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## SENATE BILL NO. 49

Offered January 13, 2010

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A BILL to amend and reenact §§ 24.2-604, 24.2-639, 24.2-653, and 24.2-655 of the Code of Virginia, relating to authorized representatives at polling places; use of wireless communication devices.

Patron—Martin

Referred to Committee on Privileges and Elections

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

**1. That §§ 24.2-604, 24.2-639, 24.2-653, and 24.2-655 of the Code of Virginia are amended and reenacted as follows:**

§ 24.2-604. Prohibited activities at polls; notice of prohibited area; electioneering; presence of representatives of parties or candidates; simulated elections; observers; news media; penalties.

A. During the times the polls are open and ballots are being counted, it shall be unlawful for any person (i) to loiter or congregate within 40 feet of any entrance of any polling place; (ii) within such distance to give, tender, or exhibit any ballot, ticket, or other campaign material to any person or to solicit or in any manner attempt to influence any person in casting his vote; or (iii) to hinder or delay a qualified voter in entering or leaving a polling place.

B. Prior to opening the polls, the officers of election shall post, in the area within 40 feet of any entrance to the polling place, sufficient notices which state "Prohibited Area" in two-inch type. The notices shall also state the provisions of this section in not less than 24-point type. The officers of election shall post the notices within the prohibited area to be visible to voters and the public.

C. The officers of election shall permit one authorized representative of each political party or independent candidate in a general or special election, or one authorized representative of each candidate in a primary election, to remain in the room in which the election is being conducted at all times. A representative may serve part of the day and be replaced by successive representatives. The officers of election shall have discretion to permit up to three authorized representatives of each political party or independent candidate in a general or special election, or up to three authorized representatives of each candidate in a primary election, to remain in the room in which the election is being conducted. The officers shall permit one such representative for each pollbook station. However, no more than one such representative for each pollbook station or three representatives of any political party or independent candidate, whichever number is larger, shall be permitted in the room at any one time. Each authorized representative shall be a qualified voter of the county or city within which the polling place is located ~~any jurisdiction of the Commonwealth~~. Each representative shall present to the officers of election a written statement designating him to be a representative of the party or candidate and signed by the county or city chairman of his political party, the independent candidate, or the primary candidate, as appropriate. Such statement, bearing the chairman's or candidate's original signature, may be photocopied, and such photocopy shall be as valid as if the copy had been signed. No candidate whose name is printed on the ballot shall serve as a representative of a party or candidate for purposes of this section. Authorized representatives shall be allowed, whether in a regular polling place or central absentee voter precinct, to be close enough to the process to be able to hear and see what is occurring. Any representative who complains to the chief officer of election that he is unable to hear or see the process may accept the chief officer's decision or, if dissatisfied, he may immediately appeal the decision to the local electoral board. *Authorized representatives shall be allowed, whether in a regular polling place or central absentee voter precinct, to use a cellular telephone or any other handheld wireless communications device, except that authorized representatives shall not be allowed to use such telephones or devices to film or photograph inside a polling place or central absentee voter precinct. The officers of election may prohibit the use of cellular telephones or other handheld wireless communications devices if such use will result in a violation of subsection A or D or § 24.2-607.* Authorized representatives shall not be allowed in any case to provide assistance to any voter as permitted under § 24.2-649 or to wear any indication that they are authorized to assist voters either inside the polling place or within 40 feet of any entrance to the polling place.

D. It shall be unlawful for any authorized representative, voter, or any other person in the room to (i) hinder or delay a qualified voter; (ii) give, tender, or exhibit any ballot, ticket, or other campaign material to any person; (iii) solicit or in any manner attempt to influence any person in casting his vote; (iv) hinder or delay any officer of election; or (v) otherwise impede the orderly conduct of the election.

E. The officers of election may require any person who is found by a majority of the officers present

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59 to be in violation of this section to remain outside of the prohibited area. Any person violating  
60 subsection A or D of this section shall be guilty of a Class 1 misdemeanor.

61 F. This section shall not be construed to prohibit a candidate from entering any polling place on the  
62 day of the election to vote, or to visit a polling place for no longer than 10 minutes per polling place  
63 per election day, provided that he complies with the restrictions stated in subsections A and D of this  
64 section.

65 G. This section shall not be construed to prohibit a minor from entering a polling place on the day  
66 of the election to vote in a simulated election at that polling place, provided that the local electoral  
67 board has determined that such polling place can accommodate simulated election activities without  
68 interference or substantial delay in the orderly conduct of the official voting process. Persons supervising  
69 or working in a simulated election in which minors vote may remain within such polling place. The  
70 local electoral board and the chief officer for the polling place shall exercise authority over, but shall  
71 have no responsibility for the administration of, simulated election related activities at the polling place.

