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SENATE BILL NO. 591

Offered January 10, 2018

Prefiled January 9, 2018

A *BILL to amend and reenact § 24.2-669 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 24.2-671.2, and to repeal § 24.2-671.1 of the Code of Virginia, relating to post-election risk-limiting audits.*

Patrons—Vogel and Howell

Referred to Committee on Privileges and Elections

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 24.2-671.2 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, (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 *a post-election audit as part of a post-election pilot program* pursuant to § ~~24.2-671.1~~ 24.2-671.2. In the event that ballots 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 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.

§ 24.2-671.2. Risk-limiting audits.**A. For purposes of this section:**

"Incorrect outcome" means the electoral outcome that differs from the outcome that would be found by a full manual tabulation of the votes on all ballots validly cast in the election.

"Risk limit" means the largest probability that the audit will fail to correct an incorrect outcome in an election.

"Risk-limiting audit" means a procedure that has a pre-specified minimum probability of requiring a full hand tabulation of the votes on all ballots validly cast in an election contest if the voting system reports an incorrect outcome.

B. Beginning with the November general election in 2020, in every election held in the Commonwealth in which a voting system is used, a post-election risk-limiting audit with a five percent risk limit shall be conducted for federal and statewide election contests in accordance with the requirements of this section. The risk-limiting audit shall be completed prior to certifying the results of the election being audited. The purpose of the risk-limiting audits is to provide efficient and cost-effective scientific quality control for election results.

C. All risk-limiting audits conducted pursuant to this section shall be performed by the electoral boards and general registrars and shall be carried out in accordance with the standards set and procedures prescribed by the State Board. Such standards and procedures shall include certifying election results after the conclusion of a risk-limiting audit, ballot accounting, and applying and checking seals. The State Board shall develop security procedures to ensure that collection of validly

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59 *cast ballots is complete, accurate, and trustworthy throughout the risk-limiting audit.*

60 *D. Candidates and political parties may have representatives present to observe the risk-limiting*
61 *audits. The risk-limiting audit shall be conducted in such a way that the representatives and other*
62 *lawfully present observers are able to adequately monitor the risk-limiting audit process to determine*
63 *whether it was carried out correctly. Every representative and lawfully present observer shall be able to*
64 *evaluate whether the correct ballots were audited and whether he agrees with the risk-limiting auditors'*
65 *determination of voter intent for each audited ballot.*

66 *E. Notwithstanding the provisions of § 24.2-668, all ballots cast in an election being audited*
67 *pursuant to this section shall be available for the risk-limiting audit. The electoral boards and general*
68 *registrars shall observe best practices for chain of custody of the ballots and shall secure ballots from*
69 *loss, theft, alteration, augmentation, substitution, damage, or destruction. The electoral boards and*
70 *general registrars shall ensure that the collection of validly cast ballots is complete and intact and shall*
71 *maintain an accurate, written record of the chain of custody of the ballots. Such record shall be*
72 *retained with all other ballot materials. At the conclusion of the risk-limiting audit, the ballots shall be*
73 *secured in accordance with the provisions of § 24.2-668 and the results of the election shall be certified*
74 *in accordance with the standards set by the State Board.*

75 *F. Risk-limiting audits performed pursuant to this section shall determine voter intent manually and*
76 *directly from original, voter-verifiable ballots cast and counted in the election, and paper record copies.*
77 *Voter intent shall not be determined from ballot images, reproductions, or remade ballots or by relying*
78 *on electronic or digital representations of ballots.*

79 *G. The electoral boards shall promptly report the results of the risk-limiting audits in their*
80 *jurisdiction to the Department. At the conclusion of each risk-limiting audit, the Department shall submit*
81 *to the State Board a report that includes all data generated by the risk-limiting audit and all*
82 *information required to confirm that the risk-limiting audit was conducted correctly.*

83 *H. The State Board may order a partial or full recount or may issue a writ for a new election, as*
84 *appropriate, if an elections official fails to comply with the requirements of this section.*

85 **2. That § 24.2-671.1 of the Code of Virginia is repealed.**

86 **3. That the State Board of Elections shall establish a work group to assist with the development of**
87 **standards and procedures for preparing for and conducting post-election risk-limiting audits,**
88 **pursuant to § 24.2-671.2 of the Code of Virginia, in the Commonwealth. The work group shall**
89 **include the following members: the Commissioner of Elections; the Chief Information Technology**
90 **Officer of the Department of Elections; one representative of the Virginia Information Technology**
91 **Agency; three representatives from the Virginia Registrars Association, from geographically and**
92 **politically diverse areas of the Commonwealth, appointed by the Chairman of the Senate**
93 **Committee on Privileges and Elections; three representatives from the Virginia Electoral Board**
94 **Association, from geographically and politically diverse areas of the Commonwealth, appointed by**
95 **the Chairman of the House Committee on Privileges and Elections; at least one representative of**
96 **Verified Voting, appointed by the State Board of Elections; at least one representative of the**
97 **Virginia League of Women Voters, appointed by the State Board of Elections; at least one**
98 **representative of voting equipment vendors, appointed by the State Board of Elections; and at**
99 **least one representative of each of the following fields, appointed by the State Board of Elections:**
100 **election security, statistics, computer science, and voting rights. The work group shall organize no**
101 **later than July 31, 2018, and shall adopt a statement of goals no later than August 31, 2018, for**
102 **inclusion in its interim and final reports required pursuant to the fourth enactment of this act.**
103 **The work group shall consider the information gathered on risk-limiting audits by recognized**
104 **experts and the experience of other states in implementing such audits.**

105 **4. The work group, through the State Board of Elections, shall submit an interim progress report**
106 **by December 1, 2018, and a final report by December 1, 2019, to the Governor and the General**
107 **Assembly that shall include the standards and procedures for preparing for and conducting**
108 **post-election risk-limiting audits and any legislative proposals as may be necessary to implement**
109 **and administer the requirements of § 24.2-671.2 of the Code of Virginia.**

110 **5. That the provisions of the first enactment of this act shall not become effective unless reenacted**
111 **by the 2020 Session of the General Assembly.**