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SENATE BILL NO. 848

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Privileges and Elections
on February 20, 2009)

(Patron Prior to Substitute—Senator Edwards)

A BILL to amend and reenact §§ 24.2-101, 24.2-115, 24.2-115.1, 24.2-307, 24.2-404, 24.2-418, 24.2-604, and 24.2-1004 of the Code of Virginia, relating to elections; clarifications and revisions to registration and election processes; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-101, 24.2-115, 24.2-115.1, 24.2-307, 24.2-404, 24.2-418, 24.2-604, and 24.2-1004 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-101. Definitions.

As used in this title, unless the context requires a different meaning:

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. "Candidate" shall include a person who seeks the nomination of a political party or who, by reason of receiving the nomination of a political party for election to an office, is referred to as its nominee. For the purposes of Chapters 8 (§ 24.2-800 et seq.), 9.3 (§ 24.2-945 et seq.), and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any write-in candidate. However, no write-in candidate who has received less than 15 percent of the votes cast for the office shall be eligible to initiate an election contest pursuant to Article 2 (§ 24.2-803 et seq.) of Chapter 8. For the purposes of Chapters 9.3 (§ 24.2-945 et seq.) and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any person who raises or spends funds in order to seek or campaign for an office of the Commonwealth, excluding federal offices, or one of its governmental units in a party nomination process or general, primary, or special election; and such person shall be considered a candidate until a final report is filed pursuant to Article 3 (§ 24.2-947 et seq.) of Chapter 9.3.

"Central absentee voter precinct" means a precinct established by a county or city pursuant to § 24.2-712 for the processing of absentee ballots for the county or city or any combination of precincts within the county or city.

"Constitutional office" or "constitutional officer" means a county or city office or officer referred to in Article VII, Section 4 of the Constitution of Virginia: clerk of the circuit court, attorney for the Commonwealth, sheriff, commissioner of the revenue, and treasurer.

"Election" means a general, primary, or special election.

"Election district" means the territory designated by proper authority or by law which is represented by an official elected by the people, including the Commonwealth, a congressional district, a General Assembly district, or a district for the election of an official of a county, city, town, or other governmental unit.

"Electoral board" or "local electoral board" means a board appointed pursuant to § 24.2-106 to administer elections for a county or city. The electoral board of the county in which a town or the greater part of a town is located shall administer the town's elections.

"General election" means an election held in the Commonwealth on the Tuesday after the first Monday in November or on the first Tuesday in May for the purpose of filling offices regularly scheduled by law to be filled at those times.

"Officer of election" means a person appointed by an electoral board pursuant to § 24.2-115 to serve at a polling place for any election.

"Party" or "political party" means an organization of citizens of the Commonwealth which, at either of the two preceding statewide general elections, received at least 10 percent of the total vote cast for any statewide office filled in that election. The organization shall have a state central committee and an office of elected state chairman which have been continually in existence for the six months preceding the filing of a nominee for any office.

"Person with a disability" means a person with a disability as defined by the Virginians with Disabilities Act (§ 51.5-1 et seq.).

"Polling place" means the one place provided for each precinct at which the qualified voters who are residents of the precinct may vote.

"Precinct" means the territory designated by the governing body of a county, city, or town to be served by one polling place.

"Primary" or "primary election" means an election held for the purpose of selecting a candidate to be the nominee of a political party for election to office.

"Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and

60 who is (i) 18 years of age on or before the day of the election or qualified pursuant to § 24.2-403 or
61 subsection D of § 24.2-544, (ii) a resident of the Commonwealth and of the precinct in which he offers
62 to vote, and (iii) registered to vote. No person who has been convicted of a felony shall be a qualified
63 voter unless his civil rights have been restored by the Governor or other appropriate authority. No
64 person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as
65 provided by law.

66 "Qualified voter in a town" means a person who is a resident within the corporate boundaries of the
67 town in which he offers to vote, duly registered in the county of his residence, and otherwise a qualified
68 voter.

69 "Referendum" means any election held pursuant to law to submit a question to the voters for
70 approval or rejection.

71 "Registered voter" means any person who is maintained on the Virginia voter registration system. All
72 registered voters shall be maintained on the Virginia voter registration system with active status unless
73 assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.). For
74 purposes of applying the precinct size requirements of § 24.2-307, calculating election machine
75 requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6, mailing notices of local election
76 district, precinct or polling place changes as required by subdivision 13 of § 24.2-114 and § 24.2-306,
77 and determining the number of signatures required for candidate and voter petitions, "registered voter"
78 shall include only persons maintained on the Virginia voter registration system with active status.

