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HOUSE BILL NO. 2707

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee
on February 24, 2007)

(Patron Prior to Substitute—Delegate Hugo)

A BILL to amend and reenact §§ 24.2-626 and 24.2-802 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 24.2-625.2 and 24.2-626.1, relating to voting equipment requirements and recount procedures.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-626 and 24.2-802 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 24.2-625.2 and 24.2-626.1 as follows:

§ 24.2-625.2. Prohibition of wireless communications on voting equipment.

There shall be no wireless communications on election day, while the polls are open, between or among voting machines within the polling place or between any voting machine within the polling place and any equipment outside the polling place. For purposes of this section, the term wireless communication shall mean the ability to transfer information via electromagnetic waves without the use of electrical conductors.

§ 24.2-626. Governing bodies shall acquire electronic voting or counting systems.

A. The governing body of each county having an optional form of government and of each city shall provide for the use of mechanical or electronic voting or counting systems, of a kind approved by the State Board, at every precinct and for all elections held in the county, the city, or any part of the county or city. The governing body of every other county shall provide for the use of such systems at every precinct having 750 or more registered voters. No county shall divide or create precincts so that resulting precincts will contain fewer than 750 registered voters, in order to avoid the requirements of this section.

Each county and city governing body shall purchase, lease, lease purchase, or otherwise acquire such systems and may provide for the payment therefor in the manner it deems proper. Systems of different kinds may be adopted for use and be used in different precincts of the same county or city, or within a precinct or precincts in a county or city, subject to the approval of the State Board.

Any county may acquire such systems for precincts containing fewer than 750 registered voters.

The governing body of a town may provide for the use of paper ballots, in lieu of such systems, in elections for town offices and in town referendum elections if every town precinct contains 500 or fewer registered voters.

B. Notwithstanding the provisions of subsection A of this section, the governing body of any county may elect to use paper ballots throughout the county so long as the county meets the following criteria: (i) the population of the county is less than 7,000 according to the 1990 United States Census; (ii) the county is divided into six precincts; (iii) no precinct contains 1,000 or more registered voters; and (iv) the county has not provided for the use of mechanical or electronic voting or counting systems in any precinct prior to July 1, 1996.

On and after July 1, 2007, no county or city shall acquire any direct recording electronic machine (DRE) for use in elections in the county or city. DREs acquired prior to July 1, 2007, may be used in elections in the county or city for the remainder of their useful life.

§ 24.2-626.1. Acquisition and use of accessible voting devices.

The governing body of any county or city shall provide for the use of a voting or counting system in all elections that shall:

1. Provide for at least one voting system equipped for individuals with disabilities at each polling place, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters; and

2. Provide alternative language accessibility when required by § 203 of the Voting Rights Act of 1965 (42 USC § 1973aa-1a).

§ 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.

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

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

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

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

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

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

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

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

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

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

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

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

121 3 2. 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, the recount officials shall rerun the printout from the machine or examine the counters as appropriate.

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

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

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

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

188 I. For the purposes of this section:

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

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

194 **2. That the State Board of Elections shall be authorized to determine the equitable allocation of**
195 **any federal or state funds made available to implement the provisions of this act among the**
196 **counties and cities of the Commonwealth.**