

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 565

An Act to amend and reenact § 24.2-669 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-671.1, relating to elections; pilot programs for audits of optical scan tabulators.

[S 292]

Approved March 11, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 24.2-669 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:

§ 24.2-669. Clerk to keep ballots; inspection; destruction.

The clerk to whom the counted and uncounted ballots are delivered shall, without breaking the seal, deposit them in a secure place in his office, where they shall be kept for the time required by this section. He shall not allow the ballots to be inspected except (i) by an authorized representative of the State Board or by the electoral board at the direction of the State Board to ensure the accuracy of the returns or the purity of the election, (ii) by the officers of election, and then only at the direction of the electoral board in accordance with § 24.2-672 when the provisions of § 24.2-662 have not been followed, ~~or~~ (iii) on the order of a court before which there is pending a proceeding for a contest or recount under Chapter 8 (§ 24.2-800 et seq.) of this title or before whom there is then pending a proceeding in which the ballots are necessary for use in evidence, *or (iv) for the purpose of conducting an audit as part of a post-election pilot program pursuant to § 24.2-671.1.* In the event that ballots are inspected under clause (i), ~~or~~ (ii), *or (iv)* 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 inspection. 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 inspection.

After the counted ballots for a federal election have remained in the clerk's office for two years, if no election contest or other proceeding is pending in which such ballots may be needed as evidence, the clerk shall destroy such ballots. After the counted ballots for any other election have remained in the clerk's office for one year, if no election contest or other proceeding is pending in which such ballots may be needed as evidence, the clerk shall destroy such ballots. After the unused ballots have remained in the clerk's office and the time has expired for initiating a recount, contest, or other proceeding in which such ballots may be needed as evidence and no such contest or proceeding is pending, the clerk may then destroy the unused ballots other than punchcard ballots, which shall be returned to the electoral board.

§ 24.2-671.1. *Pilot programs for audits of optical scan tabulators.*

A. *The State Board shall be authorized to provide for pilot programs in one or more localities with respect to an election in which the margin between the top two candidates for each office on the ballot exceeds 10 percent, with the consent of the electoral board of the locality, to conduct a post-election audit of one or more optical scan tabulators in one or more precincts, notwithstanding any other provision of law to the contrary. The purposes of the pilot programs shall be to study the accuracy of optical scan tabulators; to evaluate the time, cost, and accuracy of audits; and to determine proper procedures for conducting audits. A pilot program may audit any combination of randomly selected or specific tabulators.*

B. *No audit conducted as part of a pilot program shall commence until after the election has been certified and the period to initiate a recount has expired without the initiation of a recount. An audit conducted as part of a pilot program shall have no effect on the election results.*

C. *All audits shall be performed in accordance with the procedures prescribed by the State Board under the supervision of the local electoral board. The procedures established by the State Board shall include its procedures for conducting hand counts of ballots. Candidates and political parties may have representatives observe the audits.*

D. *At the conclusion of each audit, the local electoral board shall announce publicly the results of the audit of the machines in its jurisdiction. The announcement shall include a comparison of the audited election results and the initial tally for each machine audited, and an analysis of any detected discrepancies.*