

# VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

## CHAPTER 576

*An Act to amend and reenact §§ 24.2-101, 24.2-531, 24.2-603.1, 24.2-609, 24.2-612, 24.2-613, 24.2-623, 24.2-625, 24.2-626, 24.2-627, 24.2-629, 24.2-633, 24.2-634, 24.2-638, 24.2-639, 24.2-641, 24.2-642, 24.2-645, 24.2-646, 24.2-647, 24.2-648, 24.2-649, 24.2-653, 24.2-653.1, 24.2-654, 24.2-657, 24.2-658, 24.2-659, 24.2-663, 24.2-671.1, 24.2-712, 24.2-801, 24.2-801.1, and 24.2-802 of the Code of Virginia and to repeal §§ 24.2-628 and 24.2-640 of the Code of Virginia, relating to voting technology.*

[H 679]

Approved April 4, 2014

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

**1. That §§ 24.2-101, 24.2-531, 24.2-603.1, 24.2-609, 24.2-612, 24.2-613, 24.2-623, 24.2-625, 24.2-626, 24.2-627, 24.2-629, 24.2-633, 24.2-634, 24.2-638, 24.2-639, 24.2-641, 24.2-642, 24.2-645, 24.2-646, 24.2-647, 24.2-648, 24.2-649, 24.2-653, 24.2-653.1, 24.2-654, 24.2-657, 24.2-658, 24.2-659, 24.2-663, 24.2-671.1, 24.2-712, 24.2-801, 24.2-801.1, and 24.2-802 of the Code of Virginia are amended and reenacted as follows:**

#### **§ 24.2-101. Definitions.**

As used in this title, unless the context requires a different meaning:

*"Ballot scanner machine" means the electronic counting machine in which a voter inserts a marked ballot to be scanned and the results tabulated.*

*"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. "Candidate" shall include a person who seeks the nomination of a political party or who, by reason of receiving the nomination of a political party for election to an office, is referred to as its nominee. For the purposes of Chapters 8 (§ 24.2-800 et seq.), 9.3 (§ 24.2-945 et seq.), and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any write-in candidate. However, no write-in candidate who has received less than 15 percent of the votes cast for the office shall be eligible to initiate an election contest pursuant to Article 2 (§ 24.2-803 et seq.) of Chapter 8. For the purposes of Chapters 9.3 (§ 24.2-945 et seq.) and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any person who raises or spends funds in order to seek or campaign for an office of the Commonwealth, excluding federal offices, or one of its governmental units in a party nomination process or general, primary, or special election; and such person shall be considered a candidate until a final report is filed pursuant to Article 3 (§ 24.2-947 et seq.) of Chapter 9.3.*

*"Central absentee voter precinct" means a precinct established by a county or city pursuant to § 24.2-712 for the processing of absentee ballots for the county or city or any combination of precincts within the county or city.*

*"Constitutional office" or "constitutional officer" means a county or city office or officer referred to in Article VII, Section 4 of the Constitution of Virginia: clerk of the circuit court, attorney for the Commonwealth, sheriff, commissioner of the revenue, and treasurer.*

*(Effective July 1, 2014) "Department of Elections" means the state agency headed by the Commissioner of Elections.*

*"Direct recording electronic machine" or "DRE" means the electronic voting machine on which a voter touches areas of a computer screen, or uses other control features, to mark a ballot and his vote is recorded electronically.*

*"Election" means a general, primary, or special election.*

*"Election district" means the territory designated by proper authority or by law which is represented by an official elected by the people, including the Commonwealth, a congressional district, a General Assembly district, or a district for the election of an official of a county, city, town, or other governmental unit.*

*"Electoral board" or "local electoral board" means a board appointed pursuant to § 24.2-106 to administer elections for a county or city. The electoral board of the county in which a town or the greater part of a town is located shall administer the town's elections.*

*"Entrance of polling place" or "entrance to polling place" means an opening in the wall used for ingress to a structure.*

*"General election" means an election held in the Commonwealth on the Tuesday after the first Monday in November or on the first Tuesday in May for the purpose of filling offices regularly scheduled by law to be filled at those times.*

*"Machine-readable ballot" means a tangible ballot that is marked by a voter or by a system or device operated by a voter and then fed into and scanned by a counting machine capable of reading*

*ballots and tabulating results.*

"Officer of election" means a person appointed by an electoral board pursuant to § 24.2-115 to serve at a polling place for any election.

*"Paper ballot" means a tangible ballot that is marked by a voter and then manually counted.*

"Party" or "political party" means an organization of citizens of the Commonwealth which, at either of the two preceding statewide general elections, received at least 10 percent of the total vote cast for any statewide office filled in that election. The organization shall have a state central committee and an office of elected state chairman which have been continually in existence for the six months preceding the filing of a nominee for any office.

"Person with a disability" means a person with a disability as defined by the Virginians with Disabilities Act (§ 51.5-1 et seq.).

"Polling place" means the structure that contains the one place provided for each precinct at which the qualified voters who are residents of the precinct may vote.

"Precinct" means the territory designated by the governing body of a county, city, or town to be served by one polling place.

"Primary" or "primary election" means an election held for the purpose of selecting a candidate to be the nominee of a political party for election to office.

*"Printed ballot" means a tangible ballot that is printed on paper and includes both machine-readable ballots and paper ballots.*

"Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and who is (i) 18 years of age on or before the day of the election or qualified pursuant to § 24.2-403 or subsection D of § 24.2-544, (ii) a resident of the Commonwealth and of the precinct in which he offers to vote, and (iii) a registered voter. No person who has been convicted of a felony shall be a qualified voter unless his civil rights have been restored by the Governor or other appropriate authority. No person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as provided by law. Whether a signature should be counted towards satisfying the signature requirement of any petition shall be determined based on the signer of the petition's qualification to vote. For purposes of determining if a signature on a petition shall be included in the count toward meeting the signature requirements of any petition, "qualified voter" shall include only persons maintained on the Virginia voter registration system (a) with active status and (b) with inactive status who are qualified to vote for the office for which the petition was circulated.

"Qualified voter in a town" means a person who is a resident within the corporate boundaries of the town in which he offers to vote, duly registered in the county of his residence, and otherwise a qualified voter.

"Referendum" means any election held pursuant to law to submit a question to the voters for approval or rejection.