79 "Registration records" means all official records concerning the registration of qualified voters and
80 shall include all records, lists, applications, and files, whether maintained in books, on cards, on
81 automated data bases, or by any other legally permitted record-keeping method.

82 "Residence" or "resident," for all purposes of qualification to register and vote, means and requires
83 both domicile and a place of abode. ~~In determining domicile, consideration may be given to a person's~~
84 ~~expressed intent, conduct, and all attendant circumstances including, but not limited to, financial~~
85 ~~independence, business pursuits, employment, income sources, residence for income tax purposes,~~
86 ~~marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real~~
87 ~~property owned by the person, motor vehicle and other personal property registration, and other factors~~
88 ~~reasonably necessary to determine the qualification of a person to register or vote. To establish domicile,~~
89 ~~a person must live in a particular locality with the intention to remain there for an unlimited time. A~~
90 ~~place of abode is the physical place where a person dwells. The State Board shall promulgate~~
91 ~~guidelines to assist general registrars with determining a person's residence.~~

92 "Special election" means any election that is held pursuant to law to fill a vacancy in office or to
93 hold a referendum.

94 "State Board" or "Board" means the State Board of Elections.

95 "Virginia voter registration system" or "voter registration system" means the automated central
96 record-keeping system for all voters registered within the Commonwealth that is maintained as provided
97 in Article 2 (§ 24.2-404 et seq.) of Chapter 4.

98 § 24.2-115. Appointment, qualifications, and term of officers of election.

99 Each electoral board at its regular meeting in the first week of February shall appoint officers of
100 election. Their terms of office shall begin on March 1 following their appointment and continue, at the
101 discretion of the electoral board, for a term not to exceed three years or until their successors are
102 appointed.

103 Not less than three competent citizens shall be appointed for each precinct and, insofar as practicable,
104 each officer shall be a qualified voter of the precinct he is appointed to serve, but in any case a
105 qualified voter of the Commonwealth. In appointing the officers of election, representation shall be
106 given to each of the two political parties having the highest and next highest number of votes in the
107 Commonwealth for Governor at the last preceding gubernatorial election. The representation of the two
108 parties shall be equal at each precinct having an equal number of officers and shall vary by no more
109 than one at each precinct having an odd number of officers. If possible, officers shall be appointed from
110 lists of nominations filed by the political parties entitled to appointments. The party shall file its
111 nominations with the secretary of the electoral board at least 10 days before February 1 each year.

112 Officers of election shall serve for all elections held in their respective precincts during their terms of
113 office unless the electoral board decides that fewer officers are needed for a particular election, in which
114 case party representation shall be maintained as provided above. For a primary election involving only
115 one political party, persons representing the political party holding the primary shall serve as the officers
116 of election if possible.

117 The electoral board shall designate one officer as the chief officer of election and one officer as the
118 assistant for each precinct. The officer designated as the assistant for a precinct, whenever practicable,
119 shall not represent the same political party as the chief officer for the precinct. *The electoral board may*
120 *also appoint at least one officer of election who reports to the precinct at least one hour prior to the*
121 *closing of the precinct and whose primary responsibility is to assist with closing the precinct and*

reporting the results of the votes at the precinct.

The electoral board shall instruct each chief officer and assistant in his duties not less than three nor more than 30 days before each election. Each electoral board may instruct each officer of election in his duties at an appropriate time or times before each November general election.

If an officer of election is unable to serve at any election during his term of office, the electoral board may at any time appoint a substitute who shall hold office and serve for the unexpired term.

Additional officers may be appointed in accordance with this section at any time that the electoral board determines that they are needed.

The secretary of the electoral board shall prepare a list of the officers of election that shall be available for inspection and posted in the general registrar's office prior to March 1 each year. Whenever substitute or additional officers are appointed, the secretary shall promptly add the names of the appointees to the public list.

§ 24.2-115.1. Officers of election; hours of service.

The electoral board ~~may~~ shall provide that the officers of election for ~~one or more precincts may~~ every precinct shall be assigned to work all or a portion of the time that the precinct is open on election day. ~~If an officer of election is appointed to assist with the closing of the precinct and reporting the results of the votes at the precinct, he shall be required to report to the precinct at least one hour prior to the closing of the precinct.~~ However, the chief officer and the assistant chief officer, appointed pursuant to § 24.2-115 to represent the two political parties, shall be on duty at all times.

§ 24.2-307. Requirements for county and city precincts.

The governing body of each county and city shall establish by ordinance as many precincts as it deems necessary. Each governing body is authorized to increase or decrease the number of precincts and alter precinct boundaries subject to the requirements of this chapter.

