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HOUSE BILL NO. 2734

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact §§ 24.2-613, 24.2-625, 24.2-626, 24.2-627, 24.2-629, 24.2-633, 24.2-639, 24.2-640, 24.2-641, 24.2-657, 24.2-659, 24.2-669, 24.2-801, 24.2-801.1, and 24.2-802 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 24.2-626.1, and to repeal § 24.2-628 of the Code of Virginia, relating to voting equipment requirements and recount procedures.

Patrons—Englin and Brink

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-613, 24.2-625, 24.2-626, 24.2-627, 24.2-629, 24.2-633, 24.2-639, 24.2-640, 24.2-641, 24.2-657, 24.2-659, 24.2-669, 24.2-801, 24.2-801.1, and 24.2-802 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 24.2-626.1 as follows:

§ 24.2-613. Form of ballot.

The ballots shall be white paper without any distinguishing mark or symbol and shall contain the names of all the candidates qualifying to have their names printed on the official ballot as provided by law. Their names shall be printed in black ink, immediately below the office for which they have qualified as candidates. The names on the ballot shall be in clear print; each name shall be on a separate line; and the type used in printing the ballots shall be plain roman type, not smaller than twelve-point pica. Immediately to the left of and on the same line with the name of each candidate shall be printed a square, not less than one-quarter, nor more than one-half inch in size, printed thus:

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However, the provisions of this title pertaining to ballot squares shall not be applicable to ~~punch~~ ^{heard} ~~or~~ mark sense ballots.

For elections for federal, statewide, and General Assembly offices only, each candidate who has been nominated by a political party or in a primary election shall be identified by the name of his political party. Independent candidates shall be identified by the term "Independent." For the purpose of this section, any Independent candidate may, by producing sufficient and appropriate evidence of nomination by a "recognized political party" to the State Board, have the term "Independent" on the ballot converted to that of a "recognized political party" on the ballot and be treated on the ballot in a manner consistent with the candidates nominated by political parties. For the purpose of this section, a "recognized political party" is defined as an organization that, for at least six months preceding the filing of its nominee for the office, has had in continual existence a state central committee composed of registered voters residing in each congressional district of the Commonwealth, a party plan and bylaws, and a duly elected state chairman and secretary. A letter from the state chairman of a recognized political party certifying that a candidate is the nominee of that party shall constitute sufficient and appropriate evidence of nomination by a recognized political party. The name of the political party, the name of the "recognized political party," or term "Independent" may be shown by an initial or abbreviation to meet ballot requirements.

Except as provided for primary elections, the State Board shall determine by lot the order of the political parties, and the names of all candidates for a particular office shall appear together in the order determined for their parties. In an election district in which more than one person is nominated by one political party for the same office, the candidates' names shall appear alphabetically in their party groups under the name of the office, with sufficient space between party groups to indicate them as such. For the purpose of this section and § 24.2-640, except as provided for presidential elections in § 24.2-614, "recognized political parties" shall be treated as a class; the order of the recognized political parties within the class shall be determined by lot by the State Board; and the class shall follow the political parties as defined by § 24.2-101 and precede the independent class. Independent candidates shall be treated as a class under "Independent"; their names shall be placed on the ballot after the political parties and recognized political parties; and where there is more than one independent candidate for an office, their names shall appear alphabetically.

No individual's name shall appear on the ballot more than once for the same office.

In preparing the ballots for general, special and primary elections, the State Board and electoral boards shall cause to be printed in not less than ten-point type, immediately below the title of any

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59 office, a statement of the number of candidates who may be voted for for that office. The following
60 language shall be used: "Vote for not more than"

61 At any precinct at which mark sense ballots are used, the mark sense ballot may be used in lieu of
62 the official paper ballot with the approval of the State Board.

63 Any locality which uses mark sense ballots at one or more precincts, including any central absentee
64 precinct, may, with the approval of the State Board, use the mark sense ballot or printed reproductions
65 of the mark sense ballot in lieu of the official paper ballot. Such reproductions shall be printed and
66 otherwise handled in accordance with all laws and procedures that apply to official paper ballots.

