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SENATE BILL NO. 1226

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact §§ 24.2-625.1 and 24.2-629 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-631.1, relating to electronic voting equipment; security.

Patrons—Howell, Stolle and Wampler; Delegates: May, Nixon and Plum

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-625.1 and 24.2-629 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-631.1 as follows:

§ 24.2-625.1. Voting equipment security.

A. Records of the State Board of Elections or of a local electoral board, to the extent such records describe protocols for maintaining the security of ballots or voting and counting equipment, or reveal the results of risk assessments of specific local electoral procedures, the release of which would compromise the security of any election, shall be confidential and excluded from inspection and copying under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. The State Board of Elections or a local electoral board may hold a closed meeting pursuant to the provisions of the Virginia Freedom of Information Act for the purpose of discussing protocols for maintaining the security of ballots or voting and counting equipment, or risk assessments of specific local electoral procedures, where discussion of such matters in open meeting would compromise the security of any election. Nothing in this subsection shall be construed to authorize a closed meeting to discuss any breach of security in the conduct of an election.

C. Two members of any local electoral board may conduct site visits for the sole purpose of investigating compliance with security policies and procedures. No such visit shall be deemed a meeting under the provisions of the Virginia Freedom of Information Act. However, prior to conducting such site visits, the board shall hold an open meeting, as defined in the Virginia Freedom of Information Act, and shall identify at that meeting its intention to conduct such site visits, the dates on which such visits will occur, and all polling places or other locations at which such visits will occur, withholding only information identifying secure sites at which voting and counting equipment or ballots are stored. No later than 30 days after any site visit has been conducted pursuant to this paragraph, the board shall hold an open meeting, as defined in the Virginia Freedom of Information Act, at which it shall identify each location visited and the date on which each such location was visited, withholding only information identifying secure sites at which voting and counting equipment or ballots are stored.

D. *The electoral board of each county and city that utilizes electronic voting systems shall develop and annually update written plans and procedures to ensure the security and integrity of its electronic voting systems. The general registrar and the State Board shall provide the electoral board assistance, upon request.*

E. Nothing in this section shall be construed to prohibit the release of information concerning any breach of security in the conduct of an election.

§ 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. *The Board shall also require the vendor to provide documentation of the practices recommended by the vendor to ensure the optimum security and functionality of the system.*

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59 B. The provisions of this title pertaining to mechanical voting devices and ballots shall be deemed
60 applicable to such equipment and ballots provided that (i) the counting equipment used with punchcard
61 or mark sense ballots shall not be required to prevent a voter from voting for a greater number of
62 candidates than he is lawfully entitled to; (ii) the provisions of this title pertaining to ballot squares shall
63 not be applicable to punchcard or mark sense ballots; and (iii) any system approved pursuant to this title
64 shall segregate ballots containing write-in votes from all others. Every electronic voting system shall
65 ensure voting in absolute secrecy, and systems requiring the voter to vote a ballot that is inserted in an
66 electronic counting device shall provide for secrecy of the ballot and a method to conceal the voted
67 ballot. Systems requiring the voter to vote a ballot that is inserted in an electronic counting device shall
68 report, if possible, the number of ballots on which a voter voted for a lesser number of candidates for an
69 office than the number he was lawfully entitled to vote and the number of ballots on which a voter
70 voted for a greater number of candidates than the number he was lawfully entitled to vote. Electronic
71 voting devices shall be programmable, if possible, to allow such undervoted and overvoted ballots to be
72 separated when necessary.

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

75 C. After its examination of the equipment, ballots, and other materials submitted by the vendors, the
76 Board shall prepare and file in its office a report of its finding as to (i) the apparent capability of such
77 equipment to accurately count, register, and report votes; (ii) whether the system can be conveniently
78 used without undue confusion to the voter; (iii) its accessibility to voters with disabilities; (iv) whether
79 the system can be safely used without undue potential for fraud; (v) the ease of its operation and
80 transportation by voting equipment custodians and officers of election; (vi) the financial stability of the
81 vendor and manufacturer; (vii) whether the system meets the requirements of this title; (viii) whether the
82 system meets federal requirements; and (ix) whether, in the opinion of the Board, the potential for
83 approval of such system is such as to justify further examination and testing.

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

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

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

110 G. A vendor whose electronic system is approved for use shall provide annual updates to the State
111 Board concerning its recommended practices for optimum security and functionality of the system.

112 § 24.2-631.1. Independent review of electronic ballots and programming.

113 The electoral board of each county and city that utilizes electronic voting equipment shall ensure
114 that the electronic ballots and programming codes are reviewed by an independent, third-party agent
115 and that all electronic voting equipment is tested by an independent, third-party agent prior to the final
116 testing and sealing or locking of the equipment in accordance with §§ 24.2-632 and 24.2-633. Each
117 electoral board shall adhere to procedures and guidelines developed by the State Board for the
118 independent testing and verification of electronic ballots, coding, and equipment.

119 2. That the provisions set forth in § 24.2-631.1 of the Code of Virginia of this act shall not become
120 effective until July 1, 2008.

121 3. That the State Board of Election shall develop guidelines for the independent, third-party
122 review program set forth in this act and select and contract with an independent, third-party
123 agent to provide the review of electronic ballots, programming codes, and equipment for electoral
124 boards across the state no later than July 1, 2008. The independent, third-party agent shall either
125 be a state-supported institution of higher education or a nonprofit science and engineering
126 corporation. The contract shall include the provision that the third-party agent shall develop
127 electronic ballots for a local electoral board, upon request.