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SENATE BILL NO. 853

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections
on February 3, 2015)

(Patrons Prior to Substitute—Senators Favola and McDougle [SB 1073])

A BILL to amend and reenact §§ 24.2-638, 24.2-649, and 24.2-707 of the Code of Virginia, relating to elections; assistance for certain voters.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-638, 24.2-649, and 24.2-707 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-638. Voting equipment to be in plain view; officers and others not permitted to see actual voting; unlocking counter compartment of equipment, etc.

During the election, the exterior of the voting equipment and every part of the polling place shall be in plain view of the officers of election.

No voting or counting machines shall be removed from the plain view of the officers of election or from the polling place at any time during the election and through the determination of the vote as provided in § 24.2-657. However, an electronic voting machine that is so constructed as to be easily portable may be taken outside the polling place pursuant to subsection A of § 24.2-649 and to assist a voter age 65 or older or ~~physically disabled~~ *who is a person with a disability* so long as: (i) the voting machine remains in the plain view of two officers of election representing two political parties or, in a primary election, two officers of election representing the party conducting the primary, provided that if the use of two officers for this purpose would result in too few officers remaining in the polling place to meet legal requirements, the machine shall remain in plain view of one officer who shall be either the chief officer or the assistant chief officer; (ii) the voter casts his ballot in a secret manner unless the voter requests assistance pursuant to § 24.2-649; and (iii) there remain sufficient officers of election in the polling place to meet legal requirements. After the voter has completed voting his ballot, the officer or officers shall immediately return the voting machine to its assigned location inside the polling place. The machine number, the time that the machine was removed and the time that it was returned, the number on the machine's public counter before the machine was removed and the number on the same counter when it was returned, the names of the voters who used the machine while it was removed provided that secrecy of the ballot is maintained in accordance with guidance from the State Board, and the name or names of the officer or officers who accompanied the machine shall be recorded on the statement of results. If a polling place fails to record the information required in the previous sentence, or it is later proven that the information recorded was intentionally falsified, the local electoral board shall dismiss at a minimum the chief officer or the assistant chief officer, or both, as appropriate, and shall dismiss any other officer of election who is shown to have caused the failure to record the required information intentionally or by gross negligence or to have intentionally falsified the information. The dismissed officers shall not be allowed thereafter to serve as an officer or other election official anywhere in the Commonwealth. In the case of an emergency that makes a polling place unusable or inaccessible, voting or counting machines may be removed to an alternative polling place pursuant to the provisions of subsection D of § 24.2-310.

The equipment shall be placed at least four feet from any table where an officer of election is working or seated. The officers of election shall not themselves be, or permit any other person to be, in any position or near any position that will permit them to observe how a voter votes or has voted.

One of the officers shall inspect the face of the voting machine after each voter has cast his vote and verify that the ballots on the face of the machine are in their proper places and that the machine has not been damaged. During an election, the door or other covering of the counter compartment of the voting or counting machine shall not be unlocked or open or the counters exposed except for good and sufficient reasons, a statement of which shall be made and signed by the officers of election and attached to the statement of results. No person shall be permitted in or about the polling place except the voting equipment custodian, vendor, or contractor technicians and other persons authorized by this title.

§ 24.2-649. Assistance for certain voters; penalties.

A. Any *qualified* voter age 65 or older or ~~physically disabled~~ *who is a person with a disability* may request and then shall be handed a printed ballot by an officer of election outside the polling place but within 150 feet of the entrance to the polling place. The voter shall mark the printed ballot in the officer's presence but in a secret manner and, obscuring his vote, return the ballot to the officer. The officer shall immediately return to the polling place and shall deposit a paper ballot in the ballot container in accordance with § 24.2-646 or a machine-readable ballot in the ballot scanner machine in

60 accordance with the instructions of the State Board.

