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SENATE BILL NO. 591

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections
on February 6, 2018)

(Patrons Prior to Substitute—Senators Vogel and Howell)

A BILL to amend and reenact § 24.2-101 of the Code of Virginia and to repeal § 24.2-671.1 of the Code of Virginia, relating to post-election audits.

Be it enacted by the General Assembly of Virginia:

1. That § 24.2-101 of the Code of Virginia is 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.

"General registrar" means the person appointed by the electoral board of a county or city pursuant to § 24.2-110 to be responsible for all aspects of voter registration, in addition to other duties prescribed by this title. When performing duties related to the administration of elections, the general registrar is acting in his capacity as the director of elections for the locality in which he serves.

"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.

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

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

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

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

70 "*Post-election audit*" means a process conducted after an election to confirm the accurate reporting
71 of the results of the election.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

122 3. That the State Board of Elections shall establish a work group tasked with developing standards
123 and procedures for conducting post-election audits in order to determine whether the voting
124 systems used in an audited election correctly tabulated the election results. The work group shall,
125 at a minimum, (i) consider the types of post-election audits available and being implemented in
126 other states, including risk-limiting audits; (ii) recommend the type of post-election audit to be
127 used in the Commonwealth; (iii) establish the process and procedures for conducting the
128 recommended post-election audit, including the timeline for conducting the audit; (iv) recommend
129 actions to be taken in the event that the results of a post-election audit indicate that the voting
130 systems did not accurately count the ballots cast in that election; and (v) propose legislation for
131 implementing the recommendations of the work group. The work group shall organize no later
132 than July 31, 2018, and shall adopt a statement of goals no later than August 31, 2018, for
133 inclusion in its interim and final reports required pursuant to the fifth enactment of this act.
134 4. That the work group established pursuant to the third enactment of this act shall include the
135 following members: the Commissioner of Elections; the Chief Information Technology Officer of
136 the Department of Elections; one member of the State Board of Elections; four general registrars
137 from geographically and politically diverse areas of the Commonwealth, appointed by the
138 Chairman of the Senate Committee on Privileges and Elections; four local electoral board
139 members from geographically and politically diverse areas of the Commonwealth, appointed by
140 the Chairman of the House Committee on Privileges and Elections; and four representatives
141 appointed by the State Board of Elections, each of whom shall represent at least one of the
142 following: election security, statistics, computer science, or voting rights.
143 5. That the work group, through the State Board of Elections, shall submit an interim progress
144 report by January 7, 2019, and a final report by December 1, 2019, to the Governor and the
145 General Assembly. The final report shall include, at a minimum, the process and procedures
146 established by the work group for conducting any recommended post-election audit and legislative
147 proposals for implementing such recommendations.