67 § 24.2-625. Application of Title 24.2 and general law.

68 All of the provisions of this title and general law not inconsistent with the provisions of this article
69 shall apply to elections in counties, cities, and towns adopting and using ~~mechanical~~ or electronic voting
70 or counting systems.

71 § 24.2-626. Governing bodies shall acquire electronic voting or counting systems.

72 A. The governing body of each county having an optional form of government and of each city shall
73 provide for the use of ~~mechanical~~ or electronic voting or counting systems, of a kind approved by the
74 State Board, at every precinct and for all elections held in the county, the city, or any part of the county
75 or city. The governing body of every other county shall provide for the use of such systems at every
76 precinct having 750 or more registered voters. No county shall divide or create precincts so that
77 resulting precincts will contain fewer than 750 registered voters, in order to avoid the requirements of
78 this section.

79 Each county and city governing body shall purchase, lease, lease purchase, or otherwise acquire such
80 systems and may provide for the payment therefor in the manner it deems proper. Systems of different
81 kinds may be adopted for use and be used in different precincts of the same county or city, or within a
82 precinct or precincts in a county or city, subject to the approval of the State Board.

83 Any county may acquire such systems for precincts containing fewer than 750 registered voters.

84 The governing body of a town may provide for the use of paper ballots, in lieu of such systems, in
85 elections for town offices and in town referendum elections if every town precinct contains 500 or fewer
86 registered voters.

87 B. Notwithstanding the provisions of subsection A of this section, the governing body of any county
88 may elect to use paper ballots throughout the county so long as the county meets the following criteria:
89 (i) the population of the county is less than 7,000 according to the 1990 *most recent decennial* United
90 States Census; (ii) the county is divided into six precincts; (iii) no precinct contains 1,000 or more
91 registered voters; and (iv) the county has not provided for the use of mechanical or electronic voting or
92 counting systems in any precinct prior to July 1, 1996.

93 § 24.2-626.1. *Acquisition and use of accessible voting devices.*

94 *The governing body of any county or city shall provide for the use of a voting or counting system in*
95 *all elections, except as otherwise specifically provided pursuant to § 24.2-626, that shall:*

96 *1. Be accessible for individuals with disabilities, including nonvisual accessibility for the blind and*
97 *visually impaired, in a manner that provides the same opportunity for access and participation*
98 *(including privacy and independence) as for other voters;*

99 *2. Provide alternative language accessibility when required by section 203 of the Voting Rights Act*
100 *of 1965 (42 USC § 1973aa-1a); and*

101 *3. Satisfy the requirements of subdivision 1 through the use of at least one direct recording*
102 *electronic system or other voting system equipped for individuals with disabilities at each polling place.*

103 § 24.2-627. Electronic voting or counting devices; number required.

104 A. The governing body of any county or city which adopts for use at elections ~~mechanical~~ or direct
105 electronic voting systems shall provide for each precinct at least the following number of voting devices:

106 In each precinct having not more than 750 registered voters, 1;

107 In each precinct having more than 750 but not more than 1,500 registered voters, 2;

108 In each precinct having more than 1,500 but not more than 2,250 registered voters, 3;

109 In each precinct having more than 2,250 but not more than 3,000 registered voters, 4;

110 In each precinct having more than 3,000 but not more than 3,750 registered voters, 5;

111 In each precinct having more than 3,750 but not more than 4,500 registered voters, 6;

112 In each precinct having more than 4,500 but not more than 5,000 registered voters, 7.

113 B. The governing body of any county or city, which adopts for use at elections any electronic system
114 which requires the voter to vote a ballot which is inserted in an electronic counter, shall provide for
115 each precinct at least one voting booth with a marking device for each 425 registered voters or portion
116 thereof and shall provide for each precinct at least one counting device.

