2020 SESSION

ENROLLED

[S 444]

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VIRGINIA ACTS OF ASSEMBLY - CHAPTER

2 An Act to amend and reenact § 24.2-800, §§ 24.2-801, 24.2-801.1, and 24.2-802, as they are currently 3 effective and as they shall become effective, and § 24.2-814 of the Code of Virginia and to amend 4 the Code of Virginia by adding in Article 1 of Chapter 8 of Title 24.2 sections numbered 24.2-802.1, 5 24.2-802.2, and 24.2-802.3, relating to election recounts; reorganization of sections; technical 6 amendments.

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Approved

9 Be it enacted by the General Assembly of Virginia:

10 1. That § 24.2-800, §§ 24.2-801, 24.2-801.1, and 24.2-802, as they are currently effective and as they

shall become effective, and § 24.2-814 of the Code of Virginia are amended and reenacted and that 11

12 the Code of Virginia is amended by adding in Article 1 of Chapter 8 of Title 24.2 sections numbered 24.2-802.1, 24.2-802.2, and 24.2-802.3 as follows: 13

14 § 24.2-800. Recounts in all elections.

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A. The provisions of this article apply to all elections held in the Commonwealth.

B. When there is between any candidate apparently nominated or elected and any candidate 16 apparently defeated a difference of not more than one percent of the total vote cast for the two such 17 candidates as determined by the State Board or the electoral board, the defeated candidate may appeal 18 19 from the determination of the State Board or the electoral board for a recount of the vote as set forth in this article. When there is between any write-in candidate apparently nominated or elected and any 20 21 candidate apparently defeated, or between any candidate apparently nominated or elected and any write-in candidate apparently defeated, a difference of not more than five percent of the total vote cast 22 23 for the two such candidates as determined by the State Board or the electoral board, the defeated 24 candidate may appeal from the determination of the State Board or the electoral board for a recount of 25 the vote as set forth in this article. In an election of electors for the President and Vice President of the 26 United States, the presidential candidate shall represent the vice presidential candidate and slate of 27 electors and be the party to the recount for purposes of this article.

28 C. When there is between the vote for a question and the vote against a question a difference of not 29 more than fifty 50 votes or one percent of the total vote cast for and against the question as determined 30 by the State Board or the electoral board, whichever is greater, fifty 50 or more voters qualified to vote 31 on the question, by signing and filing their petition, may appeal from the determination of the State 32 Board or the electoral board for a recount of the vote as set forth in this article.

33 D. The State Board shall promulgate standards and instructions for the conduct of simultaneous 34 recounts of two or more elections in a single election district. 35

§ 24.2-801. (Effective until July 1, 2020) Petition for recount; recount court.

36 A. The petition for a recount of an election, other than an election for presidential electors, shall be 37 filed within 10 days from the day the State Board or the electoral board certifies the result of the election under § 24.2-679 or § 24.2-671, but not thereafter. The petition shall be filed in the Circuit 38 39 Court of the City of Richmond in the case of any statewide office and in the circuit court of the county 40 or city in which the candidate being challenged resides in the case of any other office. The petition shall 41 be filed in the Circuit Court of the City of Richmond in the case of any statewide referendum and in the 42 circuit court of any county or city comprising a part of the election district in the case of any other 43 referendum.

B. The petition shall set forth the results certified by the State Board or electoral board and shall 44 45 request the court to have the ballots in the election recounted or, in the case of direct recording electronic machines, the vote redetermined. 46

C. In an election for office, a copy of the petition shall be served on the candidate apparently nominated or elected as provided under § 8.01-296 and within 10 days after the *State* Board or electoral 47 48 49 board has certified the results of such election. In a referendum, a copy of the petition shall be so served 50 on the governing body or chief executive officer of the jurisdiction in which the election was held.

D. The chief judge of the circuit court in which a petition is filed shall promptly notify the Chief 51 Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief 52 53 judge, and the court shall be constituted and sit in all respects as a court appointed and sitting under 54 §§ 24.2-805 and 24.2-806. 55

§ 24.2-801. (Effective July 1, 2020) Petition for recount; recount court.

56 A. The petition for a recount of an election, other than an election for presidential electors, shall be SB444ER

57 filed within 10 days from the day the State Board or the electoral board certifies the result of the election under § 24.2-679 or § 24.2-671, but not thereafter. The petition shall be filed in the Circuit 59 Court of the City of Richmond in the case of any statewide office and in the circuit court of the county or city in which the candidate being challenged resides in the case of any other office. The petition shall be filed in the Circuit court of the City of Richmond in the case of any statewide referendum and in the circuit court of any county or city comprising a part of the election district in the case of any other referendum.