"Registered voter" means any person who is maintained on the Virginia voter registration system. All registered voters shall be maintained on the Virginia voter registration system with active status unless assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.). For purposes of applying the precinct size requirements of § 24.2-307, calculating election machine requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6, mailing notices of local election district, precinct or polling place changes as required by subdivision 13 of § 24.2-114 and § 24.2-306, and determining the number of signatures required for candidate and voter petitions, "registered voter" shall include only persons maintained on the Virginia voter registration system with active status. For purposes of determining if a signature on a petition shall be included in the count toward meeting the signature requirements of any petition, "registered voter" shall include only persons maintained on the Virginia voter registration system (i) with active status and (ii) on inactive status who are qualified to vote for the office for which the petition was circulated.

"Registration records" means all official records concerning the registration of qualified voters and shall include all records, lists, applications, and files, whether maintained in books, on cards, on automated data bases, or by any other legally permitted record-keeping method.

"Residence" or "resident," for all purposes of qualification to register and vote, means and requires both domicile and a place of abode. To establish domicile, a person must live in a particular locality with the intention to remain. A place of abode is the physical place where a person dwells.

"Special election" means any election that is held pursuant to law to fill a vacancy in office or to hold a referendum.

"State Board" or "Board" means the State Board of Elections.

"Virginia voter registration system" or "voter registration system" means the automated central record-keeping system for all voters registered within the Commonwealth that is maintained as provided in Article 2 (§ 24.2-404 et seq.) of Chapter 4.

*"Voting system" means the electronic voting and counting machines used at elections. This term includes direct recording electronic machines (DRE) and ballot scanner machines.*

#### **§ 24.2-531. Pollbooks used during primaries.**

There shall be pollbooks in the form set forth in § 24.2-611 and a separate ballot container provided

for each party taking part in *provided for use during* any primary. The ballot container for each party shall have plainly marked upon its top the words "Primary Ballot Container" and the name of the party.

**§ 24.2-603.1. Postponement of certain elections; state of emergency.**

For purposes of this section, "election" means (i) any local or state referendum, (ii) any primary, special, or general election for local or state office except a general election for Governor, Lieutenant Governor, Attorney General and the General Assembly, (iii) any primary for federal office including any primary for the nomination of candidates for the office of President of the United States, or (iv) any federal special election to fill a vacancy in the United States Senate or the United States House of Representatives. In the event of a state of emergency declared by the Governor pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 or declared by the President of the United States or the governor of another state pursuant to law and confirmed by the Governor by an executive order, the Governor may postpone an election by executive order in areas affected by the emergency to a date, notwithstanding the provisions of § 24.2-682, not to exceed 14 days from the original date of the election.

If a local governing body determines that a longer postponement is required, it may petition a three-judge panel of the Virginia Supreme Court, to include the Chief Justice as the presiding Justice, for an extension. The Chief Justice shall choose the other two Justices by lot. The Court may postpone the election to a date it deems appropriate, notwithstanding the provisions of § 24.2-682, not to exceed 30 days from the original date of the election.

Only those persons duly registered to vote as of the original date of the election shall be entitled to vote in the rescheduled election.

If, as a direct result of the emergency, any ballots already cast at the polling places or equipment on which ballots have been cast, or any voted absentee ballots already received by the appropriate election officials or any equipment on which absentee ballots have already been cast have been destroyed or otherwise damaged so that such ballots cannot be counted ~~by the counting device or counted manually or by a voting system~~, the Governor (i) shall specify that such ballots or votes previously cast by machinery or paper need to be recast on or by the rescheduled election date so that they may be counted and (ii) shall direct the appropriate election officials to immediately send replacement absentee ballots to all absentee voters whose voted ballots are known to have been so destroyed or damaged. Such instructions may be issued by executive order separately from the executive order postponing the election. Any absentee ballots duly cast and received by the rescheduled election date and able to be counted shall be valid and counted when determining the results of the rescheduled election; however, if more than one absentee ballot is received from any voter, only the first absentee ballot received and able to be counted shall be counted. Any person who was duly registered to vote as of the original date of the election, and who has not voted, or who is permitted to recast their ballot due to the emergency, may vote by absentee ballot in accordance with the provisions of Chapter 7 (§ 24.2-700 et seq.) ~~of this title~~ in the rescheduled election. Official ballots shall not be invalidated on the basis that they contain the original election date.

If the postponement of the election is ordered after voting at the polls on the original election date has already commenced, all qualified voters in a precinct in which any voted ballots, voting equipment containing voted ballots or pollbooks recording who has already voted in that precinct have been destroyed or damaged as a direct result of the emergency, so that the votes cannot be counted or it cannot be determined who has already voted, shall be allowed to vote in the rescheduled election, and no votes cast at the polls on the original election date shall be counted. If the postponement of the election is ordered after voting at the polls on the original election date has already commenced and no ballots cast at the polls, voting equipment containing voted ballots, or pollbooks recording who has already voted in that election in that precinct have been destroyed or damaged as a direct result of the emergency, only qualified voters who had not yet voted shall be eligible to vote on the rescheduled election day and all votes cast on the original and postponed election dates shall be counted at the close of the polls on the rescheduled election day.

The provisions of § 24.2-663 requiring the voiding of all ballots received from any voter who votes more than once in the same election shall not apply to ballots otherwise lawfully cast or recast pursuant to this section; however, no more than one ballot may be counted from any voter in the same election. If one ballot has already been counted, any additional ballots from the same voter shall be void and shall not be counted. The provisions of § 24.2-1004 or any other law prohibiting any voter from voting more than once in the same election, or any oath attesting to the same, shall not apply to ballots otherwise lawfully cast or recast pursuant to this section.

No results shall be tallied or votes counted in any postponed election before the closing of the polls on the rescheduled election date. Officers of election in unaffected areas shall count and report the results for the postponed election after the close of the polls on the rescheduled election date. The counting may take place at the precinct or another location determined by the local electoral board.

The State Board shall prescribe appropriate procedures to implement this section.

**§ 24.2-609. Voting booths.**

Each electoral board shall provide at each polling place in its county or city one or more voting booths. At least one booth shall be an enclosure which permits the voter to vote by ~~paper~~ printed ballot

in secret and is equipped with a writing surface and, operative writing implements, and ~~adequately~~ ~~adequate~~ ~~lighted~~ ~~lighting~~. Enclosures for voting equipment shall provide for voting in secret and be adequately lighted. "Voting booth" includes enclosures for voting ~~paper~~ ~~printed~~ ballots and for voting equipment.

