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## HOUSE BILL NO. 2419

Offered January 20, 1997

A *BILL to amend and reenact §§ 15.1-1054, 24.2-116, 24.2-531, 24.2-610, 24.2-611, 24.2-643, 24.2-651, 24.2-652, 24.2-653, 24.2-656, 24.2-657, 24.2-658, 24.2-661, 24.2-662, 24.2-664, 24.2-668, 24.2-671, 24.2-711, and 24.2-802 of the Code of Virginia, and to repeal § 24.2-533 of the Code of Virginia, relating to procedures for conducting elections and requirements for pollbooks.*

Patrons—Putney; Senator: Newman

Referred to Committee on Privileges and Elections

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

1. That §§ 15.1-1054, 24.2-116, 24.2-531, 24.2-610, 24.2-611, 24.2-643, 24.2-651, 24.2-652, 24.2-653, 24.2-656, 24.2-657, 24.2-658, 24.2-661, 24.2-662, 24.2-664, 24.2-668, 24.2-671, 24.2-711, and 24.2-802 of the Code of Virginia are amended and reenacted, as follows:

§ 15.1-1054. How new territory organized; to what wards attached; transfer of electors, elections.

Whenever, by extension of its territorial limits as aforesaid, territory is annexed to a city or town, the council thereof shall, if the city or town is divided into wards, by ordinance immediately organize the same into a new ward or wards and forthwith select the proper number of councilmen from the residents and qualified voters of such new ward or wards to serve until the next general election, or attach the same to an existing ward or wards, under such regulations as are provided by law. Whether the city or town is divided into wards or not, all electors residing in the annexed territory shall be entitled to transfers to the proper ~~pollbooks~~ *registered voter lists* in the city or town without again registering therein. Any person residing in the territory who has not registered shall be entitled to register and vote in the city or town, if he would have been entitled to register and vote at the next succeeding election in the county. For the purposes of this section, any person residing in the annexed territory who was qualified to register and vote in the county prior to annexation, shall be deemed to be a resident of the city or town and qualified to vote in the next general or special election therein. The failure of the council to so district the territory shall invalidate an election held in the city or town following annexation.

Notwithstanding any provision of law to the contrary there shall be an election for members of council on the first Tuesday in May following the effective date of annexation. If council members are chosen on an at-large basis the election shall be held for the unexpired portion of the term of each council member whose term extends beyond July 1, or September 1, whichever date by law applies to such council terms, immediately following the effective date of annexation. If council members are chosen on a ward basis, the election shall be held for each ward affected by the annexation. However, no such election shall be held as a result of an annexation instituted under § 15.1-1033 or § 15.1-1034, unless the city or town shall increase its population by more than five percent due to the annexation.

§ 24.2-116. Compensation of officers.

The governing body of each county, city, or town shall pay its officers of election at least thirty dollars for each day's service rendered on each election day. In addition, the governing body shall pay each officer ten dollars and mileage at the rate payable to members of the General Assembly for each time he delivers ~~pollbooks~~ *registered voter lists* and ballots to the polling place and each time he delivers returns and ballots to the appropriate official after the polls close.

§ 24.2-531. Registered voter lists and ballot boxes.

There shall be ~~pollbooks~~ *registered voter lists* in the form set forth in § 24.2-611 and a separate ballot box provided for each party taking part in any primary. The ballot box for each party shall have plainly marked upon its top the words "Primary Ballot Box" and the name of the party. The officers of election shall enter on the cover of the ~~pollbook~~ *registered voter list*, if not entered previously, the name of the party whose voters are recorded therein.

§ 24.2-610. Materials at polling places.

A. The State Board shall provide copies of this title to each electoral board for each precinct in its county or city. The electoral board shall furnish a copy of this title to each precinct for the use of the officers of election on election day.

B. The State Board shall transmit to the secretary of each electoral board ~~pollbooks~~ *registered voter lists* for each precinct in its county or city of sufficient size to contain the full names of all the voters in the precinct. The ~~pollbooks~~ *registered voter lists* shall be uniform throughout the Commonwealth.

C. The electoral board, general registrar, and officers of election shall comply with the requirements of this title and the instructions of the State Board to ensure that the ~~pollbooks~~, ballots, precinct

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60 registered voter lists, voting equipment keys, and other materials and supplies required to conduct the  
61 election are delivered to the polling place before 6:00 a.m. on the day of the election and delivered to  
62 the proper official following the election.

