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## SENATE BILL NO. 1251

Offered January 11, 2023

Prefiled January 10, 2023

*A BILL to amend and reenact §§ 24.2-659 and 24.2-668 of the Code of Virginia, relating to elections; conduct of election; election results to be delivered by officers representing both major parties on election night.*

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Patron—Marsden

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Referred to Committee on Privileges and Elections

**Be it enacted by the General Assembly of Virginia:****1. That §§ 24.2-659 and 24.2-668 of the Code of Virginia are amended and reenacted as follows:****§ 24.2-659. Locking voting systems after election and delivering keys to clerk; printed returns as evidence.**

A. If the voting system is secured by the use of equipment keys, after the officers of election lock and seal each machine, the equipment keys shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct, the number of each machine, the number on the seal, and the number of the protective counter, if one, on the machine. The sealed envelope shall be delivered by one of the officers of the officer of election representing each political party to the clerk of the circuit court where the election was held on the night of the election. The custodians of the voting equipment shall enclose and seal in an envelope, properly endorsed, all other keys to all voting equipment in their jurisdictions and deliver the envelope to the clerk of the circuit court by noon on the day following the election.

B. If the voting systems are secured by the use of equipment keys or electronic activation devices that are not specific to a particular machine, after the officers of election lock and seal each machine, the equipment keys and electronic activation devices shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct. The sealed envelope shall be delivered by one of the officers officer of election representing each political party to the clerk of the circuit court where the election was held.

C. If the voting system is secured by removal of the data storage device used in that election, the officers shall remove the data storage device and proceed to lock and seal each machine. The data storage device shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct, the number of each machine, the number on the seal, and the number of the protective counter, if one, on the machine. The sealed envelope shall be delivered by one of the officers officer of election representing each political party to the clerk of the circuit court where the election was held. The equipment keys used at the polls shall be sealed in a different envelope and delivered to the clerk who shall release them to the general registrar upon request or at the expiration of the time specified by subsection F.

D. If the voting system provides for the creation of a separate master electronic back-up on a data storage device that combines the data for all of the voting systems in a given precinct, that data storage device shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an officer of election stating the name of the precinct. The sealed envelope shall be delivered by one of the officers officer of election representing each political party to the clerk of the circuit court where the election was held. The data storage device for the individual machines may remain sealed in its individual machine until the expiration of the time specified by subsection F. The equipment keys and the electronic activation devices used at the polls shall be sealed together in a separate envelope and delivered to the clerk who shall release them to the general registrar upon request or at the expiration of the time specified by subsection F.

E. If the voting system is secured by removal of the data storage device used in that election, and the only record of votes cast for any office or on any question is saved on that data storage device and not on the machine itself, the officers shall remove the data storage device and proceed to lock and seal each machine. Each such machine shall remain locked and sealed until it is returned to the site at which voting systems are stored in the locality. The data storage device shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct, the number of each machine, the number on the seal, and the number of the protective counter, if one, on the machine. The sealed envelope shall be delivered by one of the officers officer of election representing each political party to the clerk of the circuit court where the election was held. The equipment keys used at the polls shall be sealed in a different envelope and delivered to the general

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59 registrar no later than noon on the day after the election.

60 F. The voting systems described in subsections A, B, C, and D shall remain locked and sealed until  
61 the deadline to request a recount under Chapter 8 (§ 24.2-800 et seq.) has passed and, if any contest or  
62 recount is pending thereafter, until it has been concluded. Such machines and any envelope containing  
63 data storage devices shall be opened and all data examined only (i) on the order of a court of competent  
64 jurisdiction or (ii) on the request of an authorized representative of the State Board, or the electoral  
65 board or general registrar at the direction of the State Board, in order to ensure the accuracy of the  
66 returns. In the event that machines and data storage devices are examined under clause (ii), each  
67 political party and each independent candidate on the ballot, or each primary candidate, shall be entitled  
68 to have a representative present during such examination. The representatives and observers lawfully  
69 present shall be prohibited from interfering with the officers of election in any way. The State Board,  
70 local electoral board, or general registrar shall provide such parties and candidates reasonable advance  
71 notice of the examination.

72 When the required time has expired, the clerk of the circuit court shall return all voting equipment  
73 keys and data storage devices to the general registrar.

74 G. The local electoral board or general registrar may direct the officers of election and custodians  
75 that any sealed equipment keys or data storage devices that are otherwise required by the provisions of  
76 this section to be delivered to the clerk of the circuit court shall instead be delivered to the principal  
77 office of the general registrar ~~no later than noon on the day following~~ *night of* the election. The general  
78 registrar shall secure and retain the sealed equipment keys and any other electronic locking or activation  
79 devices in his office and shall convey them to the clerk of the court by noon on the day following the  
80 ascertainment of the results of the election by the electoral board.

81 H. The provisions of this section requiring the locking and sealing of voting systems shall not apply  
82 to any ballot marking device and its data storage device provided pursuant to § 24.2-626.1, where the  
83 number of persons voting in the election or the number of votes cast for any office or on any question  
84 are not recorded by the ballot marking device.

85 **§ 24.2-668. Pollbooks, statements of results, and ballots to be sealed and delivered to clerk or**  
86 **general registrar.**

87 A. After ascertaining the results and before adjourning, the officers shall put the pollbooks, the  
88 duplicate statements of results, and any printed inspection and return sheets in the envelopes provided by  
89 the State Board. The officers shall seal the envelopes and direct them to the clerk of the circuit court for  
90 the county or city. The pollbooks, statements, and sheets thus sealed and directed, the sealed counted  
91 ballots envelope or container, and the unused, defaced, spoiled, and set aside ballots properly accounted  
92 for, packaged and sealed, shall be conveyed by one ~~of the officers to be determined by lot, if they~~  
93 ~~cannot otherwise agree,~~ *officer of election representing each political party* to the clerk of court ~~by noon~~  
94 *on the day following night of* the election.

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

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

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

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

**121** pollbook, provided that the records for the election have been transferred or printed according to the  
**122** instructions of the State Board.

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