72 H. A local electoral board, and its general registrar, may conduct a special election day program for  
73 high school students, selected by the electoral board in cooperation with high school authorities, in one  
74 or more polling places designated by the electoral board, other than a central absentee voter precinct.  
75 The program shall be designed to stimulate the students' interest in elections and registering to vote,  
76 provide assistance to the officers of election, and ensure the safe entry and exit of elderly and disabled  
77 voters from the polling place. Each student shall take and sign an oath as an election page, serve under  
78 the direct supervision of the chief officer of election of his assigned polling place, and observe strict  
79 impartiality at all times. Election pages may observe the electoral process and seek information from the  
80 chief officer of election, but shall not handle or touch ballots, voting machines, or any other official  
81 election materials, or enter any voting booth.

82 I. A local electoral board may authorize in writing the presence of additional neutral observers as it  
83 deems appropriate, except as otherwise prohibited or limited by this section. Such observers shall  
84 comply with the restrictions in subsections A and D of this section and shall not be allowed in any case  
85 to provide assistance to any voter as permitted under § 24.2-649 or to wear any indication that they are  
86 authorized to assist voters either inside the polling place or within 40 feet of any entrance to the polling  
87 place.

88 J. The officers of election shall permit representatives of the news media to visit and film or  
89 photograph inside the polling place for a reasonable and limited period of time while the polls are open.  
90 However, the media (i) shall comply with the restrictions in subsections A and D of this section; (ii)  
91 shall not film or photograph any person who specifically asks the media representative at that time that  
92 he not be filmed or photographed; (iii) shall not film or photograph the voter or the ballot in such a way  
93 that divulges how any individual voter is voting; and (iv) shall not film or photograph the voter list or  
94 any other voter record or material at the precinct in such a way that it divulges the name or other  
95 information concerning any individual voter. Any interviews with voters, candidates or other persons,  
96 live broadcasts, or taping of reporters' remarks, shall be conducted outside of the polling place and the  
97 prohibited area. The officers of election may require any person who is found by a majority of the  
98 officers present to be in violation of this subsection to leave the polling place and the prohibited area.

99 K. The provisions of subsections A and D shall not be construed to prohibit a person who  
100 approaches or enters the polling place for the purpose of voting from wearing a shirt, hat, or other  
101 apparel on which a candidate's name or a political slogan appears or from having a sticker or button  
102 attached to his apparel on which a candidate's name or a political slogan appears.

103 § 24.2-639. Duties of officers of election.

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

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

118 Before opening the polls, each officer shall examine the equipment and see that no vote has been  
119 cast and that the counters register zero. The officers shall conduct their examination in the presence of  
120 the following party and candidate representatives: one authorized representative of each political party or

independent candidate in a general or special election, or one authorized representative of each candidate in a primary election, if such representatives are available. Each authorized representative shall be a qualified voter of the ~~county or city within which the polling place is located~~ *any jurisdiction of the Commonwealth*. Each representative, who is not himself a candidate or party chairman, shall present to the officers of election a written statement designating him to be a representative of the party or candidate and signed by the county or city chairman of his political party, the independent candidate, or the primary candidate, as appropriate. Such statement, bearing the chairman's or candidate's original signature, may be photocopied and such photocopy shall be as valid as if the copy had been signed.

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

§ 24.2-653. Voter whose name does not appear on pollbook; handling of provisional ballots; ballots cast after normal close of polls due to court order extending polling hours.

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. Such person shall be asked to present one of the forms of identification specified in subsection B of § 24.2-643. If he is unable to present one of these forms of identification, he shall sign a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be, and the officers of election shall note on the green envelope that the required statement was signed in lieu of presenting one of the specified forms of identification. The officers of election shall enter the appropriate information for the person in the precinct provisional ballots log in accordance with the instructions of the State Board but shall not enter a consecutive number for the voter on the pollbook nor otherwise mark his name as having voted. The officers of election shall provide an application for registration to the person offering to vote in the manner provided in this section.

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 container by an officer of election.

An officer of election, by a written notice given to the voter, shall inform him 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 and of the voter's right to be present at that meeting. At the meeting, the voter may request an extension of the determination of the provisional vote to the following day in order to provide information to prove that the voter is entitled to vote in the precinct pursuant to § 24.2-401. The electoral board shall have the authority to grant such extensions which it deems reasonable to determine the status of a provisional vote.