64 *B.* The petition shall set forth the results certified by the *State* Board or electoral board and shall request the court to have the ballots in the election recounted.

66 C. In an election for office, a copy of the petition shall be served on the candidate apparently nominated or elected as provided under § 8.01-296 and within 10 days after the *State* Board or electoral board has certified the results of such election. In a referendum, a copy of the petition shall be so served on the governing body or chief executive officer of the jurisdiction in which the election was held.

D. The chief judge of the circuit court in which a petition is filed shall promptly notify the Chief
Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief
judge, and the court shall be constituted and sit in all respects as a court appointed and sitting under
§§ 24.2-805 and 24.2-806.

74 § 24.2-801.1. (Effective until July 1, 2020) Petition for recount of election for presidential 75 electors; recount court.

76 A. The petition for a recount of an election for presidential electors shall be filed no later than 5:00 77 p.m. on the second calendar day after the day the State Board certifies the result of the election under 78 § 24.2-679, but not thereafter. Presidential candidates who anticipate the possibility of asking for a 79 recount are encouraged to so notify the State Board by letter as soon as possible after election day. The petition shall be filed in the Circuit Court of the City of Richmond. If any presidential candidate is 80 eligible to seek a recount of the results of the election for presidential electors under § 24.2-800 the 81 State Board shall, within 24 hours of the certification of the results, notify the Circuit Court of the City 82 83 of Richmond and the Supreme Court of Virginia (i) that a recount is possible, (ii) which presidential 84 candidate is eligible to seek a recount, and (iii) of the date the results were certified. The Circuit Court 85 of the City of Richmond shall make arrangements to receive any such filing if the office would normally be closed the entire day, or prior to 5:00 p.m., on the second calendar day after the day the 86 87 State Board certified the result of the election.

88 B. The petition shall set forth the results certified by the State Board and shall request the court to have the ballots in the election recounted or, in the case of direct recording electronic machines, the vote redetermined.

91 C. A copy of the petition shall be served on the presidential candidate whose electors were
 92 apparently elected as provided under § 8.01-296 and within five calendar days after the *State* Board has
 93 certified the results of such election.

D. As soon as a petition is filed, the chief judge of the Circuit Court shall promptly notify the Chief
Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief
judge, and the court shall be constituted and sit in all respects as a court appointed and sitting under
§ 24.2-805.

98 *E.* Any recount of an election for presidential electors shall be held promptly and completed, in 99 accordance with the provisions of 3 U.S.C. § 5, at least six days before the time fixed for the meeting of 100 the electors.

101 § 24.2-801.1. (Effective July 1, 2020) Petition for recount of election for presidential electors; 102 recount court.

103 A. The petition for a recount of an election for presidential electors shall be filed no later than 5:00 104 p.m. on the second calendar day after the day the State Board certifies the result of the election under 105 § 24.2-679, but not thereafter. Presidential candidates who anticipate the possibility of asking for a recount are encouraged to so notify the State Board by letter as soon as possible after election day. The petition shall be filed in the Circuit Court of the City of Richmond. If any presidential candidate is 106 107 108 eligible to seek a recount of the results of the election for presidential electors under § 24.2-800 the 109 State Board shall, within 24 hours of the certification of the results, notify the Circuit Court of the City 110 of Richmond and the Supreme Court of Virginia (i) that a recount is possible, (ii) which presidential candidate is eligible to seek a recount, and (iii) of the date the results were certified. The Circuit Court 111 112 of the City of Richmond shall make arrangements to receive any such filing if the office would normally be closed the entire day, or prior to 5:00 p.m., on the second calendar day after the day the 113 114 State Board certified the result of the election.

115 *B.* The petition shall set forth the results certified by the *State* Board and shall request the court to 116 have the ballots in the election recounted.

117 C. A copy of the petition shall be served on the presidential candidate whose electors were

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118 apparently elected as provided under § 8.01-296 and within five calendar days after the State Board has 119 certified the results of such election.

120 D. As soon as a petition is filed, the chief judge of the Circuit Court shall promptly notify the Chief 121 Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief 122 judge, and the court shall be constituted and sit in all respects as a court appointed and sitting under 123 § 24.2-805.

