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SENATE BILL NO. 685

Offered January 15, 2008

A BILL to amend and reenact §§ 24.2-626 and 24.2-659 of the Code of Virginia, relating to elections; acquisition of voting equipment by localities; securing voting equipment after the election.

Patrons—Colgan; Delegate: Miller, J.H.

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-626 and 24.2-659 of the Code of Virginia are amended and reenacted as follows:

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

The governing body of each county and city shall provide for the use of 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.

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.

~~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.~~

§ 24.2-659. 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~~ *Except for voting or counting devices secured by removal of the memory card, cartridge, or*

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other data storage medium, 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 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.