

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 107

An Act to amend and reenact §§ 24.2-659 and 24.2-682 of the Code of Virginia, relating to elections; locking of equipment after election; and timing of special elections.

[S 509]

Approved March 2, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-659 and 24.2-682 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-659. Locking voting and counting devices after election and delivering keys to clerk; printed returns as evidence.

A. If the voting or counting device is secured by the use of equipment keys, after the officers of election lock and seal each voting and counting device, the equipment keys shall be enclosed in an envelope which shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct, the number of each device, the number on the seal, and the number of the protective counter, if one, on the device. The sealed envelope shall be delivered by one of the officers of the election to the clerk of the circuit court where the election was held. The custodians of the voting equipment shall enclose and seal in an envelope, properly endorsed, all other keys to all voting equipment in their jurisdictions and deliver the envelope to the clerk of the circuit court by noon on the day following the election. If the voting or counting devices are secured by the use of equipment keys or electronic activation devices that are not specific to a particular device, after the officers of election lock and seal each voting and counting device, the equipment keys and electronic activation devices shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct. The sealed envelope shall be delivered by one of the officers of election to the clerk of the circuit court where the election was held.

If the voting or counting device is secured by removal of the memory card, cartridge, or other data storage medium used in that election, the officers shall remove the memory card, cartridge, or other data storage medium and proceed to lock and seal each voting and counting device. The memory card, cartridge, or other data storage medium shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct, the number of each device, the number on the seal, and the number of the protective counter, if one, on the device. The sealed envelope shall be delivered by one of the officers of election to the clerk of the circuit court where the election was held. The equipment keys used at the polls shall be sealed in a different envelope and delivered to the clerk who shall release them to the electoral board upon request or at the expiration of the time specified by this section.

If the voting or counting device provides for the creation of a separate master electronic back-up on a memory card, cartridge or other data storage medium that combines the data for all of the voting devices in a given precinct, that data storage medium shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an officer of election stating the name of the precinct. The sealed envelope shall be delivered by one of the officers of election to the clerk of the circuit court where the election was held. The memory cards or data storage medium for the individual devices may remain sealed in its individual device until the expiration of the time specified by this section. The equipment keys and the electronic activation devices used at the polls shall be sealed together in a separate envelope and delivered to the clerk who shall release them to the electoral board upon request or at the expiration of the time specified by this section.

The voting and counting devices shall remain locked and sealed ~~for the period of 15 days after the results of the election have been ascertained until the deadline to request a recount under Chapter 8 (§ 24.2-800 et seq.) has passed~~ and, if any contest or recount is pending thereafter, until it has been concluded. The devices shall be opened and all data examined only (i) on the order of a court of competent jurisdiction or (ii) on the request of an authorized representative of the State Board or the electoral board at the direction of the State Board in order to ensure the accuracy of the returns. In the event that devices are examined under clause (ii) of this paragraph, each political party and each independent candidate on the ballot, or each primary candidate, shall be entitled to have a representative present during such examination. The representatives and observers lawfully present shall be prohibited from interfering with the officers of election in any way. The State Board or local electoral board shall provide such parties and candidates reasonable advance notice of the examination.

When recounts occur in precincts using mechanical or direct electronic voting devices with printed return sheets, the printed return sheets delivered to the clerk may be used as the official evidence of the results.

When the required time has expired, the clerk of the circuit court shall return all voting equipment

keys to the electoral board.

B. The local electoral board may direct that the officers of election and custodians, in lieu of conveying the sealed equipment keys to the clerk of the circuit court as provided in subsection A of this section, shall convey them to the principal office of the general registrar on the night of the election. The general registrar shall secure and retain the sealed equipment keys and any other electronic locking or activation devices in his office and shall convey them to the clerk of the court by noon of the day following the ascertainment of the results of the election by the electoral board.

§ 24.2-682. Times for special elections.

A. Notwithstanding any charter or special act to the contrary, the following provisions govern the times for holding special elections. Every special election shall be held on a Tuesday. No special election shall be held within the ~~sixty~~ 55 days prior to a general or primary election. No special election shall be held on the same day as a primary election. A special election may be held on the same day as a general election.

B. A referendum election shall be ordered at least sixty days prior to the date for which the referendum election is called.

C. A special election to fill a vacancy in any county, city, or town office, including school board member, regularly elected in a November general election, shall be held on a November general election day. A special election to fill a vacancy in any city or town office, including school board member, regularly elected in a May general election, shall be held on a regular May general election day.

A special election to fill a vacancy in any constitutional office shall be held promptly and in accordance with the requirements of subsection A.