61 Any county or city that has acquired an electronic voting machine that is so constructed as to be
62 easily portable may use the voting machine in lieu of a printed ballot for the voter requiring assistance
63 pursuant to this subsection. However, the electronic voting machine may be used in lieu of a printed
64 ballot only so long as: (i) the voting machine remains in the plain view of two officers of election
65 representing two political parties, or in a primary election, two officers of election representing the party
66 conducting the primary, provided that if the use of two officers for this purpose would result in too few
67 officers remaining in the polling place to meet legal requirements, the voting machine shall remain in
68 plain view of one officer who shall be either the chief officer or the assistant chief officer and (ii) the
69 voter casts his ballot in a secret manner unless the voter requests assistance pursuant to this section.
70 After the voter has completed voting his ballot, the officer or officers shall immediately return the
71 voting machine to its assigned location inside the polling place. The machine number, the time that the
72 machine was removed and the time that it was returned, the number on the machine's public counter
73 before the machine was removed and the number on the same counter when it was returned, and the
74 name or names of the officer or officers who accompanied the machine shall be recorded on the
75 statement of results.

76 B. Any qualified voter who requires assistance to vote by reason of physical disability or inability to
77 read or write may, if he so requests, be assisted in voting. If he is blind, he may designate an officer of
78 election or any other person to assist him. If he is unable to read and write or disabled for any cause
79 other than blindness, he may designate an officer of election or some other person to assist him other
80 than the voter's employer or agent of that employer, or officer or agent of the voter's union.

81 The officer of election or other person so designated shall not enter the booth with the voter unless
82 (i) the voter signs a request stating that he requires assistance by reason of physical disability or
83 inability to read or write and (ii) the officer of election or other person signs a statement that he is not
84 the voter's employer or an agent of that employer, or an officer or agent of the voter's union, and that he
85 will act in accordance with the requirements of this section. The request and statement shall be on a
86 single form furnished by the State Board. If the voter is unable to sign the request, his own mark
87 acknowledged by him before an officer of election shall be sufficient signature, provided no mark shall
88 be required of a voter who is blind. An officer of election shall advise the voter and person assisting the
89 voter of the requirements of this section and record the name of the voter and the name and address of
90 the person assisting him.

91 The officer of election or other person so designated shall assist the qualified voter in the preparation
92 of his ballot in accordance with his instructions and without soliciting his vote or in any manner
93 attempting to influence his vote and shall not in any manner divulge or indicate, by signs or otherwise,
94 how the voter voted on any office or question. If a printed ballot is used, the officer or other person so
95 designated shall deposit the ballot in the ballot container in accordance with § 24.2-646 or in the ballot
96 scanner machine in accordance with the instructions of the State Board.

97 C. If the voter requires assistance in a language other than English and has not designated a person
98 to assist him, an officer of election, before he assists as interpreter, shall inquire of the representatives
99 authorized to be present pursuant to § 24.2-604 whether they have a volunteer available who can
100 interpret for the voter. One representative interpreter for each party or candidate, insofar as available,
101 shall be permitted to observe the officer of election communicate with the voter. The voter may
102 designate one of the volunteer party or candidate interpreters to provide assistance. A person so
103 designated by the voter shall meet all the requirements of this section for a person providing assistance.

104 D. A person who willfully violates subsection B or C is guilty of a Class 1 misdemeanor. In
105 addition, the provisions of § 24.2-1016 and its felony penalties for false statements shall be applicable to
106 any request or statement signed pursuant to this section, and the provisions of §§ 24.2-704 and
107 24.2-1012 and the felony penalties for violations of the law related to providing assistance to absentee
108 voters shall be applicable in such cases.

109 E. *Any qualified voter who is 75 years of age or older or a person with a disability may request*
110 *and, between the hours of 9:30 a.m. and 4:30 p.m., shall be permitted to go to the front of the line and*
111 *to vote at the next available voting booth or voting system. Notice of this provision shall be displayed*
112 *prominently in the polling place and in the office of the registrar. The provisions of this subdivision*
113 *shall not apply where the polling place is located in a nursing home, assisted living facility, or*
114 *continuing care retirement community and the voter is a resident of such facility.*

115 F. In any precinct in which an electronic voting machine is available that provides an audio ballot,
116 the officers of election shall notify a voter requiring assistance pursuant to this section that such
117 machine is available for him to use to vote in privacy without assistance and the officers of election
118 shall instruct the voter on the use of the voting machine. Nothing in this section shall be construed to
119 require a voter to use the machine unassisted.

