

LD2227352

## SENATE BILL NO. 326

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Privileges and Elections  
on March 2, 1994)

(Patron Prior to Substitute—Senator Gartlan)

*A BILL to amend and reenact §§ 24.2-629 and 24.2-712 of the Code of Virginia, relating to authorized use of electronic voting systems and ballots; central absentee voter precincts.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 24.2-629 and 24.2-712 of the Code of Virginia are amended and reenacted as follows:**

§ 24.2-629. Authorized use of electronic systems and ballots.

A. Any person, firm, or corporation hereinafter referred to as the "vendor," manufacturing, owning, or offering for sale any electronic voting or counting system and ballots designed to be used with such equipment may apply to the State Board, in the manner prescribed by the Board, to have examined a production model of such equipment and the ballots used with it. In addition to any other materials which may be required, a current statement of the financial status of the vendor, including any assets and liabilities, shall be filed with the Board; if the vendor is not the manufacturer of the equipment for which application is made, such a statement shall also be filed for the manufacturer. These statements shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.). The Board shall also require, at a site of its choosing, a demonstration of such system and ballots and may require that a production model of the system and a supply of ballots be provided to the Board for testing purposes.

B. The provisions of this title pertaining to mechanical voting devices and ballots shall be deemed applicable to such equipment and ballots provided that (i) the counting equipment used with punchcard or mark sense ballots shall not be required to prevent a voter from voting for a greater number of candidates than he is lawfully entitled to; (ii) ~~the ballot squares or target areas on mark sense ballots shall be the equivalent of not less than one-quarter inch and not more than one-half inch square;~~ (iii) the provisions of this title pertaining to ballot squares shall not be applicable to punchcard or mark sense ballots; and ~~(iv)~~ (iii) any system approved pursuant to this title shall segregate ballots containing write-in votes from all others. Every electronic voting system shall ensure voting in absolute secrecy, and systems requiring the voter to vote a ballot which is inserted in an electronic counting device shall provide for secrecy of the ballot and a method to conceal the voted ballot.

C. After its examination of the equipment, ballots, and other materials submitted by the vendors, the Board shall prepare and file in its office a report of its finding as to (i) the apparent capability of such equipment to accurately count, register, and report votes; (ii) whether the system can be conveniently used without undue confusion to the voter; (iii) its accessibility to voters with disabilities; (iv) whether the system can be safely used without undue potential for fraud; (v) the ease of its operation and transportation by voting equipment custodians and officers of election; (vi) the financial stability of the vendor and manufacturer; (vii) whether the system meets the requirements of this title; and (viii) whether, in the opinion of the Board, the potential for approval of such system is such as to justify further examination and testing.

D. If the Board determines that there is such potential and prior to its final determination as to approval or disapproval of such system, the Board shall obtain a report by an independent electronics or engineering consultant as to (i) whether the system accurately counts, registers, and reports votes; (ii) whether it is capable of storing and retaining existing votes in a permanent memory in the event of power failure during and after the election; (iii) the number of separate memory capabilities for the storage of recorded votes; (iv) its mechanical and electronic perfections and imperfections; (v) the audit trail provided by the system; (vi) the anticipated frequency of repair; (vii) the ease of repair; (viii) the anticipated life of the equipment; (ix) its potential for fraudulent use; (x) its accessibility to voters with disabilities; (xi) the ease of its programming, transportation, and operation by voting equipment custodians and officers of election; and (xii) any other matters deemed necessary by the Board. Failure by an applicant to cooperate with the consultant by furnishing information and production equipment and ballots requested shall be deemed a withdrawal of the application, but nothing in this section shall require the disclosure of trade secrets by the applicant. If such trade secrets are essential to the proper analysis of the system and are provided for that reason, the consultant shall subscribe to an oath subject to the penalty for perjury that he will neither disclose nor make use of such information except as necessary for the system analysis. The report of the consultant shall be filed in the office of the Board.

