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HOUSE BILL NO. 1003

Offered January 13, 2016

Prefiled January 13, 2016

A BILL to amend and reenact §§ 24.2-101, 24.2-629, 24.2-668, and 24.2-669 of the Code of Virginia, relating to voting systems; voter-verifiable paper record.

Patrons—Levine and Rasoul

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-101, 24.2-629, 24.2-668, and 24.2-669 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:

"Ballot scanner machine" means the electronic counting machine in which a voter inserts a marked ballot to be scanned and the results tabulated.

"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.

"Department of Elections" or "Department" means the state agency headed by the Commissioner of Elections.

"Direct recording electronic machine" or "DRE" means the electronic voting machine on which a voter touches areas of a computer screen, or uses other control features, to mark a ballot and his vote is recorded electronically.

"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.

"Entrance of polling place" or "entrance to polling place" means an opening in the wall used for ingress to a structure.

"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.

"Machine-readable ballot" means a tangible ballot that is marked by a voter or by a system or device operated by a voter and then fed into and scanned by a counting machine capable of reading ballots and tabulating results.

"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.

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"Paper ballot" means a tangible ballot that is marked by a voter and then manually counted.

"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 structure that contains 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.

"Printed ballot" means a tangible ballot that is printed on paper and includes both machine-readable ballots and paper ballots.

"Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and who is (i) 18 years of age on or before the day of the election or qualified pursuant to § 24.2-403 or subsection D of § 24.2-544, (ii) a resident of the Commonwealth and of the precinct in which he offers to vote, and (iii) a registered voter. No person who has been convicted of a felony shall be a qualified voter unless his civil rights have been restored by the Governor or other appropriate authority. No person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as provided by law. Whether a signature should be counted towards satisfying the signature requirement of any petition shall be determined based on the signer of the petition's qualification to vote. For purposes of determining if a signature on a petition shall be included in the count toward meeting the signature requirements of any petition, "qualified voter" shall include only persons maintained on the Virginia voter registration system (a) with active status and (b) with inactive status who are qualified to vote for the office for which the petition was circulated.

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

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

"Registered voter" means any person who is maintained on the Virginia voter registration system. All registered voters shall be maintained on the Virginia voter registration system with active status unless assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.). For purposes of applying the precinct size requirements of § 24.2-307, calculating election machine requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6, mailing notices of local election district, precinct or polling place changes as required by subdivision 13 of § 24.2-114 and § 24.2-306, and determining the number of signatures required for candidate and voter petitions, "registered voter" shall include only persons maintained on the Virginia voter registration system with active status. For purposes of determining if a signature on a petition shall be included in the count toward meeting the signature requirements of any petition, "registered voter" shall include only persons maintained on the Virginia voter registration system (i) with active status and (ii) on inactive status who are qualified to vote for the office for which the petition was circulated.

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

"Residence" or "resident," for all purposes of qualification to register and vote, means and requires both domicile and a place of abode. To establish domicile, a person must live in a particular locality with the intention to remain. A place of abode is the physical place where a person dwells.

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

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

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

"Voter-verifiable paper record" means a tangible record of the ballot cast by the voter that is printed on paper and is physically separate from any other similar document.

"Voting system" means the electronic voting and counting machines used at elections. This term includes direct recording electronic machines (DRE) and ballot scanner machines.

§ 24.2-629. State Board approval process of electronic voting systems.

A. Any person, firm, or corporation, referred to in this article as the "vendor," manufacturing, owning, or offering for sale any electronic voting or counting machine and ballots designed to be used with such equipment may apply to the State Board, in the manner prescribed by the Board, to have examined a production model of such equipment and the ballots used with it. The Board may require the vendor to pay a reasonable application fee when he files his request for testing or certification of new or upgraded voting equipment. Receipts from such fees shall be credited to the Board for reimbursement of testing and certification expenses. In addition to any other materials that may be required, a current statement of the financial status of the vendor, including any assets and liabilities, shall be filed with the Board; if the vendor is not the manufacturer of the equipment for which application is made, such a statement shall also be filed for the manufacturer. These statements shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The Board shall require, at a site of its choosing, a demonstration of such equipment and ballots and may require that a production model of the equipment and a supply of ballots be provided to the Board for testing purposes. The Board shall also require the vendor to provide documentation of the practices recommended by the vendor to ensure the optimum security and functionality of the system.