At the time any precinct is established, it shall have no more than ~~5,000~~ 3,500 registered voters. The general registrar shall notify the governing body whenever the number of voters who voted in a precinct in an election for President of the United States exceeds ~~4,000~~ 3,000. Within six months of receiving the notice, the governing body shall proceed to revise the precinct boundaries, and any newly established or redrawn precinct shall have no more than ~~5,000~~ 3,500 registered voters.

At the time any precinct is established, each precinct in a county shall have no fewer than 100 registered voters and each precinct in a city shall have no fewer than 500 registered voters.

Each precinct shall be wholly contained within any election district used for the election of one or more members of the governing body or school board for the county or city.

The governing body shall establish by ordinance one polling place for each precinct.

§ 24.2-404. Duties of State Board.

A. The State Board shall provide for the continuing operation and maintenance of a central record-keeping system, the Virginia Voter Registration System, for all voters registered in the Commonwealth.

In order to operate and maintain the system, the Board shall:

1. Maintain a complete, separate, and accurate record of all registered voters in the Commonwealth.

2. Require the general registrars to enter the names of all registered voters into the system and to change or correct registration records as necessary.

3. Provide to each general registrar, voter registration cards for newly registered voters and for notice to registered voters on the system of changes and corrections in their registration records and polling places.

4. Require the general registrars to delete from the record of registered voters the name of any voter who (i) is deceased, (ii) is no longer qualified to vote in the county or city where he is registered due to removal of his residence, (iii) has been convicted of a felony, (iv) has been adjudicated incapacitated, (v) is known not to be a United States citizen by reason of reports from the Department of Motor Vehicles pursuant to § 24.2-410.1, or (vi) is otherwise no longer qualified to vote as may be provided by law.

5. Retain on the system for four years a separate record for registered voters whose names have been deleted, with the reason for deletion.

6. Retain on the system permanently a separate record for information received regarding deaths, felony convictions, and adjudications of incapacity pursuant to §§ 24.2-408 through 24.2-410.

7. Provide to each general registrar, at least 10 days prior to a general or primary election and three days prior to a special election, an alphabetical list of all registered voters in each precinct or portion of a precinct in which the election is being held in the county, city, or town. These precinct lists shall be used as the official lists of qualified voters and shall constitute the pollbooks. The State Board shall provide instructions for the division of the pollbooks and precinct lists into sections to accommodate the efficient processing of voter lines at the polls. Prior to any general, primary, or special election, the State Board shall provide any general registrar, upon his request, with a separate electronic list of all

183 registered voters in the registrar's county or city. If electronic pollbooks are used in the locality or
184 electronic voter registration inquiry devices are used in precincts in the locality, the State Board shall
185 provide a regional or statewide list of registered voters to the general registrar of the locality. The State
186 Board shall determine whether regional or statewide data is provided. Neither the pollbook nor the
187 regional or statewide list of registered voters shall include the day and month of birth of the voter, but
188 shall include the voter's year of birth.

189 8. Acquire by purchase, lease, or contract equipment necessary to execute the duties of the Board.

190 9. Use any source of information that may assist in carrying out the purposes of this section. All
191 agencies of the Commonwealth shall cooperate with the State Board in procuring and exchanging
192 identification information for the purpose of maintaining the voter registration system.

193 10. Reprint and impose a reasonable charge for the sale of any part of Title 24.2, lists of precincts
194 and polling places, statements of election results by precinct, and any other items required of the State
195 Board by law. Receipts from such sales shall be credited to the Board for reimbursement of printing
196 expenses.

197 B. The State Board shall be authorized to provide for the production, distribution, and receipt of
198 information and lists through the Virginia Voter Registration System by any appropriate means
199 including, but not limited to, paper and electronic means.

200 C. The State Board shall institute procedures to ensure that each requirement of this section is
201 fulfilled. As part of its procedures, the State Board shall provide that the general registrar shall mail
202 notice of any cancellation pursuant to clause (v) of subdivision A 4 to the person whose registration is
203 cancelled.

204 *D. The State Board shall promulgate guidelines to assist general registrars with determining a*
205 *person's residence.*

206 § 24.2-418. Application for registration.

207 Each applicant to register shall provide, subject to felony penalties for making false statements
208 pursuant to § 24.2-1016, the information necessary to complete the application to register. Unless
209 physically disabled, he shall sign the application. The application to register shall be only on a form or
210 forms prescribed by the State Board.