124 E. Any recount of an election for presidential electors shall be held promptly and completed, in 125 accordance with the provisions of 3 U.S.C. § 5, at least six days before the time fixed for the meeting of 126 the electors. 127

§ 24.2-802. (Effective until July 1, 2020) Recount standards.

128 A. The State Board of Elections shall promulgate standards for (i) the proper handling and security 129 of voting and counting machines, ballots, and other materials required for a recount, (ii) accurate 130 determination counting 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 131 132 will promote a timely and accurate resolution of the recount.

133 B. The State Board shall promulgate additional standards and instructions for the conduct of 134 simultaneous recounts of two or more elections in a single election district.

135 C. The chief judge of the circuit court or the full recount court may, consistent with State Board of 136 Elections standards, resolve disputes over the application of the standards and direct all other appropriate 137 measures to ensure the proper conduct of the recount.

138 The recount procedures to be followed throughout the election district shall be as uniform as 139 practicable, taking into account the types of ballots and voting and counting machines in use in the **140** election district.

141 In preparation for the recount, the clerks of the circuit courts shall (a) secure all printed ballots and 142 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 143 144 locked except when access is necessary for the clerk and his staff; and (d) certify that these security 145 measures have been taken in whatever form is deemed appropriate by the chief judge.

146 B. Within seven calendar days of the filing of the petition for a recount of any election other than an 147 election for presidential electors, or within five calendar days of the filing of a petition for a recount of 148 an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing 149 at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to 150 review by the full court. As part of the preliminary hearing, the chief judge may permit the petitioner 151 and his counsel, together with each other party and his counsel and at least two members of the 152 electoral board and the custodians, to examine any direct recording electronic machine of the type that 153 prints returns when the print-out sheets are not clearly legible. The petitioner and his counsel and each 154 other party and their counsel under supervision of the electoral board and its agents shall also have 155 access to pollbooks and other materials used in the election for examination purposes, provided that 156 individual ballots cast in the election shall not be examined at the preliminary hearing. The chief judge 157 during the preliminary hearing shall review all security measures taken for all ballots and voting and 158 counting machines and direct, as he deems necessary, all appropriate measures to ensure proper security 159 to conduct the recount.

160 The chief judge, subject to review by the full court, may set the place or places for the recount and 161 may order the delivery of election materials to a central location and the transportation of voting and 162 counting machines to a central location in each county or city under appropriate safeguards.

163 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 164 order setting out such rules of procedure. The court shall call for the advice and cooperation of the 165 166 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 167 168 the accurate determination of votes in the election.

169 The determination of the votes in a recount shall be based on votes cast in the election and shall not 170 take into account (a) any absentee ballots or provisional ballots sought to be cast but ruled invalid and 171 not cast in the election, (b) ballots cast only for administrative or test purposes and voided by the 172 officers of election, or (c) ballots spoiled by a voter and replaced with a new ballot.

173 The eligibility of any voter to have voted shall not be an issue in a recount. Commencing upon the 174 filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be 175 used pursuant to § 24.2-803 in contesting the results of an election.

176 C. The court shall permit each candidate, or petitioner and governing body or chief executive officer, 177 to select an equal number of the officers of election to be recount officials and to count printed ballots, 178 or in the case of direct recording electronic machines, to redetermine the vote. The number shall be

179 fixed by the court and be sufficient to conduct the recount within a reasonable period. The court may 180 permit each party to the recount to submit a list of alternate officials in the number the court directs. 181 There shall be at least one team of recount officials to recount printed ballots and to redetermine the 182 vote cast on direct recording electronic machines of the type that prints returns for the election district at 183 large in which the recount is being held. There shall be at least one team from each locality using ballot 184 scanner machines to insert the ballots into one or more scanners. The ballot scanner machines shall be 185 programmed to count only votes cast for parties to the recount or for or against the question in a referendum recount. Each team shall be composed of one representative of each party. 186

187 The court may provide that if, at the time of the recount, any recount official fails to appear, the 188 remaining recount officials present shall appoint substitute recount officials who shall possess the same qualifications as the recount officials for whom they substitute. The court may select pairs of recount 189 190 coordinators to serve for each county or city in the election district who shall be members of the county 191 or city electoral board and represent different political parties. The court shall have authority to summon 192 such officials and coordinators. On the request of any party to the recount, the court shall allow that 193 party to appoint one representative observer for each team of recount officials. The representative 194 observers shall have an unobstructed view of the work of the recount officials. The expenses of its 195 representatives shall be borne by each party.

