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HOUSE BILL NO. 179
Offered January 8, 2020
Prefiled December 26, 2019
A BILL to amend and reenact § 24.2-802, as it is currently effective and as it shall become effective, of
the Code of Virginia, relating to recounts; procedure for certain ballots.
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Patrons—Levine, Simonds, Jenkins, Kory and Samirah
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Referred to Committee on Privileges and Elections
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Be it enacted by the General Assembly of Virginia:
1. That § 24.2-802, as it is currently effective and as it shall become effective, of the Code of
Virginia is amended and reenacted as follows:
§ 24.2-802. (Effective until July 1, 2020) Procedure for recount.
A. The State Board of Elections shall promulgate standards for (i) the proper handling and security
of voting and counting machines, ballots, and other materials required for a recount, (ii) accurate
determination of votes based upon objective evidence and taking into account the counting machine and
form of ballots approved for use in the Commonwealth, and (iii) any other matters that will promote a
timely and accurate resolution of the recount. The chief judge of the circuit court or the full recount
court may, consistent with State Board of Elections standards, resolve disputes over the application of
the standards and direct all other appropriate measures to ensure the proper conduct of the recount.
The recount procedures to be followed throughout the election district shall be as uniform as
practicable, taking into account the types of ballots and voting and counting machines in use in the
election district.
In preparation for the recount, the clerks of the circuit courts shall (a) secure all printed ballots and
other election materials in sealed boxes; (b) 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; (c) cause such vault or room to be securely
locked except when access is necessary for the clerk and his staff; and (d) certify that these security
measures have been taken in whatever form is deemed appropriate by the chief judge.
B. Within seven calendar days of the filing of the petition for a recount of any election other than an
election for presidential electors, or within five calendar days of the filing of a petition for a recount of
an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing
at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to
review by the full court. As part of the preliminary hearing, the chief judge may permit the petitioner
and his counsel, together with each other party and his counsel and at least two members of the
electoral board and the custodians, to examine any direct recording electronic machine of the type that
prints returns when the print-out sheets are not clearly legible. The petitioner and his counsel and each
other party and their counsel under supervision of the electoral board and its agents shall also have
access to pollbooks and other materials used in the election for examination purposes, provided that
individual ballots cast in the election shall not be examined at the preliminary hearing. The chief judge
during the preliminary hearing shall review all security measures taken for all ballots and voting and
counting machines and direct, as he deems necessary, all appropriate measures to ensure proper security
to conduct the recount.
The chief judge, subject to review by the full court, may set the place or places for the recount and
may order the delivery of election materials to a central location and the transportation of voting and
counting machines to a central location in each county or city under appropriate safeguards.
After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing at which all
motions shall be disposed of and the rules of procedure shall be fixed finally, and it shall issue a written
order setting out such rules of procedure. The court shall call for the advice and cooperation of the
Department, the State Board, or any local electoral board, as appropriate, and such boards or agency
shall have the duty and authority to assist the court. The court shall fix procedures that shall provide for
the accurate determination of votes in the election.
The determination of the votes in a recount shall be based on votes cast in the election and shall not
take into account (a) any absentee ballots or provisional ballots sought to be cast but ruled invalid and
not cast in the election, (b) ballots cast only for administrative or test purposes and voided by the
officers of election, or (c) ballots spoiled by a voter and replaced with a new ballot.
The eligibility of any voter to have voted shall not be an issue in a recount. Commencing upon the
filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be
used pursuant to § 24.2-803 in contesting the results of an election.

59   C. The court shall permit each candidate, or petitioner and governing body or chief executive officer,
60 to select an equal number of the officers of election to be recount officials and to count printed ballots,
61 or in the case of direct recording electronic machines, to redetermine the vote. The number shall be
62 fixed by the court and be sufficient to conduct the recount within a reasonable period. The court may
63 permit each party to the recount to submit a list of alternate officials in the number the court directs.
64 There shall be at least one team of recount officials to recount printed ballots and to redetermine the
65 vote cast on direct recording electronic machines of the type that prints returns for the election district at
66 large in which the recount is being held. There shall be at least one team from each locality using ballot
67 scanner machines to insert the ballots into one or more scanners. The ballot scanner machines shall be
68 programmed to count only votes cast for parties to the recount or for or against the question in a
69 referendum recount. Each team shall be composed of one representative of each party.
70   The court may provide that if, at the time of the recount, any recount official fails to appear, the
71 remaining recount officials present shall appoint substitute recount officials who shall possess the same
72 qualifications as the recount officials for whom they substitute. The court may select pairs of recount
73 coordinators to serve for each county or city in the election district who shall be members of the county
74 or city electoral board and represent different political parties. The court shall have authority to summon
75 such officials and coordinators. On the request of any party to the recount, the court shall allow that
76 party to appoint one representative observer for each team of recount officials. The representative
77 observers shall have an unobstructed view of the work of the recount officials. The expenses of its
78 representatives shall be borne by each party.
