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SENATE BILL NO. 265

Offered January 19, 1996

A BILL to amend and reenact §§ 24.2-653, 24.2-659, 24.2-668, and 24.2-671 of the Code of Virginia, relating to voting procedures and post-election procedures.

Patron—Earley

Referred to the Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-653, 24.2-659, 24.2-668, and 24.2-671 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-653. Voter whose name does not appear on precinct registered voter list.

A. When a person offers to vote pursuant to § 24.2-652 and the general registrar is not available or cannot state that the person is registered to vote, then such person shall be allowed to vote by paper ballot in the manner provided in this section.

Such person shall be given a paper ballot and provide, subject to the penalties for making false statements pursuant to § 24.2-1016, on a green envelope supplied by the State Board, the identifying information required in § 24.2-652. The officers of election shall enter the appropriate information for the person on the precinct registered voter list but not mark his name as having voted nor enter it on the precinct pollbook.

The voter shall then, in the presence of an officer of election, but in a secret manner, mark the ballot as provided in § 24.2-644 and seal it in the green envelope. The envelope containing the ballot shall then be placed in the ballot box by an officer of election.

An officer of election shall inform the voter that a determination of his right to vote shall be made by the electoral board on the following day and advise the voter of the beginning time and place for the board's meeting.

B. The votes cast pursuant to subsection A, in their unopened envelopes, shall be sealed in a special envelope marked "Challenged Votes," inscribed with the number of envelopes contained therein, and signed by the officers of election who counted them. All challenged votes envelopes shall be delivered *either (i) to the clerk of the circuit court who shall deliver all such envelopes to the secretary of the electoral board or (ii) to the general registrar in localities in which the electoral board has directed delivery of election materials to the general registrar pursuant to § 24.2-668.*

The electoral board shall meet on the day following the election and determine whether each person having cast such a ballot was entitled to do so. One authorized representative of each political party or independent candidate in a general election or one authorized representative of each candidate in a primary or special election, who is a qualified voter of the city or county, shall be permitted to remain in the room in which the determination is being made so long as he does not impede the orderly conduct of the determination.

If the electoral board determines that such person was not entitled to vote, or is unable to determine his right to vote, the envelope containing his ballot shall not be opened and his vote shall not be counted. The general registrar shall notify in writing pursuant to § 24.2-114 those persons found not properly registered.

If the electoral board determines that such person was entitled to vote, the precinct registered voter list shall be so marked, the name of the voter shall be entered in a challenged votes pollbook, the envelope shall be opened, and the ballot placed in a ballot box without any inspection further than that provided for in § 24.2-646.

On completion of its determination, the electoral board shall proceed to count such ballots and certify the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671. No adjustment shall be made to the statement of results for the precinct in which the person offered to vote.

The certification of the results of the count together with all ballots and envelopes, whether open or unopened, and other related material shall be delivered by the electoral board to the clerk of the circuit court and retained by him as provided for in §§ 24.2-668 and 24.2-669.

§ 24.2-659. Locking voting and counting devices after election and delivering keys to clerk or general registrar; printed returns as evidence.

A. After the officers of election lock and seal each voting and counting device, the equipment keys shall be enclosed in an envelope which shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct, the number of each device, the number on the seal, and the number of the protective counter, if one, on the device. The sealed envelope shall be delivered by

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60 one of the officers of the election to the clerk of the circuit court where the election was held. The
61 custodians of the voting equipment shall enclose and seal in an envelope, properly endorsed, all other
62 keys to all voting equipment in their jurisdictions and deliver the envelope to the clerk of the circuit
63 court by noon on the day following the election.

64 The voting and counting devices shall remain locked and sealed for the period of fifteen days after
65 the results of the election have been ascertained and, if any contest or recount is pending thereafter, until
66 it has been concluded. The devices shall be opened and all data examined only (i) on the order of a
67 court of competent jurisdiction or (ii) on the request of an authorized representative of the State Board
68 or the electoral board at the direction of the State Board in order to ensure the accuracy of the returns.