196 D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used 197 and any or all ballots cast at the election, or may assume supervision thereof through the recount 198 coordinators and officials. 199

The redetermination of the vote in a recount shall be conducted as follows:

200 1. For paper ballots, the recount officials shall hand count the paper ballots using the standards 201 promulgated by the State Board pursuant to subsection A.

202 2. For direct recording electronic machines (DREs), the recount officials shall open the envelopes 203 with the printouts and read the results from the printouts. If the printout is not clear, or on the request 204 of the court, the recount officials shall rerun the printout from the machine or examine the counters as 205 appropriate.

206 3. For ballot scanner machines, the recount officials shall rerun all the machine-readable ballots 207 through a scanner programmed to count only the votes for the office or issue in question in the recount 208 and to set aside all ballots containing write-in votes, overvotes, and undervotes. The ballots that are set 209 aside, any ballots not accepted by the scanner, and any ballots for which a scanner could not be 210 programmed to meet the programming requirements of this subdivision, shall be hand counted using the standards promulgated by the State Board pursuant to subsection A. If the total number of 211 212 machine-readable ballots reported as counted by the scanner plus the total number of ballots set aside by 213 the scanner do not equal the total number of ballots rerun through the scanner, then all ballots cast on 214 ballot scanner machines for that precinct shall be set aside to be counted by hand using the standards 215 promulgated by the State Board pursuant to subsection A. Prior to running the machine-readable ballots 216 through the ballot scanner machine, the recount officials shall ensure that logic and accuracy tests have 217 been successfully performed on each scanner after the scanner has been programmed. The result 218 calculated for ballots accepted by the ballot scanner machine during the recount shall be considered the 219 correct determination for those machine-readable ballots unless the court finds sufficient cause to rule 220 otherwise. 221

There shall be only one redetermination of the vote in each precinct.

222 At the conclusion of the recount of each precinct, the recount officials shall write down the number 223 of valid ballots cast, this number being obtained from the ballots cast in the precinct, or from the ballots 224 cast as shown on the statement of results if the ballots cannot be found, for each of the two candidates 225 or for and against the question. They shall submit the ballots or the statement of results used, as to the 226 validity of which questions exist, to the court. The written statement of any one recount official 227 challenging a ballot shall be sufficient to require its submission to the court. If, on all direct recording 228 electronic machines, the number of persons voting in the election, or the number of votes cast for the 229 office or on the question, totals more than the number of names on the pollbooks of persons voting on 230 the voting machines, the figures recorded by the machines shall be accepted as correct.

231 At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned 232 ballots, and after hearing arguments, the court shall rule on the validity of all questioned ballots and 233 votes. After determining all matters pertaining to the recount and redetermination of the vote as raised 234 by the parties, the court shall certify to the State Board and the electoral board or boards (a) the vote for 235 each party to the recount and declare the person who received the higher number of votes to be 236 nominated or elected, as appropriate, or (b) the votes for and against the question and declare the 237 outcome of the referendum. The Department shall post on the Internet any and all changes made during 238 the recount to the results as previously certified by it pursuant to § 24.2-679.

239 E. Costs of the recount shall be assessed against the counties and cities comprising the election 240 district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a 241 recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated or elected and the candidate petitioning for the recount a difference of not more than one-half of one 242 243 percent of the total vote cast for the two such candidates as determined by the State Board or electoral 244 board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate 245 petitioning for the recount or the petitioners in a recount of a referendum. If more than one candidate 246 petitions for a recount, the court may assess costs in an equitable manner between the counties and 247 cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date shall be assessed against any candidate or petitioner who defaults or withdraws his petition. 248

249 F. The court shall determine the costs of the recount subject to the following limitations: (i) no per 250 diem payment shall be assessed for salaried election officials; (ii) no per diem payment to officers of 251 election serving as recount officials shall exceed two-thirds of the per diem paid such officers by the 252 county or city for service on election day; and (iii) per diem payments to alternates shall be allowed 253 only if they serve.

254 G. Any petitioner who may be assessed with costs under subsection E shall post a bond with surety 255 with the court in the amount of \$10 per precinct in the area subject to recount. If the petitioner wins the recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond shall be forfeit only to 256 257 the extent of the assessed costs. If the assessed costs exceed the bond, he shall be liable for such excess. 258

H. The recount proceeding shall be final and not subject to appeal.

259 I. For the purposes of this section:

260 "Overvote" means a ballot on which a voter casts a vote for a greater number of candidates or 261 positions than the number for which he was lawfully entitled to vote and no vote shall be counted with 262 respect to that office or issue.