117 C. The local electoral board of any county or city shall be authorized to conduct any May general
118 election, primary election, or special election held on a date other than a November general election
119 with the number of voting or marking devices it determines is appropriate for each precinct,
120 notwithstanding the provisions of subsections A and B of this section.

§ 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).*

C. 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 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 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 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; (viii) whether the system meets federal requirements; and (ix) whether, in the opinion of the Board, the potential for approval of such system is such as to justify further examination and testing.

DF. 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.

EG. 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

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

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

189 § 24.2-633. Notice of final testing of equipment; sealing equipment.

190 Before the final testing of voting or counting equipment for any election, the electoral board shall
191 mail written notice (i) to the chairman of the local committee of each political party or, (ii) in a primary
192 election, to the chairman of the local committee of the political party holding the primary, or (iii) in a
193 city or town council election in which no candidate is a party nominee and which is held when no other
194 election having party nominees is being conducted, to the candidates.

195 The notice shall state the time and place where the equipment will be tested and state that the
196 political party or candidate receiving the notice may have one representative present while the equipment
197 is tested.

198 At the time stated in the notice, the representatives, if present, shall be afforded an opportunity to see
199 that the equipment is in proper condition for use at the election. When a device has been so examined
200 by the representatives, it shall be sealed with a numbered seal in their presence, or, if the device cannot
201 be sealed with a numbered seal, it shall be locked with a key. The representatives shall certify as to the
202 numbers of the devices; ~~if mechanical voting devices are used, that all counters are set at zero (000);~~ the
203 number registered on the protective counter; and the number on the seal. When no party or candidate
204 representative is present, the custodian shall seal the device as prescribed in this section in the presence
205 of a member of the electoral board or its representative.

206 § 24.2-639. Duties of officers of election.

207 The officers of election of each precinct at which voting or counting equipment is used shall meet at
208 the polling place by 5:15 a.m. on the day of the election and arrange the equipment, furniture, and other
209 materials for the conduct of the election. The officers of election shall verify that all required equipment,
210 ballots, and other materials have been delivered to them for the election. The officers shall post at least
211 two instruction cards for ~~mechanical or~~ direct electronic voting devices conspicuously within the polling
212 place.

213 The keys to the equipment and any electronic activation devices that are required for the operation of
214 electronic voting equipment shall be delivered, prior to the opening of the polls, to the officer of
215 election designated by the electoral board in a sealed envelope on which has been written or printed the
216 name of the precinct for which it is intended. The envelope containing the keys and any electronic
217 activation devices shall not be opened until all of the officers of election for the precinct are present at
218 the polling place and have examined the envelope to see that it has not been opened. The equipment
219 shall remain locked against voting until the polls are formally opened and shall not be operated except
220 by voters in voting.

221 Before opening the polls, each officer shall examine the equipment and see that no vote has been
222 cast and that the counters register zero. The officers shall conduct their examination in the presence of
223 the following party and candidate representatives: one authorized representative of each political party or
224 independent candidate in a general or special election, or one authorized representative of each candidate
225 in a primary election, if such representatives are available. Each authorized representative shall be a
226 qualified voter of the county or city within which the polling place is located. Each representative, who
227 is not himself a candidate or party chairman, shall present to the officers of election a written statement
228 designating him to be a representative of the party or candidate and signed by the county or city
229 chairman of his political party, the independent candidate, or the primary candidate, as appropriate. Such
230 statement, bearing the chairman's or candidate's original signature, may be photocopied and such
231 photocopy shall be as valid as if the copy had been signed.

232 ~~If any counter, other than a protective or private counter, on mechanical voting equipment is found~~
233 ~~not to register zero, the officers shall make a written statement identifying the counter, together with the~~
234 ~~number registered on it, and shall sign and post the statement on the wall of the polling room, where it~~
235 ~~shall remain during the day of election. The officers shall enter a similar statement on the statement of~~
236 ~~results. In determining the results, they shall subtract such number from the final total registered on that~~
237 ~~counter.~~ If any counter, other than a protective or private counter, on a mark sense or direct recording
238 electronic voting device is found not to register zero, the officers of election shall immediately notify the
239 electoral board which shall, if possible, substitute a device in good working order, that has been
240 prepared and tested pursuant to § 24.2-634. No mark sense or direct recording electronic device shall be
241 used if any counter, other than a protective or private counter, is found not to register zero.