B. The Board may approve any kind of electronic voting system that meets the following requirements:

1. It shall provide clear instructions for voters on how to mark or select their choice and cast that vote.

2. It shall provide facilities for voting for all offices at any election and on as many questions as may be submitted at any election.

3. It shall be capable of processing ballots for all parties holding a primary election on the same day, but programmable in such a way that an individual ballot cast by a voter is limited to the party primary election in which the voter chooses to participate.

4. It shall require votes for presidential and vice presidential electors to be cast for the presidential and vice presidential electors of one party by one operation. The ballot shall contain the words "Electors for" preceded by the name of the party or other authorized designation and followed by the names of the candidates for the offices of President and Vice President.

5. It shall enable the voter to cast votes for as many persons for an office as lawfully permitted, but no more. It shall prevent the voter from casting a vote for the same person more than once for the same office. However, ballot scanner machines shall not be required to prevent a voter from voting for a greater number of candidates than he is lawfully entitled to.

6. It shall enable the voter to cast a vote on any question on which he is lawfully permitted to vote, but no other.

7. It shall provide the voter with an opportunity to correct any error before a ballot is cast.

8. It shall correctly register or record and accurately count all votes cast for candidates and on questions.

9. It shall be provided with a "protective counter," whereby any operation of the machine before or after the election will be detected.

10. It shall be provided with a counter that at all times during an election shall show how many persons have voted.

11. It shall ensure voting in absolute secrecy. Ballot scanner machines shall provide for the secrecy of the ballot and a method to conceal the voted ballot.

12. It shall be programmable to allow ballots to be separated when necessary.

13. *It shall retain each paper ballot cast or produce a voter-verifiable paper record of each ballot cast that is available for inspection and verification by the voter at the time the ballot is cast.*

14. Ballot scanner machines shall report, if possible, the number of ballots on which a voter undervoted or overvoted.

C. After its examination of the equipment, ballots, and other materials submitted by the vendors, the Board shall prepare and file in its office a report of its finding as to (i) the apparent capability of such equipment to accurately count, register, and report votes; (ii) whether the system can be conveniently used without undue confusion to the voter; (iii) its accessibility to voters with disabilities; (iv) whether the system can be safely used without undue potential for fraud; (v) the ease of its operation and transportation by voting equipment custodians and officers of election; (vi) the financial stability of the vendor and manufacturer; (vii) whether the system meets the requirements of this title; (viii) whether the system meets federal requirements; (ix) whether issues of reliability and security identified with the system by other state governments have been adequately addressed by the vendor; and (x) whether, in the opinion of the Board, the potential for approval of such system is such as to justify further examination and testing.

D. If the Board determines that there is such potential and prior to its final determination as to approval or disapproval of such system, the Board shall obtain a report by an independent electronics or

engineering consultant as to (i) whether the system accurately counts, registers, and reports votes; (ii) whether it is capable of storing and retaining existing votes in a permanent memory in the event of power failure during and after the election; (iii) the number of separate memory capabilities for the storage of recorded votes; (iv) its mechanical and electronic perfections and imperfections; (v) the audit trail provided by the system; (vi) the anticipated frequency of repair; (vii) the ease of repair; (viii) the anticipated life of the equipment; (ix) its potential for fraudulent use; (x) its accessibility to voters with disabilities; (xi) the ease of its programming, transportation, and operation by voting equipment custodians and officers of election; and (xii) any other matters deemed necessary by the Board. Failure by an applicant to cooperate with the consultant by furnishing information and production equipment and ballots requested shall be deemed a withdrawal of the application, but nothing in this section shall require the disclosure of trade secrets by the applicant. If such trade secrets are essential to the proper analysis of the system and are provided for that reason, the consultant shall subscribe to an oath subject to the penalty for perjury that he will neither disclose nor make use of such information except as necessary for the system analysis. The report of the consultant shall be filed in the office of the Board.

E. In preparing the reports cited in subsections C and D, the Board shall require, as a condition of certification, that the system is comprehensively examined by individuals including at least one expert in election management and one in computer system security. The Board shall develop, in conjunction with the above listed individuals, a specific set of items to be examined and tested as part of the certification process to further elaborate on the requirements identified in this section.

F. If the Board determines that there is potential for approval of the system and prior to its final determination, the Board shall also require that the system be tested in an actual election in one or more counties or cities. Its use at such election shall be as valid for all purposes as if it had been legally approved by the Board and adopted by the counties or cities.