263 "Undervote" means a ballot on which a voter casts a vote for a lesser number of candidates or 264 positions than the number for which he was lawfully entitled to vote. 265

§ 24.2-802. (Effective July 1, 2020) Recount standards.

266 A. The State Board of Elections shall promulgate standards for (i) the proper handling and security of voting systems, ballots, and other materials required for a recount, (ii) accurate determination 267 268 counting of votes based upon objective evidence and taking into account the voting system and form of 269 ballots approved for use in the Commonwealth, and (iii) any other matters that will promote a timely 270 and accurate resolution of the recount.

271 B. The State Board shall promulgate additional standards and instructions for the conduct of 272 simultaneous recounts of two or more elections in a single election district.

273 C. The chief judge of the circuit court or the full recount court may, consistent with State Board of 274 Elections standards, resolve disputes over the application of the standards and direct all other appropriate 275 measures to ensure the proper conduct of the recount.

276 The recount procedures to be followed throughout the election district shall be as uniform as 277 practicable, taking into account the types of ballots and voting systems in use in the election district.

278 In preparation for the recount, the clerks of the circuit courts shall (a) secure all printed ballots and 279 other election materials in sealed boxes; (b) place all of the sealed boxes in a vault or room not open to 280 the public or to anyone other than the clerk and his staff; (c) cause such vault or room to be securely 281 locked except when access is necessary for the clerk and his staff; and (d) certify that these security 282 measures have been taken in whatever form is deemed appropriate by the chief judge.

283 B. Within seven calendar days of the filing of the petition for a recount of any election other than an 284 election for presidential electors, or within five calendar days of the filing of a petition for a recount of 285 an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing 286 at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to 287 review by the full court. The petitioner and his counsel and each other party and their counsel under 288 supervision of the electoral board and its agents shall have access to pollbooks and other materials used 289 in the election for examination purposes, provided that individual ballots cast in the election shall not be 290 examined at the preliminary hearing. The chief judge during the preliminary hearing shall review all security measures taken for all ballots and voting systems and direct, as he deems necessary, all 291 292 appropriate measures to ensure proper security to conduct the recount.

293 The chief judge, subject to review by the full court, may set the place or places for the recount and 294 may order the delivery of election materials to a central location and the transportation of voting 295 systems to a central location in each county or city under appropriate safeguards.

296 After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing at which all 297 motions shall be disposed of and the rules of procedure shall be fixed finally, and it shall issue a written 298 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 299 300 shall have the duty and authority to assist the court. The court shall fix procedures that shall provide for 301 the accurate determination of votes in the election.

302 The determination of the votes in a recount shall be based on votes cast in the election and shall not 303 take into account (a) any absentee ballots or provisional ballots sought to be cast but ruled invalid and 304 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. 305

The eligibility of any voter to have voted shall not be an issue in a recount. Commencing upon the 306 filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be 307 used pursuant to § 24.2-803 in contesting the results of an election. 308

309 C. The court shall permit each candidate, or petitioner and governing body or chief executive officer, to select an equal number of the officers of election to be recount officials and to count printed ballots. 310 311 The number shall be fixed by the court and be sufficient to conduct the recount within a reasonable 312 period. The court may permit each party to the recount to submit a list of alternate officials in the number the court directs. There shall be at least one team from each locality using ballot scanner 313 314 machines to insert the ballots into one or more scanners. The ballot scanner machines shall be 315 programmed to count only votes cast for parties to the recount or for or against the question in a referendum recount. Each team shall be composed of one representative of each party. The court may provide that if, at the time of the recount, any recount official fails to appear, the 316

317 318 remaining recount officials present shall appoint substitute recount officials who shall possess the same qualifications as the recount officials for whom they substitute. The court may select pairs of recount 319 320 coordinators to serve for each county or city in the election district who shall be members of the county 321 or city electoral board and represent different political parties. The court shall have authority to summon 322 such officials and coordinators. On the request of any party to the recount, the court shall allow that 323 party to appoint one representative observer for each team of recount officials. The representative 324 observers shall have an unobstructed view of the work of the recount officials. The expenses of its 325 representatives shall be borne by each party.