69 When recounts occur in precincts using mechanical or direct electronic voting devices with printed
70 return sheets, the printed return sheets delivered to the clerk may be used as the official evidence of the
71 results.

72 When the required time has expired, the clerk of the circuit court shall return all voting equipment
73 keys to the electoral board.

74 B. The local electoral board may direct that the officers of election and custodians, in lieu of
75 conveying the sealed equipment keys to the clerk of the circuit court as provided in subsection A of this
76 section, shall convey them to the principal office of the general registrar on the night of the election.
77 The general registrar shall secure and retain the sealed equipment keys in his office and shall convey
78 them to the clerk of the court by noon of the day following the election for the electoral board.

79 § 24.2-668. Pollbooks, statements of results, and ballots to be sealed and delivered to clerk or general
80 registrar.

81 A. After ascertaining the results and before adjourning, the officers shall put the pollbooks, the
82 duplicate statements of results, and any printed inspection and return sheets in the envelopes provided by
83 the State Board. The officers shall seal the envelopes and direct them to the clerk of the circuit court for
84 the county or city. The pollbooks, statements, and sheets thus sealed and directed, the sealed counted
85 ballots envelope or container, and the unused, defaced, spoiled and set aside ballots properly accounted
86 for, packaged and sealed, shall be conveyed by one of the officers to be determined by lot, if they
87 cannot otherwise agree, to the clerk of court by noon on the day following the election.

88 The clerk shall retain custody of the pollbooks until the time has expired for initiating a recount,
89 contest, or other proceeding in which the pollbooks may be needed as evidence and there is no
90 proceeding pending. After that time the clerk shall deliver the pollbooks to the general registrar who
91 shall preserve them for five years from the date of the election. The clerk shall retain the statement of
92 results and any printed inspection and return sheets for two years and may then destroy them.

93 B. The local electoral board may direct that the officers of election, in lieu of conveying the
94 materials to the clerk of the circuit court as provided in subsection A of this section, shall convey the
95 materials to the principal office of the general registrar on the night of the election. The general registrar
96 shall secure and retain the materials in his office and shall convey ~~them~~ the counted ballots, the unused
97 ballots, a copy of all statements of results, and any printed inspection and return sheets to the clerk of
98 the court by noon of the day following the election. The general registrar shall preserve the pollbooks
99 for five years from the date of the election. The general registrar shall retain the statements of results
100 and any printed inspection and return sheets for two years and may then destroy them.

101 § 24.2-671. Electoral board to meet and ascertain results; conclusiveness of results.

102 Each electoral board shall meet at the clerk's office of the county or city for which they are
103 appointed at or before 5:00 p.m. on the day after any election. The board may adjourn to the principal
104 office of the general registrar. It shall open the returns delivered to the clerk's office by the officers.

105 *If the electoral board has exercised the option provided by § 24.2-668 for delivery of the election*
106 *materials to the office of the general registrar on the night of the election, the electoral board shall*
107 *meet at the office of the general registrar at or before 5:00 p.m. on the day after any election.*

108 The board shall ascertain from the returns the total votes in the county or city, or town in a town
109 election, for each candidate and for and against each question and complete the abstract of votes cast at
110 such election, as provided for in § 24.2-675. For offices for which the electoral board issues the
111 certificate of election, the result so ascertained, signed and attested, shall be conclusive and shall not
112 thereafter be subject to challenge except as specifically provided in Chapter 8 (§ 24.2-800 et seq.) of this
113 title.

114 Once the result is so ascertained, the secretary of the electoral board shall deliver one copy of each
115 statement of results to the general registrar to be available for inspection when his office is open for
116 business. The secretary shall then return all pollbooks, any printed inspection and return sheets, and one
117 copy of each statement of results to the clerk.

118 **2. That an emergency exists and this act is in force from its passage.**