79   D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used
80 and any or all ballots cast at the election, or may assume supervision thereof through the recount
81 coordinators and officials.
82   The redetermination of the vote in a recount shall be conducted as follows:
83   1. For paper ballots, the recount officials shall hand count the paper ballots using the standards
84 promulgated by the State Board pursuant to subsection A.
85   2. For direct recording electronic machines (DREs), the recount officials shall open the envelopes
86 with the printouts and read the results from the printouts. If the printout is not clear, or on the request
87 of the court, the recount officials shall rerun the printout from the machine or examine the counters as
88 appropriate.
89   3. For ballot scanner machines, the recount officials shall rerun all the machine-readable ballots
90 through a scanner programmed to count only the votes for the office or issue in question in the recount
91 and to set aside all ballots containing write-in votes, overvotes, and undervotes. The ballots that are set
92 aside, any ballots not accepted by the scanner, and any ballots for which a scanner could not be
93 programmed to meet the programming requirements of this subdivision, shall be hand counted using the
94 standards promulgated by the State Board pursuant to subsection A. If the total number of
95 machine-readable ballots reported as counted by the scanner plus the total number of ballots set aside by
96 the scanner do not equal the total number of ballots rerun through the scanner, then all ballots cast on
97 ballot scanner machines for that precinct shall be set aside to be counted by hand using the standards
98 promulgated by the State Board pursuant to subsection A. Prior to running the machine-readable ballots
99 through the ballot scanner machine, the recount officials shall ensure that logic and accuracy tests have
100 been successfully performed on each scanner after the scanner has been programmed. The result
101 calculated for ballots accepted by the ballot scanner machine during the recount shall be considered the
102 correct determination for those machine-readable ballots unless the court finds sufficient cause to rule
103 otherwise.
104   There shall be only one redetermination of the vote in each precinct.
105   *Prior to the conclusion of the recount of each precinct, the recount officials shall segregate all*
106 *ballots for which there is a question regarding the ballot's validity.*
107   At the conclusion of the recount of each precinct, the recount officials shall write down the number
108 of valid ballots cast, this number being obtained from the ballots cast in the precinct, or from the ballots
109 cast as shown on the statement of results if the ballots cannot be found, for each of the two candidates
110 or for and against the question. They shall submit the ballots or the statement of results used, as to the
111 validity of which questions exist, to the court. The written statement of any one recount official
112 challenging a ballot shall be sufficient to require its submission to the court. If, on all direct recording
113 electronic machines, the number of persons voting in the election, or the number of votes cast for the
114 office or on the question, totals more than the number of names on the pollbooks of persons voting on
115 the voting machines, the figures recorded by the machines shall be accepted as correct.
116   At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned
117 ballots, and after hearing arguments, the court shall rule on the validity of all questioned ballots and
118 votes. *The court may not consider the validity of any ballots not set aside prior to the conclusion of the*
119 *recount of each precinct.* After determining all matters pertaining to the recount and redetermination of
120 the vote as raised by the parties, the court shall certify to the State Board and the electoral board or

121 boards (a) the vote for each party to the recount and declare the person who received the higher number
122 of votes to be nominated or elected, as appropriate, or (b) the votes for and against the question and
123 declare the outcome of the referendum. The Department shall post on the Internet any and all changes
124 made during the recount to the results as previously certified by it pursuant to § 24.2-679.
125　　E. Costs of the recount shall be assessed against the counties and cities comprising the election
126 district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a
127 recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated
128 or elected and the candidate petitioning for the recount a difference of not more than one-half of one
129 percent of the total vote cast for the two such candidates as determined by the State Board or electoral
130 board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate
131 petitioning for the recount or the petitioners in a recount of a referendum. If more than one candidate
132 petitions for a recount, the court may assess costs in an equitable manner between the counties and
133 cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date
134 shall be assessed against any candidate or petitioner who defaults or withdraws his petition.
135　　F. The court shall determine the costs of the recount subject to the following limitations: (i) no per
136 diem payment shall be assessed for salaried election officials; (ii) no per diem payment to officers of
137 election serving as recount officials shall exceed two-thirds of the per diem paid such officers by the
138 county or city for service on election day; and (iii) per diem payments to alternates shall be allowed
139 only if they serve.