326 D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used 327 and any or all ballots cast at the election, or may assume supervision thereof through the recount 328 coordinators and officials. 329

The redetermination of the vote in a recount shall be conducted as follows:

330 1. For paper ballots, the recount officials shall hand count the paper ballots using the standards 331 promulgated by the State Board pursuant to subsection A.

332 2. For ballot scanner machines, the recount officials shall rerun all the machine-readable ballots 333 through a scanner programmed to count only the votes for the office or issue in question in the recount 334 and to set aside all ballots containing write in votes, overvotes, and undervotes. The ballots that are set aside, any ballots not accepted by the scanner, and any ballots for which a scanner could not be 335 336 programmed to meet the programming requirements of this subdivision, shall be hand counted using the standards promulgated by the State Board pursuant to subsection A. If the total number of machine-readable ballots reported as counted by the scanner plus the total number of ballots set aside by 337 338 the scanner do not equal the total number of ballots rerun through the scanner, then all ballots cast on 339 ballot scanner machines for that precinct shall be set aside to be counted by hand using the standards promulgated by the State Board pursuant to subsection A. Prior to running the machine readable ballots 340 341 342 through the ballot scanner machine, the recount officials shall ensure that logic and accuracy tests have 343 been successfully performed on each scanner after the scanner has been programmed. The result 344 calculated for ballots accepted by the ballot scanner machine during the recount shall be considered the 345 correct determination for those machine-readable ballots unless the court finds sufficient cause to rule 346 otherwise. 347

There shall be only one redetermination of the vote in each precinct.

348 At the conclusion of the recount of each precinct, the recount officials shall write down the number 349 of valid ballots cast, this number being obtained from the ballots cast in the precinct, or from the ballots 350 cast as shown on the statement of results if the ballots cannot be found, for each of the two candidates 351 or for and against the guestion. They shall submit the ballots or the statement of results used, as to the 352 validity of which questions exist, to the court. The written statement of any one recount official 353 challenging a ballot shall be sufficient to require its submission to the court. If, on all ballot scanners, the number of persons voting in the election, or the number of votes cast for the office or on the 354 355 question, totals more than the number of names on the pollbooks of persons voting on the voting machines, the figures recorded by the machines shall be accepted as correct. 356

At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned 357 358 ballots, and after hearing arguments, the court shall rule on the validity of all questioned ballots and 359 votes. After determining all matters pertaining to the recount and redetermination of the vote as raised by the parties, the court shall certify to the State Board and the electoral board or boards (a) the vote for 360 each party to the recount and declare the person who received the higher number of votes to be 361

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362 nominated or elected, as appropriate, or (b) the votes for and against the question and declare the 363 outcome of the referendum. The Department shall post on the Internet any and all changes made during 364 the recount to the results as previously certified by it pursuant to <u>§ 24.2-679</u>.

E. Costs of the recount shall be assessed against the counties and cities comprising the election 365 366 district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a 367 recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated 368 or elected and the candidate petitioning for the recount a difference of not more than one-half of one 369 percent of the total vote cast for the two such candidates as determined by the State Board or electoral 370 board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate 371 petitioning for the recount or the petitioners in a recount of a referendum. If more than one candidate 372 petitions for a recount, the court may assess costs in an equitable manner between the counties and 373 cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date 374 shall be assessed against any candidate or petitioner who defaults or withdraws his petition.

375 F. The court shall determine the costs of the recount subject to the following limitations: (i) no per 376 diem payment shall be assessed for salaried election officials; (ii) no per diem payment to officers of election serving as recount officials shall exceed two-thirds of the per diem paid such officers by the 377 378 county or city for service on election day; and (iii) per diem payments to alternates shall be allowed 379 only if they serve.

380 G. Any petitioner who may be assessed with costs under subsection E shall post a bond with surety 381 with the court in the amount of \$10 per precinct in the area subject to recount. If the petitioner wins the 382 recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond shall be forfeit only to 383 the extent of the assessed costs. If the assessed costs exceed the bond, he shall be liable for such excess. 384

H. The recount proceeding shall be final and not subject to appeal.

385 I. For the purposes of this section:

386 "Overvote" means a ballot on which a voter casts a vote for a greater number of candidates or 387 positions than the number for which he was lawfully entitled to vote and no vote shall be counted with 388 respect to that office or issue.

389 "Undervote" means a ballot on which a voter casts a vote for a lesser number of candidates or 390 positions than the number for which he was lawfully entitled to vote.

391 § 24.2-802.1. Preliminary hearing; court to fix procedure for recount, appoint officers, and 392 supervise the recount.