242 § 24.2-640. Ballots generally.

243 In every county and city using ~~mechanical or~~ direct electronic voting systems requiring printed

ballots, the electoral board shall furnish a sufficient number of ballots printed on plain white paper, of such form and size as will fit the ballot frames. The names of the various candidates shall be printed in type not less than fourteen point. ~~On mechanical devices, the name of the office for which candidates are offering for election shall be printed in reverse printing or overlaid with a colored plastic strip.~~

For elections for federal, statewide, and General Assembly offices only, each candidate who has been nominated by a political party or in a primary election shall be identified by the name of his political party. Independent candidates shall be identified by the term "Independent." For the purpose of this section, any Independent candidate may, by producing sufficient and appropriate evidence of nomination by a "recognized political party" to the State Board, have the term "Independent" on the ballot converted to that of a "recognized political party" on the ballot and be treated on the ballot in a manner consistent with the candidates nominated by political parties. For the purpose of this section, a "recognized political party" is defined as an organization that, for at least six months preceding the filing of its nominee for the office, has had in continual existence a state central committee composed of registered voters residing in each congressional district of the Commonwealth, a party plan and bylaws, and a duly elected state chairman and secretary. A letter from the state chairman of a recognized political party certifying that a candidate is the nominee of that party shall constitute sufficient and appropriate evidence of nomination by a recognized political party. The name of the political party, the name of the "recognized political party," or term "Independent" may be shown by an initial or abbreviation to meet ballot requirements. All candidates shall be arranged on each device or other ballot to be electronically counted, either in columns or horizontal rows, and the caption of the various ballots on the devices shall be placed so that the voter knows what feature is to be used or operated to vote for his choice. No push knob, key lever or other device shall be used to vote for any candidate other than on an individual basis except for presidential electors. In districts in which more than one person is nominated by a single party for the same office, the names of the candidates shall appear alphabetically within their party groups.

The electoral board in any locality which converted from a mechanical to an electronic voting system after January 1, 1994, may use a ballot which (i) is similar to the ballot used on the mechanical system previously used in the locality, (ii) aligns the candidates of each political party and independent candidates on the same row or column, and (iii) provides a separate row or column for each political party and for independent candidates.

The provisions of general law concerning ballots shall apply unless in conflict with this section.

§ 24.2-641. Sample ballot.

The electoral board shall provide for each precinct in which ~~mechanical voting machines~~ or direct electronic voting devices are used, two sample ballots, which shall be arranged as a diagram of the front of the voting device as it will appear with the official ballot for voting on election day. Such sample ballots shall be posted for public inspection at each polling place during the day of election.

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

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

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

A. If the voting or counting device is secured by the use of equipment keys, 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 one of the officers of the election to the clerk of the circuit court where the election was held. 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. If the voting or counting devices are secured by the use of equipment keys or electronic activation devices that are not specific to a particular device, after the officers of election lock and seal each voting and counting device, 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 of election to the clerk of the circuit court where the election was held.

If the voting or counting device is secured by removal of the memory card, cartridge, or other data storage medium used in that election, the officers shall remove the memory card, cartridge, or other data storage medium and proceed to lock and seal each voting and counting device. The memory card, cartridge, or other data storage medium 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 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 one of the officers of election 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 electoral board upon request or at the expiration of the time specified by this section.

If the voting or counting device provides for the creation of a separate master electronic back-up on a memory card, cartridge or other data storage medium that combines the data for all of the voting devices in a given precinct, that data storage medium 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 of election to the clerk of the circuit court where the election was held. The memory cards or data storage medium for the individual devices may remain sealed in its individual device until the expiration of the time specified by this section. 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 electoral board upon request or at the expiration of the time specified by this section.