63 § 24.2-611. Form, signing, and use of precinct registered voter lists.

64 A. The following oath shall be on a form prescribed by the State Board, administered to all officers  
65 of election, and kept by the officers of election with ~~the pollbook~~ *the registered voter list*:

66 "I do solemnly swear (or affirm) that I will perform the duties for this election according to law and  
67 the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in  
68 conducting this election."

69 The oath shall be administered to each officer of election by the general registrar, the secretary of the  
70 electoral board, or an officer of election designated by them, who shall be so identified on the form. The  
71 oath shall be signed by each officer of election and the person administering the oath. The ~~pollbook~~  
72 *registered voter list* shall be marked to identify the election for which it is used.

73 B. The State Board shall provide a ~~second or a divisible precinct registered voter list to serve as the~~  
74 ~~pollbook for elections conducted on and after July 1, 1995. The second or divisible registered voter list~~  
75 ~~that may be divided into sections and~~ shall (i) provide a space for the officer of election to record the  
76 name and consecutive number of the voter at the time he offers to vote and (ii) be retained in  
77 accordance with the provisions governing ~~pollbooks~~ *registered voter lists* in this title. The State Board  
78 shall provide a numerical check sheet to be used to determine the consecutive number to be recorded  
79 with the name of the voter by the officer of election. When the name and number of the last qualified  
80 voter have been entered on the registered voter list, the officer of election responsible for that list shall  
81 sign a statement on the check sheet certifying the number of qualified registrants who have voted. The  
82 State Board shall provide instructions to the local electoral boards, general registrars, and officers of  
83 election for the conduct of the election and for procedures for entering a voting record for each voter  
84 and recording each voter's name, including voters unable to enter the polling place, and for verifying the  
85 accurate entry of the voting record for each registrant on the Virginia Voter Registration System.

86 § 24.2-643. Qualified voter permitted to vote; entry of voter's name on registered voter list; other  
87 information.

88 A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers  
89 of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the  
90 voting booth and furnishing an official ballot to him.

91 B. An officer of election shall ask the voter for his full name and current residence address and  
92 repeat, in a voice audible to party and candidate representatives present, the full name and address stated  
93 by the voter. The officer shall ask any voter, who is subject to the requirement to vote in person  
94 pursuant to subsection B of § 24.2-416.1, to present any one of the following forms of identification: his  
95 Commonwealth of Virginia voter registration card, his social security card, any preprinted form of  
96 identification which shows his name and address, any preprinted form of identification which shows his  
97 name and signature, or any preprinted form of identification which shows his name and photograph.

98 If the voter's name is found on the registered voter list, if he is qualified to vote in the election, and  
99 if no objection is made, an officer shall mark the voter's name on the registered voter list, ~~an officer and~~  
100 shall enter, opposite the voter's preprinted name on ~~the pollbook~~ *registered voter list*, the first or next  
101 consecutive number from the voter count form provided by the State Board, an officer shall provide the  
102 voter with the official ballot, and another officer shall admit him to the voting booth.

103 If a voter, who is subject to the requirement to vote in person pursuant to subsection B of  
104 § 24.2-416.1, is entitled to vote except that he is unable to present one of the forms of identification  
105 listed above, he shall be allowed to vote after signing a statement, subject to felony penalties for false  
106 statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be.

107 A voter may be accompanied into the voting booth by his child age fifteen or younger.

108 C. If the current residence address stated by the voter is different from the address shown on the  
109 registered voter list, the officer of election shall furnish the voter with a change of address form  
110 prescribed by the State Board. Upon its completion, the voter shall sign the prescribed form, subject to  
111 felony penalties for making false statements pursuant to § 24.2-1016, which the officer of election shall  
112 then place in an envelope provided for such forms for transmission to the general registrar who shall  
113 then transfer or cancel the registration of such voter pursuant to Chapter 4 of this title.

114 D. At the time the voter is asked his full name and current residence address, the officer of election  
115 shall ask any voter for whom an identification number other than a social security number is recorded  
116 on the registered voter list if he presently has a social security number and note that number on the list  
117 if the voter is able to provide it. Any social security numbers so provided shall be entered by the  
118 general registrar in the voter's record on the voter registration system.