**§ 24.2-612. List of offices and candidates filed with State Board and checked for accuracy; when ballots printed; number required.**

Immediately after the expiration of the time provided by law for a candidate for any office to qualify to have his name printed on the official ballot and prior to printing the ballots for an election, each electoral board shall forward to the State Board a list of the county, city, or town offices to be filled at the election and the names of all candidates who have filed for each office. In addition, each electoral board shall forward the name of any candidate who failed to qualify with the reason for his disqualification. On that same day, the electoral board shall also provide a copy of the notice to each disqualified candidate. The notice shall be sent by email or regular mail to the address on the candidate's certificate of candidate qualification, and such notice shall be deemed sufficient. The State Board shall promptly advise the electoral board of the accuracy of the list. The failure of any electoral board to send the list to the State Board for verification shall not invalidate any election.

Each electoral board shall have printed the number of ballots it determines will be sufficient to conduct the election.

Notwithstanding any other provisions of this title, the State Board may print or otherwise provide (i) one statewide paper ballot style for each paper ballot style in use for presidential and vice-presidential electors for use only by persons eligible to vote for those offices only under § 24.2-402 or clause (iii) or (v) of subsection B of § 24.2-416.1 or (ii) one statewide paper ballot style for each paper ballot style in use for Governor, Lieutenant Governor or Attorney General only for use as the early absentee ballot specified in § 24.2-702. The State Board may apportion or authorize the printer or vendor to apportion the costs for these ballots among the localities based on the number of ballots ordered. Any printer employed by the State Board shall execute the statement required by § 24.2-616. The State Board shall designate a representative to be present at the printing of such ballots and deliver them to the appropriate electoral boards pursuant to § 24.2-617. Upon receipt of such paper ballots, the electoral board shall affix its seal. Thereafter, such ballots shall be handled and accounted for, and the votes counted as the State Board shall specifically direct.

The electoral board shall make printed ballots available for absentee voting not later than 45 days prior to any election or within three business days of the receipt of a properly completed absentee ballot application, whichever is later. In the case of a special election, excluding for federal offices, if time is insufficient to meet the applicable deadline established herein, then the electoral board shall make printed ballots available as soon after the deadline as possible. For the purposes of this chapter, making printed ballots available includes mailing of such ballots or electronic transmission of such ballots pursuant to § 24.2-706 to a qualified absentee voter who is eligible for an absentee ballot under subdivision 2 of § 24.2-700. Not later than five days after absentee ballots are made available, each electoral board shall report to the State Board, in writing on a form approved by the State Board, whether it has complied with the applicable deadline.

Only the names of candidates for offices to be voted on in a particular election district shall be printed on the ballots for that election district.

The electoral boards shall send to the State Board a statement of the number of ~~paper~~ ballots ordered to be printed, proofs of each ~~paper~~ and ~~voting equipment~~ ~~printed~~ ballot for verification, and copies of each final ballot. If the State Board finds that, in its opinion, the number of ballots ordered to be printed by any local electoral board is not sufficient, it may direct the local board to order the printing of a reasonable number of additional ballots.

**§ 24.2-613. Form of ballot.**

The ballots shall comply with the requirements of this title and the standards prescribed by the State Board.

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 and also signed by such candidate accepting that nomination 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 *printed* ballots for general, special, and primary elections, the State Board and electoral boards shall cause to be printed in not less than 10-point type, immediately below the title of any office, a statement of the number of candidates ~~who for whom votes may be voted for~~ cast for that office. The following language shall be used: "Vote for not more than .....":

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

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

*In every county and city using 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 in the ballot frames.*

**§ 24.2-623. Ballot containers to be supplied by governing bodies; construction and custody.**

The governing body of each county and city shall provide a ballot container for each precinct ~~and each part of a split precinct~~. The container shall have a lock and key and an opening of sufficient size to admit a single folded or unfolded ballot and no more. The containers shall be kept by the electoral boards for use in the precincts.

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

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

**§ 24.2-626. Governing bodies shall acquire electronic voting and counting machines.**

The governing body of each county and city shall provide for the use of electronic voting or counting ~~systems machines~~, of a kind approved by the State Board, at every precinct and for all elections held in the county, the city, or any part of the county or city.

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

On and after July 1, 2007, no county or city shall acquire any direct recording electronic machine (DRE) for use in elections in the county or city except as provided herein:

1. DREs acquired prior to July 1, 2007, may be used in elections in the county or city for the remainder of their useful life.

2. Any locality that acquired DREs prior to July 1, 2007, may acquire DREs on a temporary basis to conduct an election when the existing DRE inventory is insufficient to conduct the election because all or part of its inventory is under lock or seal as required by § 24.2-659.

3. Any locality may acquire DREs from another locality within the Commonwealth, from among their existing inventories, for the expressed purpose of providing accessible voting equipment as required by § 24.2-626.1. The local electoral board shall notify the State Board when acquiring any DRE under this provision and shall certify to the State Board that the DRE acquired under this provision is necessary to meet accessible voting requirements.

4. Any locality may modify its existing DREs to comply with federal or state law requirements to provide accessible voting equipment. Any modifications made to existing DREs must be authorized by the State Board of Elections prior to modification.

**§ 24.2-627. Electronic voting or counting machines; number required.**

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

- In each precinct having not more than 750 registered voters, 1;
- In each precinct having more than 750 but not more than 1,500 registered voters, 2;
- In each precinct having more than 1,500 but not more than 2,250 registered voters, 3;
- In each precinct having more than 2,250 but not more than 3,000 registered voters, 4;
- In each precinct having more than 3,000 but not more than 3,750 registered voters, 5;
- In each precinct having more than 3,750 but not more than 4,500 registered voters, 6;
- In each precinct having more than 4,500 but not more than 5,000 registered voters, 7.

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

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

D. For purposes of applying this section, an electoral board may exclude persons voting absentee in its calculations, and if it does so, the electoral board shall send to the State Board a statement of the number of voting systems to be used in each precinct. If the State Board finds that the number of voting systems is not sufficient, it may direct the local board to use more voting systems.

**§ 24.2-629. State Board approval process of electronic voting systems.**

A. Any person, firm, or corporation ~~hereinafter~~, referred to *in this article* as the "vendor," manufacturing, owning, or offering for sale any electronic voting or counting ~~system machine~~ 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 require, at a site of its choosing, a demonstration of such ~~system equipment~~ and ballots and may require that a production model of the *system equipment* and a supply of ballots be provided to the Board for testing purposes. The Board shall also require the vendor to provide documentation of the practices recommended by the vendor to ensure the optimum security and functionality of the system.

B. The provisions of this title pertaining to mechanical voting devices and ballots shall be deemed applicable to such equipment 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. 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.