The voting and counting devices shall remain locked and sealed for the period of 15 days after the results of the election have been ascertained and, if any contest or recount is pending thereafter, until it has been concluded. The devices shall be opened and all data examined only (i) on the order of a court of competent jurisdiction or (ii) on the request of an authorized representative of the State Board or the electoral board at the direction of the State Board in order to ensure the accuracy of the returns. In the event that devices are examined under clause (ii) of this paragraph, each political party and each independent candidate on the ballot, or each primary candidate, shall be entitled to have a representative present during such examination. The representatives and observers lawfully present shall be prohibited from interfering with the officers of election in any way. The State Board or local electoral board shall provide such parties and candidates reasonable advance notice of the examination.

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

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

B. The local electoral board may direct that the officers of election and custodians, in lieu of conveying the sealed equipment keys to the clerk of the circuit court as provided in subsection A of this section, shall convey them to the principal office of the general registrar on the night of the election. The general registrar shall secure and retain the sealed equipment keys and any other electronic locking or activation devices in his office and shall convey them to the clerk of the court by noon of the day following the ascertainment of the results of the election by the electoral board.

§ 24.2-669. Clerk to keep ballots; inspection; destruction.

The clerk to whom the counted and uncounted ballots are delivered shall, without breaking the seal, deposit them in a secure place in his office, where they shall be kept for the time required by this section. He shall not allow the ballots to be inspected except (i) by an authorized representative of the State Board or by the electoral board at the direction of the State Board to ensure the accuracy of the returns or the purity of the election, (ii) by the officers of election, and then only at the direction of the electoral board in accordance with § 24.2-672 when the provisions of § 24.2-662 have not been followed, or (iii) on the order of a court before which there is pending a proceeding for a contest or recount under Chapter 8 (§ 24.2-800 et seq.) of this title or before whom there is then pending a proceeding in which the ballots are necessary for use in evidence. In the event that ballots are inspected under clause (i) or (ii) of this paragraph, each political party and each independent candidate on the ballot, or each primary candidate, shall be entitled to have a representative present during such inspection. The representatives and observers lawfully present shall be prohibited from interfering with the officers of election in any way. The State Board or local electoral board shall provide such parties and candidates reasonable advance notice of the inspection.

After the counted ballots for a federal election have remained in the clerk's office for two years, if no election contest or other proceeding is pending in which such ballots may be needed as evidence, the clerk shall destroy such ballots. After the counted ballots for any other election have remained in the

clerk's office for one year, if no election contest or other proceeding is pending in which such ballots may be needed as evidence, the clerk shall destroy such ballots. After the unused ballots have remained in the clerk's office and the time has expired for initiating a recount, contest, or other proceeding in which such ballots may be needed as evidence and no such contest or proceeding is pending, the clerk may then destroy the unused ballots ~~other than punched ballots, which shall be returned to the electoral board.~~

§ 24.2-801. Petition for recount; recount court.

The petition for a recount of an election, other than an election for presidential electors, shall be filed within 10 days from the day the State Board or the electoral board certifies the result of the election under § 24.2-679 or § 24.2-671, but not thereafter. The petition shall be filed in the Circuit Court of the City of Richmond in the case of any statewide office and in the circuit court of the county or city in which the candidate being challenged resides in the case of any other office. The petition shall be filed in the Circuit Court of the City of Richmond in the case of any statewide referendum and in the circuit court of any county or city comprising a part of the election district in the case of any other referendum.

The petition shall set forth the results certified by the Board or electoral board and shall request the court to have the ballots in the election recounted or, in the case of ~~mechanical~~ or direct electronic voting devices, the vote redetermined.

In an election for office, a copy of the petition shall be served on the candidate apparently nominated or elected as provided under § 8.01-296 and within 10 days after the Board or electoral board has certified the results of such election. In a referendum, a copy of the petition shall be so served on the governing body or chief executive officer of the jurisdiction in which the election was held.

