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HOUSE BILL NO. 2696

Offered January 10, 2007

Prefiled January 10, 2007

A *BILL to amend and reenact § 24.2-629 of the Code of Virginia, relating to voting equipment requirements.*

Patron—Hugo

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:**1. That § 24.2-629 of the Code of Virginia is 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. The Board may require the vendor to pay a reasonable application fee when he files his request for testing or certification of new or upgraded voting equipment. Receipts from such fees shall be credited to the Board for reimbursement of testing and certification expenses. In addition to any other materials that 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 (§ 2.2-3700 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 State Board shall authorize only those voting or counting devices that have a current certification from the Election Assistance Commission through the manner described in § 231 of the Help America Vote Act of 2002 (42 USC § 15371).*

BC. The provisions of this title pertaining to ~~mechanical~~ voting devices and ballots shall be deemed applicable to ~~such equipment~~ *electronic voting or counting systems* 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 provisions of this title pertaining to ballot squares shall not be applicable to ~~punchcard~~ or mark sense ballots; ~~and~~ (iii) any system approved pursuant to this title shall segregate ballots containing write-in votes from all others; ~~and (iv) any direct electronic voting device shall be equipped to provide a paper record of the votes cast on a contemporaneous and continuous basis as the votes are cast and accumulated on the device.~~

The device must generate a complete paper record showing all votes cast by each voter at the time they are cast that is visually verifiable by the voter before the voter leaves the machine. The paper record must be in a format that protects voter privacy and is practical for supporting audits and recounts.

No direct recording electronic voting device that lacks the ability to produce a paper record of the votes cast on a contemporaneous and continuous basis may be used for elections, even though it may have been approved by the Board prior to the adoption of that requirement. In the case of a discrepancy between paper and electronic totals, the paper record shall take precedence in a recount unless the court finds clear and convincing evidence that there is reason to do otherwise.

Every electronic voting system shall ensure voting in absolute secrecy, and systems requiring the voter to vote a ballot that is inserted in an electronic counting device shall provide for secrecy of the ballot and a method to conceal the voted ballot. Systems requiring the voter to vote a ballot that is inserted in an electronic counting device shall report, if possible, the number of ballots on which a voter voted for a lesser number of candidates for an office than the number he was lawfully entitled to vote and the number of ballots on which a voter voted for a greater number of candidates than the number he was lawfully entitled to vote. Electronic voting devices shall be programmable, if possible, to allow such undervoted and overvoted ballots to be separated when necessary.

B4D. The system shall provide the voter with an opportunity to correct any error before a permanent record is preserved.

CE. 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

59 conveniently used without undue confusion to the voter; (iii) its accessibility to voters with disabilities;
60 (iv) whether the system can be safely used without undue potential for fraud; (v) the ease of its
61 operation and transportation by voting equipment custodians and officers of election; (vi) the financial
62 stability of the vendor and manufacturer; (vii) whether the system meets the requirements of this title;
63 (viii) whether the system meets federal requirements; and (ix) whether, in the opinion of the Board, the
64 potential for approval of such system is such as to justify further examination and testing.

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

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

85 *FH.* If, following testing, the Board approves any electronic system and its ballots for use, the Board
86 shall so notify the electoral boards of each county and city. Systems so approved may be adopted for
87 use at elections as herein provided. No form of electronic system and ballots not so approved shall be
88 adopted by any county or city. Any electronic system and ballots approved for use by the Board shall
89 be deemed to meet the requirements of this title and any applicable federal laws, and their use in any
90 election shall be valid.

91 **2. That the provisions of this act shall become effective on January 1, 2009.**