~~B1. The system shall provide the voter with an opportunity to correct any error before a permanent record is preserved.~~

*The Board may approve any kind of electronic voting system that meets the following requirements:*

- 1. It shall provide clear instructions for voters on how to mark or select their choice and cast that vote.*
- 2. It shall provide facilities for voting for all offices at any election and on as many questions as may be submitted at any election.*
- 3. It shall be capable of processing ballots for all parties holding a primary election on the same day, but programmable in such a way that an individual ballot cast by a voter is limited to the party primary election in which the voter chooses to participate.*
- 4. It shall require votes for presidential and vice presidential electors to be cast for the presidential and vice presidential electors of one party by one operation. The ballot shall contain the words "Electors for" preceded by the name of the party or other authorized designation and followed by the names of the candidates for the offices of President and Vice President.*

5. *It shall enable the voter to cast votes for as many persons for an office as lawfully permitted, but no more. It shall prevent the voter from casting a vote for the same person more than once for the same office. However, ballot scanner machines shall not be required to prevent a voter from voting for a greater number of candidates than he is lawfully entitled to.*

6. *It shall enable the voter to cast a vote on any question on which he is lawfully permitted to vote, but no other.*

7. *It shall provide the voter with an opportunity to correct any error before a ballot is cast.*

8. *It shall correctly register or record and accurately count all votes cast for candidates and on questions.*

9. *It shall be provided with a "protective counter," whereby any operation of the machine before or after the election will be detected.*

10. *It shall be provided with a counter that at all times during an election shall show how many persons have voted.*

11. *It shall ensure voting in absolute secrecy. Ballot scanner machines shall provide for the secrecy of the ballot and a method to conceal the voted ballot.*

12. *It shall be programmable to allow ballots to be separated when necessary.*

13. *Ballot scanner machines shall report, if possible, the number of ballots on which a voter undervoted or overvoted.*

C. 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; (ix) whether issues of reliability and security identified with the system by other state governments have been adequately addressed by the vendor; and (x) whether, in the opinion of the Board, the potential for approval of such system is such as to justify further examination and testing.

D. 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.

~~D4.~~ E. In preparing the reports cited in subsections C and D, the Board shall require, as a condition of certification, that the system is comprehensively examined by individuals including at least one expert in election management and one in computer system security. The Board shall develop, in conjunction with the above listed individuals, a specific set of items to be examined and tested as part of the certification process to further elaborate on the requirements identified in this section.

E. F. 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 approved by the Board and adopted by the counties or cities.

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

G. H. A vendor whose ~~electronic~~ voting system is approved for use shall provide ~~annual~~ updates to the State Board concerning its recommended practices for optimum security and functionality of the system, *as may be requested by the Board*. Any product for which ~~annual~~ requested updates are not provided shall be deemed non-compliant and may be decertified at the discretion of the Board.

H. I. The Board shall have the authority to investigate, at its discretion, any voting system certified in Virginia to ensure that it continues to meet the standards outlined in subsections C and D. The Board may, at its discretion, decertify any voting system based on significant problems detected with the voting system in Virginia or on reports provided by federal authorities or other state election officials.

**§ 24.2-633. Notice of final testing of voting system; sealing equipment.**

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

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

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

**§ 24.2-634. Locking and securing after preparation.**

When voting or counting ~~equipment~~ has been properly prepared for an election, it shall be locked against voting and sealed, or, if the ~~device~~ *a voting or counting machine* cannot be sealed with a numbered seal, it shall be locked with a key. The equipment keys and any electronic activation devices shall be retained in the custody of the electoral board and delivered to the officers of election as provided in § 24.2-639. After the voting equipment has been delivered to the polling places, the electoral board shall provide ample protection against tampering with or damage to the equipment.

**§ 24.2-638. Voting equipment to be in plain view; officers and others not permitted to see actual voting; unlocking counter compartment of equipment, etc.**

During the election, the exterior of the voting and counting ~~equipment~~ and every part of the polling place shall be in plain view of the officers of election.

No voting or counting ~~equipment~~ *machines* shall be removed from the plain view of the officers of election or from the polling place at any time during the election and through the determination of the vote as provided in § 24.2-657. However, an electronic voting ~~device~~ *machine* that is so constructed as to be easily portable may be taken outside the polling place pursuant to subsection A of § 24.2-649 and to assist a voter age 65 or older or physically disabled so long as: (i) the voting ~~device~~ *machine* remains in the plain view of two officers of election representing two political parties or, in a primary election, two officers of election representing the party conducting the primary, provided that if the use of two officers for this purpose would result in too few officers remaining in the polling place to meet legal requirements, the ~~equipment~~ *machine* shall remain in plain view of one officer who shall be either the chief officer or the assistant chief officer; (ii) the voter casts his ballot in a secret manner unless the voter requests assistance pursuant to § 24.2-649; and (iii) there remain sufficient officers of election in the polling place to meet legal requirements. After the voter has completed voting his ballot, the officer or officers shall immediately return the voting ~~device~~ *machine* to its assigned location inside the polling place. The machine number, the time that the machine was removed and the time that it was returned, the number on the machine's public counter before the machine was removed and the number on the same counter when it was returned, the names of the voters who used the machine while it was removed provided that secrecy of the ballot is maintained in accordance with guidance from the State Board, and the name or names of the officer or officers who accompanied the machine shall be recorded on the statement of results. If a polling place fails to record the information required in the previous sentence, or it is later proven that the information recorded was intentionally falsified, the local electoral board shall dismiss at a minimum the chief officer or the assistant chief officer, or both, as appropriate; and shall dismiss any other officer of election who is shown to have caused the failure to record the required information intentionally or by gross negligence or to have intentionally falsified the information. The dismissed officers shall not be allowed thereafter to serve as an officer or other election official anywhere in the Commonwealth. In the case of an emergency that makes a polling place unusable or inaccessible, voting or counting ~~equipment~~ *machines* may be removed to an alternative polling place pursuant to the provisions of subsection D of § 24.2-310.

The equipment shall be placed at least four feet from any table where an officer of election is working or seated. The officers of election shall not themselves be, or permit any other person to be, in any position or near any position that will permit them to observe how a voter votes or has voted.

One of the officers shall inspect the face of the voting ~~device~~ *machine* after each voter has cast his



vote and verify that the ballots on the face of the ~~device machine~~ are in their proper places and that the ~~device machine~~ has not been damaged. During an election, the door or other covering of the counter compartment of the voting or counting ~~device machine~~ shall not be unlocked or open or the counters exposed except for good and sufficient reasons, a statement of which shall be made and signed by the officers of election and attached to the statement of results. No person shall be permitted in or about the polling place except the voting equipment custodian, vendor, or contractor technicians; and other persons authorized by this title.

