shall convey to the clerk of the court, by noon of the day following the ascertainment of the results of the election by the electoral board, all of the election materials. The general registrar shall retain for public inspection one copy of the statement of results.

C. If an electronic pollbook is used, the data disc or cartridge containing the electronic records of the election, or, alternately, a printed copy of the pollbook records of those who voted, shall be transmitted, sealed and retained as required by this section, and otherwise treated as the pollbook for that election for all purposes subsequent to the election. Nothing in this title shall be construed to require that the equipment or software used to produce the electronic pollbook be sealed or retained along with the pollbook, provided that the records for the election have been transferred or printed according to the instructions of the State Board.

§ 24.2-802. Procedure for recount.

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

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

INTRODUCED

HB2354

59 *In preparation for the recount, the clerks of the circuit courts shall (a) secure all paper ballots and*
60 *other election materials in sealed boxes; (b) place all of the sealed boxes in a vault or room not open*
61 *to the public or to anyone other than the clerk and his staff; (c) cause such vault or room to be*
62 *securely locked except when access is necessary for the clerk and his staff; and (d) certify that these*
63 *security measures have been taken in whatever form is deemed appropriate by the chief judge.*

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

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

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

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

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

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

106 The court may provide that if, at the time of the recount, any recount official fails to appear, the
107 remaining recount officials present shall appoint substitute recount officials who shall possess the same
108 qualifications as the recount officials for whom they substitute. The court may select pairs of recount
109 coordinators to serve for each county or city in the election district who shall be members of the county
110 or city electoral board and represent different political parties. The court shall have authority to summon
111 such officials and coordinators. On the request of any party to the recount, the court shall allow that
112 party to appoint one representative observer for each team of recount officials. The representative
113 observers shall have an unobstructed view of the work of the recount officials. The expenses of its
114 representatives shall be borne by each party.

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

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

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

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

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

127 4. For optical scan tabulators, the recount officials shall first examine the printout to redetermine the
128 vote. Only if the printout is not clear, or on the request of the court, the recount officials shall rerun all
129 the ballots through a tabulator programmed to count only the votes for the office or issue in question in
130 the recount and to set aside all ballots containing write-in votes, overvotes, and undervotes. The ballots
131 that are set aside, any ballots not accepted by the tabulator, and any ballots for which a tabulator could
132 not be programmed to meet the programming requirements of this subdivision, shall be hand counted
133 using the standards promulgated by the State Board pursuant to subsection A.

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

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

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

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

170 E. Costs of the recount shall be assessed against the counties and cities comprising the election
171 district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a
172 recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated
173 or elected and the candidate petitioning for the recount a difference of not more than one-half of one
174 percent of the total vote cast for the two such candidates as determined by the State Board or electoral
175 board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate
176 petitioning for the recount or the petitioners in a recount of a referendum. If more than one candidate
177 petitions for a recount, the court may assess costs in an equitable manner between the counties and
178 cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date
179 shall be assessed against any candidate or petitioner who defaults or withdraws his petition.

180 F. The court shall determine the costs of the recount subject to the following limitations: (i) no per
181 diem payment shall be assessed for salaried election officials; (ii) no per diem payment to officers of

182 election serving as recount officials shall exceed two-thirds of the per diem paid such officers by the
183 county or city for service on election day; and (iii) per diem payments to alternates shall be allowed
184 only if they serve.

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

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

190 I. For the purposes of this section:

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

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