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

The electoral board shall meet on the day following the election and determine whether each person having submitted such a provisional vote was entitled to do so as a qualified voter in the precinct in which he offered the provisional vote. If the board is unable to determine the validity of all the provisional ballots offered in the election, or has granted any voter who has offered a provisional ballot an extension to the following day as provided in subsection A, the meeting shall stand adjourned from day to day, not to exceed seven calendar days from the date of the election, until the board has determined the validity of all provisional ballots offered in the election.

One authorized representative of each political party or independent candidate in a general or special election or one authorized representative of each candidate in a primary election, ~~who is a qualified voter of the city or county~~, shall be permitted to remain in the room in which the determination is being

182 made so long as he does not impede the orderly conduct of the determination. Each authorized  
183 representative shall be a qualified voter of ~~the county or city~~ *any jurisdiction of the Commonwealth*.  
184 Each representative, who is not himself a candidate or party chairman, shall present to the electoral  
185 board a written statement designating him to be a representative of the party or candidate and signed by  
186 the county or city chairman of his political party, the independent candidate, or the primary candidate,  
187 as appropriate. Such statement, bearing the chairman's or candidate's original signature, may be  
188 photocopied and such photocopy shall be as valid as if the copy had been signed.

189 If the electoral board determines that such person was not entitled to vote as a qualified voter in the  
190 precinct in which he offered the provisional vote, or is unable to determine his right to vote, the  
191 envelope containing his ballot shall not be opened and his vote shall not be counted. The provisional  
192 vote shall be counted if either (i) such person is entitled to vote in the precinct pursuant to § 24.2-401  
193 or (ii) the State Board or the voter presents proof that indicates the voter submitted an application for  
194 registration to the Department of Motor Vehicles or other state-designated voter registration agency prior  
195 to the close of registration pursuant to § 24.2-416 and the registrar determines that the person was  
196 qualified for registration based upon the application for registration submitted by the person pursuant to  
197 subsection A. The general registrar shall notify in writing pursuant to § 24.2-114 those persons found  
198 not properly registered.

199 If the electoral board determines that such person was entitled to vote, the name of the voter shall be  
200 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and  
201 the ballot placed in a ballot container without any inspection further than that provided for in  
202 § 24.2-646.

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

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

209 C. Whenever the polling hours are extended by an order of a court of competent jurisdiction, any  
210 ballots marked after the normal polling hours by persons who were not already in line at the time the  
211 polls would have closed, notwithstanding the court order, shall be treated as provisional ballots under  
212 this section. The officers of election shall mark the green envelope for each such provisional ballot to  
213 indicate that it was cast after normal polling hours due to the court order, and when preparing the  
214 materials to deliver to the registrar or electoral board, shall separate these provisional ballots from any  
215 provisional ballots used for any other reason. The electoral board shall treat these provisional ballots as  
216 provided in subsection B of this section; however, the counted and uncounted provisional ballots marked  
217 after the normal polling hours shall be kept separate from all other ballots and recorded in a separate  
218 provisional ballots pollbook. The State Board of Elections shall provide instructions to the electoral  
219 boards for the handling and counting of such provisional ballots pursuant to this section.

220 § 24.2-655. Representatives of political parties and candidates to be present on request.

221 Before proceeding to ascertain the vote, the officers of election shall determine whether no more than  
222 two representatives of each political party having candidates in the election and one representative of  
223 each independent candidate or primary candidate request to be present while the absentee ballots are  
224 cast, votes are counted, and returns are completed.

225 Each representative shall be a qualified voter of ~~the city or county in which the polling place is~~  
226 ~~located~~ *any jurisdiction in the Commonwealth* and shall present to the officers of election a written  
227 statement certifying that he is an authorized representative, signed by his party chairman for the  
228 jurisdiction in which the election is held, the independent candidate, or the candidate in a primary, as  
229 appropriate. Such representatives shall be entitled to be present while the votes are counted and shall  
230 remain until the returns are completed.

231 In case such representatives, or any of them, do not request to be present, the officers shall notify the  
232 bystanders, if any, and select one or more to be present with any available representatives of the parties  
233 or candidates so that there are as many as four bystanders and representatives present.

234 The representatives and bystanders lawfully present shall have an unobstructed view of the officers of  
235 election and their actions while the absentee ballots are cast, votes are counted, and returns are  
236 completed. The representatives and bystanders lawfully present are prohibited from interfering with the  
237 officers of election in any way.