The chief judge of the circuit court in which a petition is filed shall promptly notify the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief judge, and the court shall be constituted and sit in all respects as a court appointed and sitting under §§ 24.2-805 and 24.2-806.

§ 24.2-801.1. Petition for recount of election for presidential electors; recount court.

The petition for a recount of an election for presidential electors shall be filed no later than 5:00 p.m. on the second calendar day after the day the State Board certifies the result of the election under § 24.2-679, but not thereafter. Presidential candidates who anticipate the possibility of asking for a recount are encouraged to so notify the State Board by letter as soon as possible after election day. The petition shall be filed in the Circuit Court of the City of Richmond. If any presidential candidate is eligible to seek a recount of the results of the election for presidential electors under § 24.2-800 the State Board shall, within 24 hours of the certification of the results, notify the Circuit Court of the City of Richmond and the Supreme Court of Virginia (i) that a recount is possible, (ii) which presidential candidate is eligible to seek a recount, and (iii) of the date the results were certified. The Circuit Court of the City of Richmond shall make arrangements to receive any such filing if the office would normally be closed the entire day, or prior to 5:00 p.m., on the second calendar day after the day the State Board certified the result of the election.

The petition shall set forth the results certified by the Board and shall request the court to have the ballots in the election recounted or, in the case of ~~mechanical~~ or direct electronic voting devices, the vote redetermined.

A copy of the petition shall be served on the presidential candidate whose electors were apparently elected as provided under § 8.01-296 and within five calendar days after the Board has certified the results of such election.

As soon as a petition is filed, the chief judge of the Circuit Court shall promptly notify the Chief Justice of the Supreme Court of Virginia, who shall designate two other judges to sit with the chief judge, and the court shall be constituted and sit in all respects as a court appointed and sitting under § 24.2-805.

Any recount of an election for presidential electors shall be held promptly and completed, in accordance with the provisions of 3 U.S.C. § 5, at least six days before the time fixed for the meeting of the electors.

§ 24.2-802. Procedure for recount.

A. The State Board of Elections shall promulgate standards for (i) the proper handling and security of voting and counting devices, ballots, and other materials required for a recount, (ii) accurate determination of votes based upon objective evidence and taking into account the counting device and form of ballots approved for use in the Commonwealth, and (iii) any other matters that will promote a timely and accurate resolution of the recount. The chief judge of the circuit court or the full recount court may, consistent with State Board of Elections standards, resolve disputes over the application of the standards and direct all other appropriate measures to ensure the proper conduct of the recount.

The recount procedures to be followed throughout the election district shall be as uniform as practicable, taking into account the types of ballots and voting devices in use in the election district.

B. Within seven calendar days of the filing of the petition for a recount of any election other than an election for presidential electors, or within five calendar days of the filing of a petition for a recount of an election for presidential electors, 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 petitioner and his counsel and each other party and their counsel under supervision of the electoral board and its agents shall also have access to pollbooks and other materials used in the election for examination purposes, provided that individual ballots cast in the election shall not be examined at the preliminary hearing. The chief judge during the preliminary hearing shall review all security measures taken for all ballots and voting devices and direct, as he deems necessary, all appropriate measures to ensure proper security to conduct the recount.

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 or § 24.2-801.1, 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. The court shall fix procedures that shall provide for the accurate determination of votes in the election.

The determination of the votes in a recount shall be based on votes cast in the election and shall not take into account (i) any absentee ballots or provisional ballots sought to be cast but ruled invalid and not cast in the election, (ii) ballots cast only for administrative or test purposes and voided by the officers of election, or (iii) ballots spoiled by a voter and replaced with a new ballot.

The eligibility of any voter to have voted shall not be an issue in a recount. Commencing upon the filing of the recount, nothing shall prevent the discovery or disclosure of any evidence that could be used pursuant to § 24.2-803 in contesting the results of an election.