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

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

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

Before opening the polls, each officer shall examine the equipment and see that no vote has been cast and that the counters register zero. The officers shall conduct their examination in the presence of 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 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 ballot scanner or direct recording electronic voting device machine is found not to register zero, the officers of election shall immediately notify the electoral board which shall, if possible, substitute a device machine in good working order, that has been prepared and tested pursuant to § 24.2-634. No mark sense ballot scanner or direct recording electronic device machine shall be used if any counter, other than a protective or private counter, is found not to register zero.

**§ 24.2-641. Sample ballot.**

The electoral board shall provide for each precinct in which ~~mechanical voting machines or direct electronic any voting devices or counting machines~~ are used, two sample ballots, which shall be arranged as a diagram of the front of the voting or counting device machine 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.

**§ 24.2-642. Inoperative equipment.**

A. When any voting or counting device machine becomes inoperative in whole or in part while the polls are open, the officers of election shall immediately notify the electoral board. If possible, the electoral board shall dispatch a qualified technician to the polling place to repair the inoperative device machine. All repairs shall be made in the presence of two officers of election representing the two political parties or, in the case of a primary election for only one party, two officers representing that party. If the device machine cannot be repaired on site, the electoral board shall, if possible, substitute a device machine in good order for the inoperative device machine and at the close of the polls the record of both devices machines shall be taken; and the votes shown on their counters shall be added together in ascertaining the results of the election.

No voting or counting equipment machines, including inoperative equipment machines, shall be removed from the plain view of the officers of election or from the polling place at any time during the election and through the determination of the vote as provided in § 24.2-657 except as explicitly provided pursuant to the provisions of this title.

No voting or counting ~~device machine~~ that has become inoperative and contains votes may be removed from the polling place while the polls are open and votes are being ascertained. If the officers of election are unable to ascertain the results from the inoperative ~~device machine~~ after the polls close in order to add its results to the results from the other ~~devices machines~~ in that precinct, the officers of election shall lock and seal the ~~device machine~~ without removing the memory card, cartridge, or data storage medium and deliver the ~~device machine~~ to either the clerk of court or registrar's office as provided for in § 24.2-659. On the day following the election, the electoral board shall meet and ascertain the results from the inoperative ~~device machine~~ in accordance with the procedures prescribed by the ~~device's machine's~~ manufacturer and add the results to the results for the precinct to which the ~~device machine~~ was assigned.

Nothing in this subsection shall prohibit the removal of an inoperative ~~device machine~~ from a precinct prior to the opening of the polls or ~~votes the first vote~~ being cast on that ~~device machine~~. Any ~~device machine~~ so removed shall be placed in the custody of an authorized custodian, technician, or electoral board representative. If the inoperative ~~device machine~~ can be repaired, it shall be retested and resealed pursuant to § 24.2-634 and may be returned to the precinct by an authorized custodian, technician, or electoral board representative. The officers of election shall then open the ~~device machine~~ pursuant to § 24.2-639.

B. In any precinct that uses a ballot that can be ~~marked read~~ without the use of the ~~counting device ballot scanner machine~~, if the ~~counting device ballot scanner machine~~ becomes inoperative and there is no other available ~~counting device scanner~~, the uncounted ballots shall be placed in a ballot container or compartment that is used exclusively for uncounted ballots. If an operative ~~counting device scanner~~ is available in the polling place after the polls have closed, such uncounted ballots shall be removed from the container and fed into the ~~counting device scanner~~, one at a time, by an officer of election in the presence of all persons who may be lawfully present at that time but before the votes are determined pursuant to § 24.2-657. If such ~~device a scanner~~ is not available, the ballots may be counted manually or as directed by the electoral board.

C. ~~If An officer of election may have copies of the official paper ballot reprinted or reproduced by photographic, electronic, or mechanical processes for use at the election if~~ (i) the inoperative ~~device machine~~ cannot be repaired in time to continue using it at the election, (ii) a substitute ~~device machine~~ is needed to conduct the election but is not available for use, (iii) the supply of official ~~paper ballots, or other official printed~~ ballots that can be cast without use of the inoperative ~~device, machine~~ is not adequate, and (iv) the local electoral board approves, ~~an officer of election may have copies the reprinting or reproducing of the official paper ballot reprinted or reproduced by photographic, electronic, or mechanical processes for use at the election.~~ The voted ballot copies may be received by the officers of election and placed in the ballot container and counted with the votes registered on the voting or counting ~~devices; machines~~, and the result shall be declared the same as though no ~~device machine~~ has been inoperative. The voted ballot copies shall be deemed official ballots for the purpose of § 24.2-665 and preserved and returned with the statement of results and with a certificate setting forth how and why the same were voted. The officer of election who had the ballot copies made shall provide a written statement of the number of copies made, signed by him and subject to felony penalties for making false statements pursuant to § 24.2-1016, to be preserved with the unused ballot copies.

#### **§ 24.2-645. Defaced printed ballots.**

If any ~~paper printed~~ ballot is unintentionally or accidentally defaced and rendered unfit for voting, the voter may deliver the defaced ballot to the officer of election and receive another. The returned ballot shall be marked spoiled by the officer of election and placed in the spoiled ballot envelope.

#### **§ 24.2-646. Voter folds paper ballot and hands same to officer who deposits it unopened in ballot container.**

The qualified voter shall fold each ~~paper~~ ballot with the names of the candidates and questions on the inside and hand the folded ballot to the appropriate officer of election. The officer shall place the ballot in the ballot container without any inspection except to assure himself that only a single ballot has been tendered and that the ballot is a genuine ballot. Without looking at the printed inside of the ballot, the officer may inspect the official seal on the back of the ballot to determine if it is genuine.

#### **§ 24.2-647. Voting systems; demonstration on election day.**

The electoral board shall provide at each polling place on election day, for the voting ~~device system~~ in use, a model of, or materials displaying, a portion of its ballot face. The model or materials shall be located on the table of one of the officers or in some other place accessible to the voters. An officer of election shall instruct any voter, who requests instruction before voting, on the proper manner of voting. The officer may direct the voter's attention to sample ballots so that the voter may become familiar with the location of questions and names of offices and candidates.

For ~~equipment using ballots inserted in electronic counting devices ballot scanner machines~~, an officer of election, using a demonstration ballot and ~~equipment machine~~, shall show each voter who requests, immediately on entry to the polling place, the manner in which the ballot is to be voted.