393 A. Within seven calendar days of the filing of the petition for a recount of any election other than an 394 election for presidential electors, or within five calendar days of the filing of a petition for a recount of 395 an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing 396 at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to 397 review by the full court. The petitioner and his counsel and each other party and their counsel under 398 supervision of the electoral board and its agents shall have access to pollbooks and other materials 399 used in the election for examination purposes, provided that individual ballots cast in the election shall 400 not be examined at the preliminary hearing. The chief judge during the preliminary hearing shall review 401 all security measures taken for all ballots and voting systems and direct, as he deems necessary, all 402 appropriate measures to ensure proper security to conduct the recount.

403 The chief judge, subject to review by the full court, may set the place for the recount and may order 404 the delivery of election materials to a central location and the transportation of voting systems to a 405 central location in each county or city under appropriate safeguards.

406 B. After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing at which 407 all motions shall be disposed of and the rules of procedure shall be fixed finally, and it shall issue a **408** written order setting out such rules of procedure. The court shall call for the advice and cooperation of 409 the Department, the State Board, or any local electoral board, as appropriate, and such boards or 410 agency shall have the duty and authority to assist the court. The court shall fix any additional 411 procedures, that are not provided for in this chapter, that shall provide for the accurate counting of 412 votes in the election. The recount procedures to be followed throughout the election district shall be as 413 uniform as practicable, taking into account the types of ballots and voting systems in use in the election 414 district.

415 C. The court shall permit each candidate, or petitioner and governing body or chief executive officer, 416 to select an equal number of the officers of election to be recount officials and to count printed ballots. 417 The number shall be fixed by the court and be sufficient to conduct the recount within a reasonable 418 period. The court may permit each party to the recount to submit a list of alternate officials in the number the court directs. There shall be at least one team from each locality using ballot scanner 419 machines to insert the ballots into one or more scanners. Each team shall be composed of one 420 421 representative of each party.

422 The court may provide that if, at the time of the recount, any recount official fails to appear, the 423 remaining recount officials present shall appoint substitute recount officials who shall possess the same 424 qualifications as the recount officials for whom they substitute. The court may select pairs of recount 425 coordinators to serve for each county or city in the election district who shall be members of the county 426 or city electoral board and represent different political parties. The court shall have authority to 427 summon such officials and coordinators. On the request of any party to the recount, the court shall 428 allow that party to appoint one representative observer for each team of recount officials. The 429 representative observers shall have an unobstructed view of the work of the recount officials. The 430 expenses of its representatives shall be borne by each party.

431 D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks 432 used and any or all ballots cast at the election, or may assume supervision thereof through the recount 433 coordinators and officials. 434

§ 24.2-802.2. General recount procedures.

435 A. For the purposes of this section:

"Overvote" means a ballot on which a voter casts a vote for a greater number of candidates or 436 437 positions than the number for which he was lawfully entitled to vote and no vote shall be counted with 438 respect to that office or issue.

439 "Undervote" means a ballot on which a voter casts a vote for a lesser number of candidates or **440** positions than the number for which he was lawfully entitled to vote.

441 B. The recount of the votes shall be based on votes cast in the election and shall not take into 442 account (i) any absentee ballots or provisional ballots sought to be cast but ruled invalid and not cast 443 in the election, (ii) ballots cast only for administrative or test purposes and voided by the officers of 444 election, or (iii) ballots spoiled by a voter and replaced with a new ballot.

445 C. The eligibility of any voter to have voted shall not be an issue in a recount. Commencing upon 446 the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be 447 used pursuant to § 24.2-803 in contesting the results of an election.

448 D. There shall be only one recount of the vote in each precinct. The recount of the vote shall be 449 conducted as follows:

450 1. For paper ballots, the recount officials shall hand count the paper ballots using the standards 451 promulgated by the State Board pursuant to § 24.2-802.