211 The form of the application to register shall require the applicant to provide the following
212 information: full name; gender; date of birth; social security number, if any; whether the applicant is
213 presently a United States citizen; address of residence in the precinct; place of last previous registration
214 to vote; and whether the applicant has ever been adjudicated incapacitated or convicted of a felony, and
215 if so, under what circumstances the applicant's right to vote has been restored. *The form shall contain a*
216 *statement that whoever votes more than once in any election in the same or different jurisdictions shall*
217 *be guilty of a Class 6 felony.*

218 The form shall permit any active or retired law-enforcement officer, as defined in § 9.1-101 and in 5
219 U.S.C. § 8331(20) but excluding officers whose duties relate to detention as defined in paragraphs (A)
220 through (D) of § 8331(20), to furnish, in addition to his residence street address, a post office box
221 address located within the Commonwealth to be included in lieu of his street address on the lists of
222 registered voters and persons who voted, which are furnished pursuant to §§ 24.2-405 and 24.2-406, or
223 on voter registration records made available for public inspection pursuant to § 24.2-444. *The post office*
224 *box address shall be maintained as a current post office box address and not be permitted to expire.*

225 The form shall permit any party granted a protective order issued by or under the authority of any
226 court of competent jurisdiction, including but not limited to courts of the Commonwealth of Virginia, to
227 furnish, in addition to his street address, a post office box address located within the Commonwealth to
228 be included in lieu of his street address on the lists of registered voters and persons who voted, which
229 are furnished pursuant to §§ 24.2-405 and 24.2-406, or on voter registration records made available for
230 public inspection pursuant to § 24.2-444. *The post office box address shall be maintained as a current*
231 *post office box address and not be permitted to expire.*

232 The form shall permit any party, who has furnished a signed written statement by the party that he is
233 in fear for his personal safety from another person who has threatened or stalked him accompanied by
234 evidence that he has filed a complaint with a magistrate or law-enforcement official against such other
235 person, to furnish, in addition to his street address, a post office box address located within the
236 Commonwealth to be included in lieu of his street address on the lists of registered voters and persons
237 who voted, that are furnished pursuant to §§ 24.2-405 and 24.2-406, or on voter registration records
238 made available for public inspection pursuant to § 24.2-444. *The post office box address shall be*
239 *maintained as a current post office box address and not be permitted to expire.*

240 § 24.2-604. Prohibited activities at polls; notice of prohibited area; electioneering; presence of
241 representatives of parties or candidates; simulated elections; neutral observers; news media; penalties.

242 A. During the times the polls are open and ballots are being counted, it shall be unlawful for any
243 person (i) to loiter or congregate within 40 feet of any entrance of any polling place; (ii) within such
244 distance to give, tender, or exhibit any ballot, ticket, or other campaign material to any person or to

solicit or in any manner attempt to influence any person in casting his vote; or (iii) to hinder or delay a qualified voter in entering or leaving a polling place.

B. Prior to opening the polls, the officers of election shall post, in the area within 40 feet of any entrance to the polling place, sufficient notices which state "Prohibited Area" in two-inch type. The notices shall also state the provisions of this section in not less than 24-point type. The officers of election shall post the notices within the prohibited area to be visible to voters and the public.

C. The officers of election shall permit one authorized representative of each political party or independent candidate in a general or special election, or one authorized representative of each candidate in a primary election, to remain in the room in which the election is being conducted. The officers of election shall have discretion to permit up to three authorized representatives of each political party or independent candidate in a general or special election, or up to three authorized representatives of each candidate in a primary election, to remain in the room in which the election is being conducted. If the pollbook is divided into sections, the officers shall permit one such representative for each section, but no more than three representatives of any political party or independent candidate shall be permitted in the room at any one time. Each authorized representative shall be a qualified voter of the county or city within which the polling place is located. Each representative shall present to the officers of election a written statement designating him to be a representative of the party or candidate and signed by the county or city chairman of his political party, the independent candidate, or the primary candidate, as appropriate. Such statement, bearing the chairman's or candidate's original signature, may be photocopied, and such photocopy shall be as valid as if the copy had been signed. No candidate whose name is printed on the ballot shall serve as a representative of a party or candidate for purposes of this section.

D. It shall be unlawful for any authorized representative, voter, or any other person in the room to (i) hinder or delay a qualified voter; (ii) give, tender, or exhibit any ballot, ticket, or other campaign material to any person; (iii) *actively or overtly* solicit or in any manner attempt to influence any person in casting his vote *for a particular candidate or issue*; (iv) hinder or delay any officer of election; or (v) otherwise impede the orderly conduct of the election. *However, it shall not be unlawful for a qualified voter to enter and be in the polling place for the purpose of casting a ballot while wearing clothing, buttons, or stickers bearing a candidate name or other political message so long as he makes no active or overt attempt to influence any other voter.*

E. The officers of election may require any person who is found by a majority of the officers present to be in violation of this section to remain outside of the prohibited area. Any person violating subsection A or D of this section shall be guilty of a Class 1 misdemeanor.