If any voter, after entering the voting booth, asks for further instructions concerning the manner of voting, two of the officers, from different political parties shall give such instructions to him, but no

officer shall in any manner request, or seek to persuade or induce any such voter to vote for or against any particular ticket, candidate, or question. After giving such instructions and before the voter votes, the officers shall leave the voting booth, and the voter shall cast his ballot in secret.

**§ 24.2-648. Write-in votes on voting equipment.**

Write-in votes may be cast on voting equipment for any person whose name does not appear on the ballot as a candidate for the office being voted, subject to this section and the provisions of § 24.2-644 not in conflict with this section.

Each write-in vote shall be entered in the receptacle or area designated on the ~~device~~ *machine* for the office being elected. A write-in vote shall be cast in its appropriate place, in accordance with the instructions for that equipment, or it shall be void and not counted.

Except on ~~devices~~ *which machines* that provide a means to enter a name electronically, each write-in vote shall be entered by the voter in his own handwriting or hand printing.

**§ 24.2-649. Assistance for certain voters; penalties.**

A. Any voter age 65 or older or physically disabled may request and then shall be handed a ~~paper ballot or a mark sense printed ballot~~ by an officer of election outside the polling place but within 150 feet of the entrance to the polling place. The voter shall mark the ~~paper~~ *printed* ballot in the officer's presence but in a secret manner and ~~fold and, obscuring his vote,~~ return the ballot to the officer. The officer shall immediately return to the polling place and ~~shall deposit the a paper ballot in the ballot container in accordance with § 24.2-646. The voter shall mark the mark sense ballot in the officer's presence but in a secret manner and cover and return the ballot to the officer who shall immediately return to the polling place and deposit the ballot in the ballot counter or a machine-readable ballot in the ballot scanner machine~~ in accordance with the instructions of the State Board.

Any county or city that has acquired an electronic voting ~~device~~ *machine* that is so constructed as to be easily portable may use the voting ~~device~~ *machine* in lieu of a ~~paper or mark sense printed~~ ballot for the voter requiring assistance pursuant to this subsection. However, the electronic voting ~~device~~ *machine* may be used in lieu of a ~~paper printed~~ ballot only so long as: (i) the voting ~~device~~ *machine* remains in the plain view of two officers of election representing two political parties, or, in a primary election, two officers of election representing the party conducting the primary, provided that if the use of two officers for this purpose would result in too few officers remaining in the polling place to meet legal requirements, the ~~equipment~~ *voting machine* shall remain in plain view of one officer who shall be either the chief officer or the assistant chief officer; and (ii) the voter casts his ballot in a secret manner unless the voter requests assistance pursuant to this section. After the voter has completed voting his ballot, the officer or officers shall immediately return the voting ~~device~~ *machine* to its assigned location inside the polling place. The machine number, the time that the machine was removed and the time that it was returned, the number on the machine's public counter before the machine was removed and the number on the same counter when it was returned, and the name or names of the officer or officers who accompanied the machine shall be recorded on the statement of results.

B. Any qualified voter, who requires assistance to vote by reason of physical disability or inability to read or write, may, if he so requests, be assisted in voting. If he is blind, he may designate an officer of election or any other person to assist him. If he is unable to read and write or disabled for any cause other than blindness, he may designate an officer of election or some other person to assist him other than the voter's employer or agent of that employer, or officer or agent of the voter's union.

The officer of election or other person so designated shall not enter the booth with the voter unless (i) the voter signs a request stating that he requires assistance by reason of physical disability or inability to read or write and (ii) the officer of election or other person signs a statement that he is not the voter's employer or an agent of that employer, or an officer or agent of the voter's union, and that he will act in accordance with the requirements of this section. The request and statement shall be on a single form furnished by the State Board. If the voter is unable to sign the request, his own mark acknowledged by him before an officer of election shall be sufficient signature, provided no mark shall be required of a voter who is blind. An officer of election shall advise the voter and person assisting the voter of the requirements of this section and record the name of the voter and the name and address of the person assisting him.

The officer of election or other person so designated shall assist the qualified voter in the preparation of his ballot in accordance with his instructions and without soliciting his vote or in any manner attempting to influence his vote and shall not in any manner divulge or indicate, by signs or otherwise, how the voter voted on any office or question. If a ~~paper ballot or a mark sense printed~~ ballot is used, the officer or other person so designated shall deposit the ballot in the ballot container in accordance with § 24.2-646 *or in the ballot scanner machine in accordance with the instructions of the State Board.*

C. If the voter requires assistance in a language other than English and has not designated a person to assist him, an officer of election, before he assists as interpreter, shall inquire of the representatives authorized to be present pursuant to § 24.2-604 whether they have a volunteer available who can interpret for the voter. One representative interpreter for each party or candidate, insofar as available, shall be permitted to observe the officer of election communicate with the voter. The voter may designate one of the volunteer party or candidate interpreters to provide assistance. A person so

designated by the voter shall meet all the requirements of this section for a person providing assistance.

D. A person who willfully violates subsection B or C ~~shall be~~ *is* guilty of a Class 1 misdemeanor. In addition, the provisions of § 24.2-1016 and its felony penalties for false statements shall be applicable to any request or statement signed pursuant to this section, and the provisions of §§ 24.2-704 and 24.2-1012 and the felony penalties for violations of the law related to providing assistance to absentee voters shall be applicable in such cases.

E. In any precinct in which an electronic voting ~~device~~ *machine* is available that provides an audio ballot, the officers of election shall notify a voter requiring assistance pursuant to this ~~subsection~~ *section* that such ~~equipment~~ *machine* is available for him to use to vote in privacy without assistance and the officers of election shall instruct the voter on the use of the voting ~~equipment~~ *machine*. Nothing in this ~~subsection~~ *section* shall be construed to require a voter to use the ~~equipment~~ *machine* unassisted.

**§ 24.2-653. Voter whose name does not appear on pollbook or who is marked as having voted; 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~~ *printed* ballot in the manner provided in this section. This procedure shall also apply when required by § 24.2-643 or 24.2-651.1.

Such person shall be given a ~~paper~~ *printed* 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 on the envelope, including *the last four digits of* his social security number, if any, full name including the maiden or any other prior legal name, date of birth, complete address, and signature. Such person shall be asked to present one of the forms of identification specified in subsection B of § 24.2-643. The officers of election shall note on the green envelope whether or not the voter has presented 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 *printed* ballot as provided in § 24.2-644 and seal it in the green envelope. The envelope containing the ballot shall then promptly be placed in the ballot container by an officer of election.