E. If the Board determines that there is potential for approval of the system and prior to its final determination, the Board shall also require that the system be tested in an actual election in one or more counties or cities. Its use at such election shall be as valid for all purposes as if it had been legally

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60 approved by the Board and adopted by the counties or cities.

61 F. If, following testing, the Board approves any electronic system and its ballots for use, the Board  
62 shall so notify the electoral boards of each county and city. Systems so approved may be adopted for  
63 use at elections as herein provided. No form of electronic system and ballots not so approved shall be  
64 adopted by any county or city. Any electronic system and ballots approved for use by the Board shall  
65 be deemed to meet the requirements of this title, and their use in any election shall be valid.

66 § 24.2-712. Central absentee voter precincts; counting ballots.

67 A. Notwithstanding any other provision of law, the governing body of each county or city may  
68 establish one or more central absentee voter precincts in the courthouse or other public buildings for the  
69 purpose of receiving, counting, and recording absentee ballots cast in the county or city. The decision to  
70 establish any absentee voter precinct shall be made by the governing body by ordinance; the ordinance  
71 shall state for which elections the precinct shall be used. The decision to abolish any absentee voter  
72 precinct shall be made by the governing body by ordinance. Immediate notification of either decision  
73 shall be sent to the State Board and the electoral board.

74 B. Each central absentee voter precinct shall have at least three officers of election as provided for  
75 other precincts. The number of officers shall be determined by the electoral board.

76 C. If any voter brings an unmarked ballot to the central absentee voter precinct on the day of the  
77 election, he shall be allowed to vote it. If any voter brings an unmarked ballot to the electoral board on  
78 or before the day of the election, he shall be allowed to vote it, and his ballot shall be delivered to the  
79 absentee voter precinct before the closing of the polls.

80 The officers at the absentee voter precinct shall determine any appeal by any other voter whose name  
81 appears on the absentee voter applicant list and who offers to vote in person. If the officers at the  
82 absentee voter precinct produce records showing the receipt of his application and the certificate of  
83 mailing for the ballot, they shall deny his appeal. If the officers cannot produce such records, the voter  
84 shall be allowed to vote in person at the absentee voter precinct and have his vote counted with other  
85 absentee votes. If the voter's appeal is denied, the provisions of § 24.2-708 shall be applicable, and the  
86 officers shall advise the voter that he may vote on presentation of a statement signed by him that he has  
87 not received an absentee ballot and subject to felony penalties for making false statements pursuant to  
88 § 24.2-1016.

89 D. Absentee ballots may be processed as required by § 24.2-711 by the officers of election at the  
90 central absentee voter precinct prior to the closing of the polls but the ballot box shall not be opened  
91 and the counting of ballots shall not begin prior to that time. In the case of punch card *or mark sense*  
92 ballots to be inserted in electronic counting equipment, the ballot box may be opened and the absentee  
93 ballots may be inserted in the counting equipment prior to the closing of the polls in accordance with  
94 procedures prescribed by the State Board, including procedures to preserve ballot secrecy, but no ballot  
95 count totals shall be initiated prior to that time.

96 As soon as the polls are closed in the county or city the officers of election at the central absentee  
97 voter precinct shall proceed to ascertain and record the vote given by absentee ballot and report the  
98 results in the manner provided for counting and reporting ballots generally in Article 4 (§ 24.2-643 et  
99 seq.) of Chapter 6 of this title.

100 E. *A locality may provide that the officers of election for a central absentee voter precinct may be*  
101 *assigned to work all or a portion of the time that the precinct is open on election day subject to the*  
102 *following conditions:*

103 1. *At least three officers, appointed pursuant to § 24.2-115 to represent the two political parties, are*  
104 *on duty at all times; and*

105 2. *No officer, political party representative, or other candidate representative shall leave the precinct*  
106 *after any ballots have been counted until the polls are closed and the count for the precinct is*  
107 *completed and reported.*