140　　G. Any petitioner who may be assessed with costs under subsection E shall post a bond with surety
141 with the court in the amount of $10 per precinct in the area subject to recount. If the petitioner wins the
142 recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond shall be forfeit only to
143 the extent of the assessed costs. If the assessed costs exceed the bond, he shall be liable for such excess.
144　　H. The recount proceeding shall be final and not subject to appeal.
145　　I. For the purposes of this section:
146　　"Overvote" means a ballot on which a voter casts a vote for a greater number of candidates or
147 positions than the number for which he was lawfully entitled to vote and no vote shall be counted with
148 respect to that office or issue.
149　　"Undervote" means a ballot on which a voter casts a vote for a lesser number of candidates or
150 positions than the number for which he was lawfully entitled to vote.
151　　**§ 24.2-802. (Effective July 1, 2020) Procedure for recount.**
152　　A. The State Board of Elections shall promulgate standards for (i) the proper handling and security
153 of voting systems, ballots, and other materials required for a recount, (ii) accurate determination of votes
154 based upon objective evidence and taking into account the voting system and form of ballots approved
155 for use in the Commonwealth, and (iii) any other matters that will promote a timely and accurate
156 resolution of the recount. The chief judge of the circuit court or the full recount court may, consistent
157 with State Board of Elections standards, resolve disputes over the application of the standards and direct
158 all other appropriate measures to ensure the proper conduct of the recount.
159　　The recount procedures to be followed throughout the election district shall be as uniform as
160 practicable, taking into account the types of ballots and voting systems in use in the election district.
161　　In preparation for the recount, the clerks of the circuit courts shall (a) secure all printed ballots and
162 other election materials in sealed boxes; (b) place all of the sealed boxes in a vault or room not open to
163 the public or to anyone other than the clerk and his staff; (c) cause such vault or room to be securely
164 locked except when access is necessary for the clerk and his staff; and (d) certify that these security
165 measures have been taken in whatever form is deemed appropriate by the chief judge.
166　　B. Within seven calendar days of the filing of the petition for a recount of any election other than an
167 election for presidential electors, or within five calendar days of the filing of a petition for a recount of
168 an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing
169 at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to
170 review by the full court. The petitioner and his counsel and each other party and their counsel under
171 supervision of the electoral board and its agents shall have access to pollbooks and other materials used
172 in the election for examination purposes, provided that individual ballots cast in the election shall not be
173 examined at the preliminary hearing. The chief judge during the preliminary hearing shall review all
174 security measures taken for all ballots and voting systems and direct, as he deems necessary, all
175 appropriate measures to ensure proper security to conduct the recount.
176　　The chief judge, subject to review by the full court, may set the place or places for the recount and
177 may order the delivery of election materials to a central location and the transportation of voting
178 systems to a central location in each county or city under appropriate safeguards.
179　　After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing at which all
180 motions shall be disposed of and the rules of procedure shall be fixed finally, and it shall issue a written
181 order setting out such rules of procedure. The court shall call for the advice and cooperation of the

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182   Department, the State Board, or any local electoral board, as appropriate, and such boards or agency
183   shall have the duty and authority to assist the court. The court shall fix procedures that shall provide for
184   the accurate determination of votes in the election.
185   The determination of the votes in a recount shall be based on votes cast in the election and shall not
186   take into account (a) any absentee ballots or provisional ballots sought to be cast but ruled invalid and
187   not cast in the election, (b) ballots cast only for administrative or test purposes and voided by the
188   officers of election, or (c) ballots spoiled by a voter and replaced with a new ballot.
189   The eligibility of any voter to have voted shall not be an issue in a recount. Commencing upon the
190   filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be
191   used pursuant to § 24.2-803 in contesting the results of an election.
192   C. The court shall permit each candidate, or petitioner and governing body or chief executive officer,
193   to select an equal number of the officers of election to be recount officials and to count printed ballots.
194   The number shall be fixed by the court and be sufficient to conduct the recount within a reasonable
195   period. The court may permit each party to the recount to submit a list of alternate officials in the
196   number the court directs. There shall be at least one team from each locality using ballot scanner
197   machines to insert the ballots into one or more scanners. The ballot scanner machines shall be
198   programmed to count only votes cast for parties to the recount or for or against the question in a
199   referendum recount. Each team shall be composed of one representative of each party.
200   The court may provide that if, at the time of the recount, any recount official fails to appear, the
201   remaining recount officials present shall appoint substitute recount officials who shall possess the same
202   qualifications as the recount officials for whom they substitute. The court may select pairs of recount
203   coordinators to serve for each county or city in the election district who shall be members of the county
204   or city electoral board and represent different political parties. The court shall have authority to summon
205   such officials and coordinators. On the request of any party to the recount, the court shall allow that
206   party to appoint one representative observer for each team of recount officials. The representative
207   observers shall have an unobstructed view of the work of the recount officials. The expenses of its
208   representatives shall be borne by each party.