An officer of election, by a written notice given to the voter, shall (i) inform him that a determination of his right to vote shall be made by the electoral board, (ii) 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, and (iii) inform a voter voting provisionally when required by § 24.2-643 that he may submit a copy of one of the forms of identification specified in subsection B of § 24.2-643 to the electoral board by facsimile, electronic mail, in-person submission, or timely United States Postal Service or commercial mail delivery, to be received by the electoral board no later than noon on the third day after the election. 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 shall be permitted to remain in the room in which the determination is being made as an observer so long as he does not participate in the proceedings and does not impede the orderly conduct of the determination. Each authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each representative, who is not himself a candidate or party chairman, shall present to the electoral board 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.

Notwithstanding the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), attendance at meetings of the electoral board to determine the validity of provisional ballots shall be permitted only for the authorized representatives provided for in this subsection, for the persons whose provisional votes are being considered and their representative or legal counsel, and for appropriate staff and legal counsel for the electoral board.

If the electoral board determines that such person was not entitled to vote as a qualified voter in the precinct in which he offered the provisional vote, is unable to determine his right to vote, or has not been provided one of the forms of identification specified in subsection B of § 24.2-643, the envelope containing his ballot shall not be opened and his vote shall not be counted. The provisional vote shall be counted if (a) such person is entitled to vote in the precinct pursuant to § 24.2-401 or (b) the State Board or the voter presents proof that indicates the voter submitted an application for registration to the Department of Motor Vehicles or other state-designated voter registration agency prior to the close of registration pursuant to § 24.2-416 and the registrar determines that the person was qualified for registration based upon the application for registration submitted by the person pursuant to subsection A. The general registrar shall notify in writing pursuant to § 24.2-114 those persons found not properly registered or whose provisional vote was not counted.

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

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

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

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

**§ 24.2-653.1. Voters who did not receive absentee ballots; provisional ballots.**

A. The provisions of this section shall apply when (i) a person offers to vote pursuant to § 24.2-643 at his proper polling place or at a central absentee voter precinct established by the governing body of the county or city where he is registered to vote, (ii) his name is shown on the pollbook as having applied for an absentee ballot, and (iii) for any reason he did not receive or has lost the absentee ballot. In such case, he shall be entitled to cast a provisional ballot after presenting to the officer of election a statement signed by him that he did not receive the ballot or has lost the ballot, subject to felony penalties for making false statements as pursuant to § 24.2-1016.

B. Such person shall be given a ~~paper~~ printed ballot and be permitted to vote the provisional ballot in accordance with the provisions of § 24.2-653 and the instructions of the State Board. The electoral board shall process the ballot in accordance with the provisions of § 24.2-653 and the instructions of the State Board.

**§ 24.2-654. Officers to lock and seal voting equipment and ascertain vote after polls closed; statement of results.**

As soon as the polls are closed, the officers of election shall lock each voting and counting ~~device~~ machine against further voting. They shall then proceed to ascertain the vote given at the election and continue without adjournment until they declare the results of the election. They shall seal the ~~devices~~ machines.

In ascertaining the vote, the officers of election shall complete a statement of results in duplicate on the form and in the manner prescribed by the State Board.

**§ 24.2-657. Determination of vote on voting systems.**

In the presence of all persons who may be present lawfully at the time, giving full view of the voting ~~equipment and counters~~ systems 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 ~~recording electronic voting devices machines~~, 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 machines~~, then the figures recorded by the ~~devices machines~~ 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.

**§ 24.2-658. Machines with printed return sheets; disposition of sheets.**

If ~~devices machines~~ that print returns are used, the printed inspection sheet and two copies of the printed return sheet containing the results of the election for each ~~device machine~~ shall be inserted in the envelope containing the ~~pollbooks statement of results~~ by the officers of election and sealed and returned as required by § 24.2-668.

The printed inspection sheets and one copy of the printed return sheets shall be kept with the ~~pollbooks statement of results~~ and preserved as provided in § 24.2-669.

One copy of the printed return sheets shall be made available by the clerk of the circuit court on the day following the election and for ~~sixty~~ 60 additional days for inspection and transcribing information therefrom by the public.

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

A. If the voting or counting ~~device machine~~ is secured by the use of equipment keys, after the officers of election lock and seal each ~~voting and counting device machine~~, the equipment keys shall be enclosed in an envelope ~~which that~~ shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct, the number of each ~~device machine~~, the number on the seal, and the number of the protective counter, if one, on the ~~device machine~~. 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 machines~~ are secured by the use of equipment keys or electronic activation devices that are not specific to a particular ~~device machine~~, after the officers of election lock and seal each ~~voting and counting device machine~~, 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 machine~~ is secured by removal of the ~~memory card, cartridge, or other data storage medium device~~ used in that election, the officers shall remove the ~~memory card, cartridge, or other data storage medium device~~ and proceed to lock and seal each ~~voting and counting device machine~~. The ~~memory card, cartridge, or other data storage medium device~~ 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 machine~~, the number on the seal, and the number of the protective counter, if one, on the ~~device machine~~. 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 machine~~ provides for the creation of a separate master electronic back-up on a ~~memory card, cartridge, or other data storage medium device~~ that combines the data for all of the voting ~~devices or counting machines~~ in a given precinct, that data storage ~~medium device~~ 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 device~~ for the individual ~~devices machines~~ may remain sealed in its individual ~~device machine~~ 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 machines~~ shall remain locked and sealed until the deadline to request a recount under Chapter 8 (§ 24.2-800 et seq.) has passed and, if any contest or recount is pending thereafter, until it has been concluded. The ~~devices machines~~ 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 machines~~ 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 *recording* electronic ~~voting devices~~ *machines* 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.

**§ 24.2-663. When ballot void.**

If a ~~paper printed~~ ballot ~~or a ballot that is inserted into an electronic counting device~~ is found to have been voted for a greater number of names for any one office than the number of persons required to fill the office, or if the title of the office is erased, the ballot shall be considered void as to all the names designated to fill such office, but no further, and the ballot shall be counted for the other offices on the ballot. In the case of ~~an electronic counting device~~ *a ballot scanner machine*, an election official is authorized to cause the ~~counting device~~ *ballot scanner* to receive the ballot and count it in accordance with this section. No ballot shall be void for having been voted for fewer names than authorized.

If any person votes, either in person or absentee, more than one time in an election, all ballots received from such person shall be void and, if possible, not counted. If one such ballot has already been cast, any additional ballots received from such person shall be void and not counted.