119 § 24.2-651. Voter who is challenged; how challenge tried.

120 Any qualified voter may, and the officers of election shall, challenge the vote of any person who is  
121 listed on the precinct registered voter list but is known or suspected not to be a qualified voter.

When any person is challenged, an officer shall explain to him the qualifications of a voter and may examine him concerning his qualifications.

The officers of election are hereby authorized to administer the necessary oath or affirmation to any witness brought before them to testify as to the qualifications of any person offering to vote.

If the person being challenged insists that he is qualified and the challenge is not withdrawn, one of the officers shall give him a form containing the following statement: "I do hereby state, subject to felony penalties for making false statements pursuant to § 24.2-1016, that I am a citizen of the United States, that I am at least eighteen years of age (or will be on the .... day of ....., ..... that I am a resident of the Commonwealth of Virginia (or that I have been a resident of this Commonwealth within the preceding thirty days and am voting only for electors of President and Vice-President of the United States), and that, according to the best of my knowledge, information and belief, I am not disqualified from voting by the Constitution and laws of this Commonwealth; that my full name is .....; that in such name I was duly registered as a voter of this precinct; that I am now or at some time since the last November general election have been an actual resident of the same; that I am the identical person I represent myself to be; and that I have not voted in this election at this or any voting place and will not vote in this election at any other voting place."

If the person challenged refuses to sign the statement, he shall not be permitted to vote. If, however, he signs the statement, he shall be permitted to vote on the voting system in use at the precinct.

When the voter has signed the statement and is permitted to vote, the officers of election shall indicate on ~~the pollbook~~ *the registered voter list*, after the name of such person, that he has signed the required statement.

If the envelope containing a voted absentee ballot has been properly signed by the voter, such ballot shall not be subject to challenge pursuant to this section.

§ 24.2-652. Voter whose name erroneously omitted from precinct registered voter list.

When a person offers to vote and his name does not appear on the precinct registered voter list, the officers of election shall permit him to vote only if all of the following conditions are met:

1. An officer of election is informed by the general registrar that the voter is registered to vote, that his registration has not been cancelled, and that his name is erroneously omitted from the precinct registered voter list.

2. The voter signs a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is a qualified and registered voter of that precinct, a resident of that precinct, and his registration is not subject to cancellation pursuant to §§ 24.2-430, 24.2-431, and 24.2-432; and he provides, subject to such penalties, all the information required to identify himself including social security number, if any, full name including the maiden or any other prior legal name, birthdate, and complete address.

3. The officer of election enters the identifying information for the voter on the precinct registered voter list.

When the voter has signed the statement and is permitted to vote, the officers of election shall indicate on ~~the pollbook~~ *the registered voter list*, after the name of such person, that he has signed the required statement.

§ 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.

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

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

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

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

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

203 § 24.2-656. Officers to sign registered voter lists.

204 As soon as the last absentee ballot, if any, is cast, the officers of election shall write on ~~the~~  
205 ~~pollbook~~ *the registered voter list*, in accordance with their instructions, the words "Polls Closed," the date  
206 of the election, and the time of their endorsement. They shall sign the ~~pollbook~~ *registered voter list*  
207 immediately following their endorsement and proceed to ascertain the vote.

208 § 24.2-657. Determination of vote on voting equipment.

209 In the presence of all persons who may be present lawfully at the time, giving full view of the  
210 voting equipment and counters or printed return sheets, the officers of election shall determine and  
211 announce the results as shown by the counters or printed return sheets, including the votes recorded for  
212 each office on the write-in ballots, and shall also announce the vote on every question. The vote as  
213 registered shall be entered on the statement of results. When completed, the statement shall be compared  
214 with the number on the counters on the equipment or on the printed return sheets. If, on all mechanical  
215 or direct electronic voting devices, the number of persons voting in the election, or the number of votes  
216 cast for any office or on any question, totals more than the number of names on the ~~pollbooks~~  
217 *registered voter lists* of persons voting on the devices, then the figures recorded by the devices shall be  
218 accepted as correct. A statement to that effect shall be entered by the officers of election in the space  
219 provided on the statement of results.