F. This section shall not be construed to prohibit a candidate from entering any polling place on the day of the election to vote, or to visit a polling place for no longer than 10 minutes per polling place per election day, provided that he complies with the restrictions stated in subsections A and D of this section.

G. This section shall not be construed to prohibit a minor from entering a polling place on the day of the election to vote in a simulated election at that polling place, provided that the local electoral board has determined that such polling place can accommodate simulated election activities without interference or substantial delay in the orderly conduct of the official voting process. Persons supervising or working in a simulated election in which minors vote may remain within such polling place. The local electoral board and the chief officer for the polling place shall exercise authority over, but shall have no responsibility for the administration of, simulated election related activities at the polling place.

H. A local electoral board, and its general registrar, may conduct a special election day program for high school students, selected by the electoral board in cooperation with high school authorities, in one or more polling places designated by the electoral board, other than a central absentee voter precinct. The program shall be designed to stimulate the students' interest in elections and registering to vote, provide assistance to the officers of election, and ensure the safe entry and exit of elderly and disabled voters from the polling place. Each student shall take and sign an oath as an election page, serve under the direct supervision of the chief officer of election of his assigned polling place, and observe strict impartiality at all times. Election pages may observe the electoral process and seek information from the chief officer of election, but shall not handle or touch ballots, voting machines, or any other official election materials, or enter any voting booth.

I. A local electoral board may authorize in writing the presence of additional neutral observers as it deems appropriate, except as otherwise prohibited or limited by this section. Such observers shall comply with the restrictions in subsections A and D of this section.

J. The officers of election shall permit representatives of the news media to visit and film or photograph inside the polling place for a reasonable and limited period of time while the polls are open. However, the media (i) shall comply with the restrictions in subsections A and D of this section; (ii) shall not film or photograph any person who specifically asks the media representative at that time that

306 he not be filmed or photographed; (iii) shall not film or photograph the voter or the ballot in such a way
307 that divulges how any individual voter is voting; and (iv) shall not film or photograph the voter list or
308 any other voter record or material at the precinct in such a way that it divulges the name or other
309 information concerning any individual voter. Any interviews with voters, candidates or other persons,
310 live broadcasts, or taping of reporters' remarks, shall be conducted outside of the polling place and the
311 prohibited area. The officers of election may require any person who is found by a majority of the
312 officers present to be in violation of this subsection to leave the polling place and the prohibited area.

313 § 24.2-1004. Illegal voting and registrations.

314 A. Any person who ~~(i) votes knowing that he is not qualified to vote where and when the vote is to~~
315 ~~be given; (ii) procures, assists, or induces another to vote, knowing that such person is not qualified to~~
316 ~~vote where and when the vote is to be given; or (iii) wrongfully deposits a ballot in the ballot container~~
317 or casts a vote on any voting equipment, is guilty of a Class 1 misdemeanor.

318 B. Any person who intentionally (i) votes more than once in the same election, whether those votes
319 are cast in Virginia or in Virginia and any other state or territory of the United States, ~~or~~ (ii) procures,
320 assists, or induces another to vote more than once in the same election, whether those votes are cast in
321 Virginia or in Virginia and any other state or territory of the United States, *(iii) votes knowing that he is*
322 *not qualified to vote where and when the vote is to be given, or (iv) procures, assists, or induces*
323 *another to vote knowing that such person is not qualified to vote where and when the vote is to be*
324 *given* is guilty of a Class 6 felony.

325 C. Any person who intentionally (i) registers to vote at more than one residence address at the same
326 time, whether such registrations are in Virginia or in Virginia and any other state or territory of the
327 United States, or (ii) procures, assists, or induces another to register to vote at more than one address at
328 the same time, whether such registrations are in Virginia or in Virginia and any other state or territory
329 of the United States, is guilty of a Class 6 felony. This subsection shall not apply to any person who,
330 when registering to vote, changing the address at which he is registered, transferring his registration, or
331 assisting another in registering, changing his address, or transferring his registration, provides the
332 information required by § 24.2-418 on the applicant's place of last previous registration to vote.

333 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
334 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
335 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
336 **periods of commitment to the custody of the Department of Juvenile Justice.**

337 **3. That the provisions of this act shall take effect in due course except that the amendments to**
338 **§ 24.2-307 of the Code of Virginia shall become effective on July 1, 2011.**