452 2. For ballot scanner machines, the recount officials shall rerun all the machine-readable ballots 453 through a scanner programmed to count only the votes for the parties or issue in question in the 454 recount and to set aside all ballots containing write-in votes, overvotes, and undervotes. The ballots that 455 are set aside, any ballots not accepted by the scanner, and any ballots for which a scanner could not be 456 programmed to meet the programming requirements of this subdivision, shall be hand counted using the 457 standards promulgated by the State Board pursuant to § 24.2-802. If the total number of machine-readable ballots reported as counted by the scanner plus the total number of ballots set aside 458 by the scanner do not equal the total number of ballots rerun through the scanner, then all ballots cast 459 460 on ballot scanner machines for that precinct shall be set aside to be counted by hand using the standards promulgated by the State Board pursuant to § 24.2-802. Prior to running the 461 machine-readable ballots through the ballot scanner machine, the recount officials shall ensure that 462 463 logic and accuracy tests have been successfully performed on each scanner after the scanner has been 464 programmed. The result calculated for ballots accepted by the ballot scanner machine during the 465 recount shall be considered correct for those machine-readable ballots unless the court finds sufficient 466 cause to rule otherwise.

467 E. At the conclusion of the recount of each precinct, the recount officials shall write down the 468 number of valid ballots cast, this number being obtained from the ballots cast in the precinct, or from 469 the ballots cast as shown on the statement of results if the ballots cannot be found, for each of the two candidates or for and against the question. They shall submit the ballots or the statement of results 470 471 used, as to the validity of which questions exist, to the court. The written statement of any one recount 472 official challenging a ballot shall be sufficient to require its submission to the court. If, on all ballot 473 scanners, the number of persons voting in the election, or the number of votes cast for the office or on 474 the question, totals more than the number of names on the pollbooks of persons voting on the voting 475 machines, the figures recorded by the machines shall be accepted as correct.

476 F. At the conclusion of the recount of all precincts, after allowing the parties to inspect the 477 questioned ballots, and after hearing arguments, the court shall rule on the validity of all questioned 478 ballots and votes. After settling all matters pertaining to the recount of the vote as raised by the parties, 479 the court shall certify to the State Board and the electoral board (i) the vote for each party to the 480 recount and declare the person who received the higher number of votes to be nominated or elected, as 481 appropriate, or (ii) the votes for and against the question and declare the outcome of the referendum. 482 The Department shall post on the Internet any and all changes made during the recount to the results 483 as previously certified by it pursuant to § 24.2-679.

484 *G.* The recount proceeding shall be final and not subject to appeal.

485 § 24.2-802.3. Costs of the recount.

486 A. Costs of the recount shall be assessed against the counties and cities comprising the election 487 district when (i) the candidate petitioning for the recount is declared the winner; (ii) the petitioners in a 488 recount of a referendum win the recount; or (iii) there was between the candidate apparently nominated 489 or elected and the candidate petitioning for the recount a difference of not more than one-half of one 490 percent of the total vote cast for the two such candidates as determined by the State Board or electoral 491 board prior to the recount. Otherwise the costs of the recount shall be assessed against the candidate 492 petitioning for the recount or the petitioners in a recount of a referendum. If more than one candidate 493 petitions for a recount, the court may assess costs in an equitable manner between the counties and 494 cities and any such candidate if both are liable for costs under this subsection. Costs incurred to date 495 shall be assessed against any candidate or petitioner who defaults or withdraws his petition.

B. The court shall appraise the costs of the recount subject to the following limitations: (i) no per
diem payment shall be assessed for salaried election officials; (ii) no per diem payment to officers of
election serving as recount officials shall exceed two-thirds of the per diem paid such officers by the
county or city for service on election day; and (iii) per diem payments to alternates shall be allowed
only if they serve.

501 C. Any petitioner who may be assessed with costs under subsection A shall post a bond with surety 502 with the court in the amount of \$10 per precinct in the area subject to recount. If the petitioner wins 503 the recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond shall be forfeit 504 only to the extent of the assessed costs. If the assessed costs exceed the bond, he shall be liable for such 505 excess.

506 § 24.2-814. Contest following recount.

507 A candidate in a primary or an election to office, who was originally declared a winner and 508 subsequently loses as the result of a recount, may file either (i) notice of his intent to contest the result 509 in accordance with § 24.2-803 or § 24.2-804 or (ii) a written complaint pursuant to § 24.2-805 or § 510 24.2-806. Such notice or complaint shall be filed within 10 days following the date of the entry of the 511 order of the recount court pursuant to subsection D F of § 24.2-802 24.2-802.2.

512 In the case of a contest pursuant to § 24.2-803 or § 24.2-804, the times for filing the answer, 513 petition, and reply and for taking depositions and affidavits shall be set by the Committee on Privileges 514 and Elections of the appropriate house. The Committee may consider the contestant's and contestee's 515 recommendations for the procedural schedule.

516 This section shall not be applicable to a contest of an election for the President and Vice President of517 the United States.