G. If, following testing, the Board approves any voting system and its ballots for use, the Board shall so notify the electoral boards of each county and city. Systems so approved may be adopted for use at elections as herein provided. No form of voting system and ballots not so approved shall be adopted by any county or city. Any voting system and ballots approved for use by the Board shall be deemed to meet the requirements of this title and any applicable federal laws, and their use in any election shall be valid.

H. A vendor whose voting system is approved for use shall provide updates concerning its recommended practices for optimum security and functionality of the system, as may be requested by the Board. Any product for which requested updates are not provided shall be deemed non-compliant and may be decertified at the discretion of the Board.

I. The Board shall have the authority to investigate, at its discretion, any voting system certified in Virginia to ensure that it continues to meet the standards outlined in subsections C and D. The Board may, at its discretion, decertify any voting system based on significant problems detected with the voting system in Virginia or on reports provided by federal authorities or other state election officials.

§ 24.2-668. Pollbooks, statements of results, and ballots to be sealed and delivered to clerk or general registrar.

A. After ascertaining the results and before adjourning, the officers shall put the pollbooks, the duplicate statements of results, and any printed inspection and return sheets in the envelopes provided by the State Board. The officers shall seal the envelopes and direct them to the clerk of the circuit court for the county or city. The pollbooks, statements, and sheets thus sealed and directed, the sealed ~~counted ballots~~ envelope or container *containing the counted ballots and voter-verifiable paper records*, and the unused, defaced, spoiled and set aside ballots properly accounted for, packaged and sealed, shall be conveyed by one of the officers to be determined by lot, if they cannot otherwise agree, to the clerk of court by noon on the day following the election.

The clerk shall retain custody of the pollbooks, paper ballots, *voter-verifiable paper records,* and other elections materials until the time has expired for initiating a recount, contest, or other proceeding in which the pollbooks, paper ballots, *voter-verifiable paper records,* and other elections materials may be needed as evidence and there is no proceeding pending. The clerk shall (i) secure all pollbooks, paper ballots, *voter-verifiable paper records,* and other election materials in sealed boxes; (ii) place all of the sealed boxes in a vault or room not open to the public or to anyone other than the clerk and his staff; (iii) cause such vault or room to be securely locked except when access is necessary for the clerk and his staff; and (iv) upon the initiation of a recount, certify that these security measures have been taken in whatever form is deemed appropriate by the chief judge.

After that time the clerk shall deliver the pollbooks to the general registrar who shall return the pollbooks or transfer a copy of the electronic data to the State Board as directed by § 24.2-114 for voting credit purposes. After the pollbooks are returned by the State Board, the general registrar shall retain the pollbooks in his principal office for two years from the date of the election. The clerk shall retain the statement of results and any printed inspection and return sheets for two years and may then destroy them.

B. The local electoral board may direct that the officers of election, in lieu of conveying the materials to the clerk of the circuit court as provided in subsection A of this section, shall convey the materials to the principal office of the general registrar on the night of the election or the morning following the election as the board directs. The general registrar shall secure and retain the materials in his office and shall convey to the clerk of the court, by noon of the day following the ascertainment of the results of the election by the electoral board, all of the election materials. The general registrar shall retain for public inspection one copy of the statement of results.

C. If an electronic pollbook is used, the data disc or cartridge containing the electronic records of the election, or, alternately, a printed copy of the pollbook records of those who voted, shall be transmitted, sealed and retained as required by this section, and otherwise treated as the pollbook for that election for all purposes subsequent to the election. Nothing in this title shall be construed to require that the equipment or software used to produce the electronic pollbook be sealed or retained along with the pollbook, provided that the records for the election have been transferred or printed according to the instructions of the State Board.

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

The clerk to whom the counted and uncounted ballots *and the voter-verifiable paper records* 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 *or voter-verifiable paper records* 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, (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.l. In the event that ballots *and voter-verifiable paper records* are inspected under clause (i), (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 *and voter-verifiable paper records* 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 *or voter-verifiable paper records* may be needed as evidence, the clerk shall destroy such ballots *and voter-verifiable paper records*. After the counted ballots *and voter-verifiable paper records* 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 *or voter-verifiable paper records* may be needed as evidence, the clerk shall destroy such ballots *and voter-verifiable paper records*. 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.

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