C. 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 the request of any party to the recount, the court shall allow that party to appoint one representative observer for each team of recount officials. The representative observers shall have an unobstructed view of the work of the recount officials. The expenses of its representatives shall be borne by each party.

D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used and any or all ballots cast at the election, or may assume supervision thereof through the recount coordinators and officials.

The redetermination of the vote in a recount shall be conducted as follows:

1. For paper ballots, the recount officials shall hand count the ballots using the standards promulgated by the State Board pursuant to subsection A.

2. For ~~mechanical lever machines without printouts~~, the recount officials shall ~~open the machines and read the counters~~.

3. For ~~mechanical lever machines with printouts~~ and direct recording electronic (DRE) voting machines (DREs), the recount officials shall open the envelopes with the printouts and read the results from the printouts. If the printout is not clear, or on the request of the court, the recount officials shall

rerun the printout from the machine or examine the counters as appropriate.

43. For optical scan tabulators, the recount officials shall first examine the printout to redetermine the vote. Only if the printout is not clear, or on the request of the court, the recount officials shall rerun all the ballots through a tabulator programmed to count only the votes for the office or issue in question in the recount and to set aside all ballots containing write-in votes, overvotes, and undervotes. The ballots that are set aside, any ballots not accepted by the tabulator, and any ballots for which a tabulator could not be programmed to meet the programming requirements of this subdivision, shall be hand counted using the standards promulgated by the State Board pursuant to subsection A.

5. For punchcard tabulators, the recount officials shall first examine the printout to redetermine the vote. Only if the printout is not clear, or on the request of the court, the recount officials shall rerun all the ballots through a tabulator programmed to count only the votes for the office or issue in question in the recount and to set aside all ballots containing write-in votes and, if possible, overvotes and undervotes. The ballots that are set aside and any ballots not accepted by the tabulator shall be hand counted using the standards promulgated by the State Board pursuant to subsection A and the standards set forth in this subdivision. The following standards shall apply in determining whether a ballot has been properly voted and should be counted: A chad is the small piece of a punch card ballot that, when removed by the voter in the voting process, leaves a hole that is recognizable by a ballot tabulator. A ballot on which the chad indicating the selection of a candidate or position on an issue is broken or separated from the card at two or more corners shall be deemed a vote and counted; a chad on which only one corner is broken or separated from the card shall not be considered a vote. No other depression, dimple, or other mark on the ballot shall be counted as a vote. On any ballot on which two or more corners of the chad indicating the selection of a candidate or position have been broken or separated from the card and the voter has also cast a vote for another candidate for the same office or position on the same issue, the partially punched chad also shall be deemed a vote and, if the voter has cast more votes than the number for which he was lawfully entitled to vote, the ballot shall be deemed an overvote and shall not be counted with respect to that office or issue.

There shall be only one redetermination of the vote in each precinct.

At the conclusion of the recount of each precinct, the recount officials shall write down 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. 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 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. After determining all matters pertaining to the recount and redetermination of the vote as raised by the parties, the court shall certify to the State Board and the electoral board or boards (a) 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 (b) the votes for and against the question and declare the outcome of the referendum. The State Board shall post on the Internet any and all changes made during the recount to the results as previously certified by it pursuant to § 24.2-679.

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

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

G. Any petitioner who may be assessed with costs under subsection E shall post a bond with surety with the court in the amount of \$10 per precinct in the area subject to recount. If the petitioner wins the

551 recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond shall be forfeit only to
552 the extent of the assessed costs. If the assessed costs exceed the bond, he shall be liable for such excess.

553 H. The recount proceeding shall be final and not subject to appeal.

554 I. For the purposes of this section:

555 "Overvote" means a ballot on which a voter casts a vote for a greater number of candidates or
556 positions than the number for which he was lawfully entitled to vote and no vote shall be counted with
557 respect to that office or issue.

558 "Undervote" means a ballot on which a voter casts a vote for a lesser number of candidates or
559 positions than the number for which he was lawfully entitled to vote.

560 **2. That § 24.2-628 of the Code of Virginia is repealed.**