209   D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used
210   and any or all ballots cast at the election, or may assume supervision thereof through the recount
211   coordinators and officials.
212   The redetermination of the vote in a recount shall be conducted as follows:
213   1. For paper ballots, the recount officials shall hand count the paper ballots using the standards
214   promulgated by the State Board pursuant to subsection A.
215   2. For ballot scanner machines, the recount officials shall rerun all the machine-readable ballots
216   through a scanner programmed to count only the votes for the office or issue in question in the recount
217   and to set aside all ballots containing write-in votes, overvotes, and undervotes. The ballots that are set
218   aside, any ballots not accepted by the scanner, and any ballots for which a scanner could not be
219   programmed to meet the programming requirements of this subdivision, shall be hand counted using the
220   standards promulgated by the State Board pursuant to subsection A. If the total number of
221   machine-readable ballots reported as counted by the scanner plus the total number of ballots set aside by
222   the scanner do not equal the total number of ballots rerun through the scanner, then all ballots cast on
223   ballot scanner machines for that precinct shall be set aside to be counted by hand using the standards
224   promulgated by the State Board pursuant to subsection A. Prior to running the machine-readable ballots
225   through the ballot scanner machine, the recount officials shall ensure that logic and accuracy tests have
226   been successfully performed on each scanner after the scanner has been programmed. The result
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228   correct determination for those machine-readable ballots unless the court finds sufficient cause to rule
229   otherwise.
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231   *Prior to the conclusion of the recount of each precinct, the recount officials shall segregate all*
232   *ballots for which there is a question regarding the ballot's validity.*
233   At the conclusion of the recount of each precinct, the recount officials shall write down the number
234   of valid ballots cast, this number being obtained from the ballots cast in the precinct, or from the ballots
235   cast as shown on the statement of results if the ballots cannot be found, for each of the two candidates
236   or for and against the question. They shall submit the ballots or the statement of results used, as to the
237   validity of which questions exist, to the court. The written statement of any one recount official
238   challenging a ballot shall be sufficient to require its submission to the court. If, on all ballot scanners,
239   the number of persons voting in the election, or the number of votes cast for the office or on the
240   question, totals more than the number of names on the pollbooks of persons voting on the voting
241   machines, the figures recorded by the machines shall be accepted as correct.
242   At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned
243   ballots, and after hearing arguments, the court shall rule on the validity of all questioned ballots and

244 votes. *The court may not consider the validity of any ballots not set aside prior to the conclusion of the*
245 *recount of each precinct.* After determining all matters pertaining to the recount and redetermination of
246 the vote as raised by the parties, the court shall certify to the State Board and the electoral board or
247 boards (a) the vote for each party to the recount and declare the person who received the higher number
248 of votes to be nominated or elected, as appropriate, or (b) the votes for and against the question and
249 declare the outcome of the referendum. The Department shall post on the Internet any and all changes
250 made during the recount to the results as previously certified by it pursuant to § 24.2-679.
251 E. Costs of the recount shall be assessed against the counties and cities comprising the election
252 district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a
253 recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated
254 or elected and the candidate petitioning for the recount a difference of not more than one-half of one
255 percent of the total vote cast for the two such candidates as determined by the State Board or electoral
256 board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate
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258 petitions for a recount, the court may assess costs in an equitable manner between the counties and
259 cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date
260 shall be assessed against any candidate or petitioner who defaults or withdraws his petition.
261 F. The court shall determine the costs of the recount subject to the following limitations: (i) no per
262 diem payment shall be assessed for salaried election officials; (ii) no per diem payment to officers of
263 election serving as recount officials shall exceed two-thirds of the per diem paid such officers by the
264 county or city for service on election day; and (iii) per diem payments to alternates shall be allowed
265 only if they serve.
266 G. Any petitioner who may be assessed with costs under subsection E shall post a bond with surety
267 with the court in the amount of $10 per precinct in the area subject to recount. If the petitioner wins the
268 recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond shall be forfeit only to
269 the extent of the assessed costs. If the assessed costs exceed the bond, he shall be liable for such excess.
270 H. The recount proceeding shall be final and not subject to appeal.
271 I. For the purposes of this section:
272 "Overvote" means a ballot on which a voter casts a vote for a greater number of candidates or
273 positions than the number for which he was lawfully entitled to vote and no vote shall be counted with
274 respect to that office or issue.
275 "Undervote" means a ballot on which a voter casts a vote for a lesser number of candidates or
276 positions than the number for which he was lawfully entitled to vote.