120 **§ 24.2-707. How ballots marked and returned by mail; cast in person; cast on voting**
121 **equipment.**

On receipt of a mailed absentee ballot, the voter shall, in the presence of a witness, (i) open the sealed envelope marked "ballot within" and (ii) mark and refold the ballot, as provided in §§ 24.2-644 and 24.2-646 without assistance and without making known how he marked the ballot, except as provided by § 24.2-704.

After the voter has marked his absentee ballot, he shall (a) enclose the ballot in the envelope provided for that purpose, (b) seal the envelope, (c) fill in and sign the statement printed on the back of the envelope in the presence of a witness, who shall sign the same envelope, (d) enclose the ballot envelope and any required assistance form within the envelope directed to the electoral board, and (e) seal that envelope and mail it to the office of the electoral board or deliver it personally to the electoral board or the general registrar. A voter's failure to provide in the statement on the back of the envelope his full middle name or his middle initial shall not be a material omission, rendering his ballot void, unless the voter failed to provide in the statement on the back of the envelope his full first and last name. A voter's failure to provide the date, or any part of the date, including the year, on which he signed the statement printed on the back of the envelope shall not be considered a material omission and shall not render his ballot void. For purposes of this chapter, "mail" shall include delivery by a commercial delivery service, but shall not include delivery by a personal courier service or another individual except as provided by §§ 24.2-703.2 and 24.2-705.

An applicant who makes his application to vote in person at a time when the printed ballots for the election are available shall follow the same procedure set forth above except that he may complete the procedure in person in the office of the general registrar or secretary of the electoral board, or at another location or locations in the county or city approved by the electoral board, before a registrar or a member of the electoral board, or, if a ballot is cast at that time, before the officers of election appointed by the electoral board. Any such location shall be in a public building owned or leased by the city, the county, or a town within the county, with adequate facilities for the protection of all records concerning the absentee voters, the absentee ballots, both voted and unvoted, and any voting equipment in use at the location. Such location may be in a facility owned or leased by the Commonwealth and used as a location for Department of Motor Vehicles facilities and for an office of the general registrar. Such location shall be deemed the equivalent of the office of the general registrar or secretary of the electoral board for the purpose of completing the application for an absentee ballot in person pursuant to §§ 24.2-701 and 24.2-706. On the request of the applicant, made no later than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote, the general registrar or the secretary may send the items set forth in subdivisions 1 through 4 of § 24.2-706 to the applicant by mail, obtaining a certificate of mailing.

Failure to follow the procedures set forth above shall render the applicant's ballot void.

The electoral board of any county or city using a central absentee voting precinct *or other location in the county or city approved by the electoral board* may provide for the casting of absentee ballots on voting equipment prior to election day by applicants who are voting in person. *Any such applicant who is 75 years of age or older or a person with a disability shall be permitted to go to the head of the line and vote at the next available voting system.* The State Board shall prescribe procedures for the use of voting equipment. The procedures shall provide for the casting of absentee ballots prior to election day by in-person applicants on voting equipment which has been certified, and is currently approved, by the State Board. The procedures shall be applicable and uniformly applied by the State Board to all jurisdictions using comparable voting equipment. At least two officers of election, one representing each political party, shall be present during all hours that absentee voting is available at any location at which absentee ballots are cast prior to election day.

The requirement that officers of election shall be present if ballots are cast on voting equipment prior to election day shall not be applicable when the voting equipment is located in the office of the general registrar or secretary of the electoral board and the general registrar, an assistant registrar, or the secretary of the electoral board is present.