220 § 24.2-658. Devices with printed return sheets; disposition of sheets.

221 If devices that print returns are used, the printed inspection sheet and two copies of the printed return  
222 sheet containing the results of the election for each device shall be inserted in the envelope containing  
223 the ~~pollbooks~~ *registered voter lists* by the officers of election and sealed and returned as required by  
224 § 24.2-668.

225 The printed inspection sheets and one copy of the printed return sheets shall be kept with the  
226 ~~pollbooks~~ *registered voter lists* and preserved as provided in § 24.2-669.

227 One copy of the printed return sheets shall be made available by the clerk of the circuit court on the  
228 day following the election and for sixty additional days for inspection and transcribing information  
229 therefrom by the public.

230 § 24.2-661. Detection and setting aside of double ballots.

231 After the votes on all voting and counting equipment have been determined and recorded, the  
232 officers of election shall proceed to examine and count the paper ballots to ascertain if any double  
233 ballots have been cast, and whether the number of ballots corresponds with the number of names on the  
234 ~~pollbooks~~ *registered voter lists* of persons who voted on paper ballots. If two or more separate ballots  
235 are found so folded together as to represent the appearance of a single ballot they shall be laid aside  
236 until the count of the ballots is completed. If, upon a comparison of the count and the number of names  
237 of such qualified voters on the ~~pollbooks~~ *registered voter lists*, it appears that the two or more ballots  
238 thus folded together were cast by the same qualified voter, they shall be set aside and not counted.

239 § 24.2-662. Procedure when paper ballots exceed names on registered voter lists.

240 If the ballots in the box exceed the number of names on the ~~pollbooks~~ *registered voter lists* of  
241 persons who voted on paper ballots, all ballots shall be replaced in the ballot box. Then, after the box is  
242 well shaken, an officer of election, being blindfolded, shall withdraw a sufficient number of ballots to  
243 reduce the number of ballots left in the box to the number of such names on the pollbooks. The drawn  
244 ballots shall be set aside and not counted.

§ 24.2-664. Reduction in number of ballots.

Whenever the number of ballots is reduced by fraudulent or void ballots below the number of names of qualified voters on the ~~pollbooks~~ *registered voter lists* who voted on paper ballots, the cause of such reduction shall be stated in the space provided on the statement of results.

§ 24.2-668. Statements of results and ballots to be sealed and delivered to clerk or general registrar.

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

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

B. The local electoral board may direct that the officers of election, in lieu of conveying the materials to the clerk of the circuit court as provided in subsection A of this section, shall convey the materials to the principal office of the general registrar on the night of the election. The general registrar shall secure and retain the materials in his office and shall convey to the clerk of the court by noon of the day following the election all of the election materials, except the envelopes containing the "Challenged Votes," and the envelopes containing the ~~pollbooks~~ *registered voter lists*, the statements of results and, if mechanical voting machines are used, one copy of the printed return sheet from each machine. Following the ascertainment of the results of the election by the electoral board, the general registrar shall retain for public inspection one copy of the statement of results and shall immediately convey to the clerk sealed envelopes containing all remaining election materials.

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

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

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

The board shall ascertain from the returns the total votes in the county or city, or town in a town election, for each candidate and for and against each question and complete the abstract of votes cast at such election, as provided for in § 24.2-675. For any office for which the total number of write-in votes for that office is less than (i) five percent of the total number of votes cast for that office and (ii) the total number of votes cast for the candidate receiving the most votes, the electoral board shall ascertain the total votes for each write-in candidate for the office within one week following the election. For offices for which the electoral board issues the certificate of election, the result so ascertained, signed and attested, shall be conclusive and shall not thereafter be subject to challenge except as specifically provided in Chapter 8 (§ 24.2-800 et seq.) of this title.

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

§ 24.2-711. Duties of officers of election.

Before the polls open, the officers of election at each precinct shall mark, for each person on the absentee voter applicant list, the letters "AB" (meaning absentee ballot) in the voting record column on the precinct registered voter list.

Before the polls open, the chief officer of election shall post the copy of the absentee voter applicant list in the polling place.

If a voter, whose name appears on the absentee voter applicant list, has not returned an unused ballot and offers to vote in his precinct, the officers of election in the precinct shall determine the matter pursuant to § 24.2-708 or, if the locality has a central absentee voter precinct, shall refuse to give him a ballot and shall refer him to the officers of the absentee precinct for an appeal pursuant to § 24.2-712.

After the close of the polls, the container of absentee ballots shall be opened by the officers of election. As each ballot envelope is removed from the container, the name of the voter shall be called and checked as if the voter were voting in person. If the voter is found entitled to vote, his name shall be ~~entered properly marked in the pollbook~~ *the registered voter list*. The ballot envelope shall then be

opened, and the ballot deposited in the ballot box without being unfolded or examined. If the voter is found not entitled to vote, the unopened envelope shall be rejected. A majority of the officers shall write and sign a statement of the cause for rejection on the envelope or on an attachment to the envelope.

When all ballots have been accounted for and either voted or rejected, the officers shall place the empty ballot envelopes, the return envelopes, and any rejected ballot envelopes, in one envelope provided for the purpose and seal and deliver it with the ballots cast at the election as provided in this title.

§ 24.2-802. Procedure for recount.

A. Within seven days of the filing of the petition, 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 mechanical or direct electronic voting device of the type that prints returns when the print-out sheets are not clearly legible. 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 devices to a central location in each county or city under appropriate safeguards.

After the full court is appointed under § 24.2-801, it shall call a hearing at which all motions shall be disposed of and the rules of procedure shall be fixed finally. The court shall call for the advice and cooperation of the State Board or any local electoral board, as appropriate, and such boards shall have the duty and authority to assist the court.

B. 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 ballots, or in the case of mechanical or direct electronic voting devices to redetermine the vote. The number shall be fixed by the court and be sufficient to conduct the recount within a reasonable 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 of recount officials to recount paper ballots and to redetermine the vote cast on mechanical or direct electronic devices of the type that prints returns for the election district at large in which the recount is being held. There shall be at least one team from each locality in the election district to redetermine the vote on other types of mechanical voting devices. There shall be at least one team from each locality using electronic counting devices to insert the ballots into one or more counting devices. The counting devices shall be 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 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 coordinators to serve for each county or city in the election district who shall be members of the county or city electoral board and represent different political parties. The court shall have authority to summon such officials and coordinators. On request of a party to the recount, the court shall allow each party to appoint one representative observer for each team of recount officials. The expenses of its representatives shall be borne by each party.

C. The court (i) shall supervise the recount and (ii) may require delivery of any or all ~~pollbooks~~ *registered voter lists* used, any or all ballots cast at the election, and absentee ballots sought to be cast but ruled invalid or may assume supervision thereof through the recount coordinators and officials. At the conclusion of the recount of each precinct, the recount officials shall write down (i) in the case of mechanical or direct electronic voting devices the redetermination of the vote and (ii) the number of valid ballots cast, this number being obtained from the ballots cast in the precinct, or from 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 used, as to the validity of which questions exist, to the court. The written statement of any one recount official challenging a ballot shall be sufficient to require its submission to the court. For purposes of redetermining the vote cast by any mechanical or direct electronic voting device that prints returns, the printed return sheets shall be sufficient evidence of the count. If, on all mechanical or direct electronic voting devices, the number of persons voting in the election, or the number of votes cast for the office or on the question, totals more than the number of names on the ~~pollbooks~~ *registered voter lists* of persons voting on the devices, the figures recorded by the devices shall be accepted as correct.

At the conclusion of the recount of all precincts, after allowing the parties to inspect the questioned ballots, and after hearing arguments, the court shall rule on the validity of all questioned ballots and votes. By an appropriate order, the court shall certify to the State Board and the electoral board or boards (i) the vote for each party to the recount and declare the person who received the higher number of votes to be nominated or elected, as appropriate, or (ii) the votes for and against the question and

368 declare the outcome of the referendum.

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

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

384 F. Any petitioner who may be assessed with costs under subsection D of this section shall post a  
385 bond with surety with the court in the amount of ten dollars per precinct in the area subject to recount.  
386 If the petitioner wins the recount, the bond shall not be forfeit. If the petitioner loses the recount, the  
387 bond shall be forfeit only to the extent of the assessed costs. If the assessed costs exceed the bond, he  
388 shall be liable for such excess.

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

390 **2. That § 24.2-533 of the Code of Virginia is repealed.**