**§ 24.2-671.1. Audits of ballot scanner machines.**

A. The State Board shall be authorized to ~~provide for pilot programs~~ *conduct a post-election audit of one or more ballot scanner machines in one or more precincts* in one or more localities with respect to an election in which the margin between the top two candidates for each office on the ballot exceeds 10 percent, with the consent of the electoral board of the locality; ~~to conduct a post-election audit of one or more optical scan tabulators in one or more precincts~~, notwithstanding any other provision of law to the contrary. The purposes of the ~~pilot programs~~ *audits* shall be to study the accuracy of ~~optical scan tabulators~~; ~~to evaluate the time, cost, and accuracy of audits~~; and ~~to determine proper procedures for conducting audits~~. ~~A pilot program may audit any combination of randomly selected or specific tabulators ballot scanner machines.~~

B. No audit ~~conducted as part of a pilot program~~ shall commence until after the election has been certified and the period to initiate a recount has expired without the initiation of a recount, *unless such audit is being conducted as part of a voting system certification*. An audit ~~conducted as part of a pilot program~~ shall have no effect on the election results.

C. All audits shall be performed in accordance with the procedures prescribed by the State Board under the supervision of the local electoral board. The procedures established by the State Board shall include its procedures for conducting hand counts of ballots. Candidates and political parties may have representatives observe the audits.

D. At the conclusion of each audit, the local electoral board shall announce publicly the results of the audit of the machines in its jurisdiction. The announcement shall include a comparison of the audited election results and the initial tally for each machine audited, and an analysis of any detected discrepancies.

**§ 24.2-712. Central absentee voter precincts; counting ballots.**

A. Notwithstanding any other provision of law, the governing body of each county or city may establish one or more central absentee voter precincts in the courthouse or other public buildings for the purpose of receiving, counting, and recording absentee ballots cast in the county or city. The decision to establish any absentee voter precinct shall be made by the governing body by ordinance; the ordinance shall state for which elections the precinct shall be used. The decision to abolish any absentee voter precinct shall be made by the governing body by ordinance. Immediate notification of either decision shall be sent to the State Board and the electoral board.

B. Each central absentee voter precinct shall have at least three officers of election as provided for other precincts. The number of officers shall be determined by the electoral board.

C. If any voter brings an unmarked ballot to the central absentee voter precinct on the day of the election, he shall be allowed to vote it. If any voter brings an unmarked ballot to the electoral board on or before the day of the election, he shall be allowed to vote it, and his ballot shall be delivered to the absentee voter precinct pursuant to § 24.2-710.

The officers at the absentee voter precinct shall determine any appeal by any other voter whose name appears on the absentee voter applicant list and who offers to vote in person. If the officers at the absentee voter precinct produce records showing the receipt of his application and the certificate of mailing for the ballot, they shall deny his appeal. If the officers cannot produce such records, the voter

shall be allowed to vote in person at the absentee voter precinct and have his vote counted with other absentee votes. If the voter's appeal is denied, the provisions of § 24.2-708 shall be applicable, and the officers shall advise the voter that he may vote on presentation of a statement signed by him that he has not received an absentee ballot and subject to felony penalties for making false statements pursuant to § 24.2-1016.

D. Absentee ballots may be processed as required by § 24.2-711 by the officers of election at the central absentee voter precinct prior to the closing of the polls but the ballot container shall not be opened and the counting of ballots shall not begin prior to that time. In the case of ~~punch card or mark sense machine-readable~~ ballots ~~to be inserted in electronic counting equipment~~, the ballot container may be opened and the absentee ballots may be inserted in the counting ~~equipment~~ *machines* prior to the closing of the polls in accordance with procedures prescribed by the State Board, including procedures to preserve ballot secrecy, but no ballot count totals shall be initiated prior to that time.

As soon as the polls are closed in the county or city the officers of election at the central absentee voter precinct shall proceed promptly to ascertain and record the vote given by absentee ballot and report the results in the manner provided for counting and reporting ballots generally in Article 4 (§ 24.2-643 et seq.) of Chapter 6.

E. The electoral board may provide that the officers of election for a central absentee voter precinct may be assigned to work all or a portion of the time that the precinct is open on election day subject to the following conditions:

1. The chief officer and the assistant chief officer, appointed pursuant to § 24.2-115 to represent the two political parties, are on duty at all times; and
2. No officer, political party representative, or other candidate representative shall leave the precinct after any ballots have been counted until the polls are closed and the count for the precinct is completed and reported.

F. The electoral board, with the written agreement of the general registrar, may provide that the central absentee voter precinct will open after 6:00 a.m. and at any time before noon on the day of the election provided that the office of the general registrar will be open for the receipt of absentee ballots until the central absentee voter precinct is open and that the officers of election for the central absentee voter precinct obtain the absentee ballots returned to the general registrar's office for the purpose of counting the absentee ballots at the central absentee voter precinct and provided further that the central absentee voter precinct is the same location as the office of the general registrar.

#### **§ 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 recording electronic voting devices machines*, 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 *recording* electronic ~~voting devices machines~~, 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 machines~~, ballots, and other materials required for a recount, (ii) accurate determination of votes based upon objective evidence and taking into account the counting ~~device machine~~ 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 and counting machines~~ in use in the election district.

In preparation for the recount, the clerks of the circuit courts shall (a) secure all ~~paper printed~~ ballots and other election materials in sealed boxes; (b) place all of the sealed boxes in a vault or room not open to the public or to anyone other than the clerk and his staff; (c) cause such vault or room to be securely locked except when access is necessary for the clerk and his staff; and (d) certify that these security measures have been taken in whatever form is deemed appropriate by the chief judge.

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 direct *recording* electronic ~~voting device machine~~ 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 counting machines~~ 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 and counting machines~~ 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 (a) any absentee ballots or provisional ballots sought to be cast but ruled invalid and not cast in the election, (b) ballots cast only for administrative or test purposes and voided by the officers of election, or (c) 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 *printed* ballots, or in the case of direct *recording* electronic ~~voting devices machines~~, 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 printed~~ ballots and to

redetermine the vote cast on direct ~~recording electronic devices~~ *machines* 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 using ~~electronic counting devices~~ *ballot scanner machines* to insert the ballots into one or more ~~counting devices~~ *scanners*. The ~~counting devices~~ *ballot scanner machines* 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 *paper* ballots using the standards promulgated by the State Board pursuant to subsection A.

2. For direct recording electronic 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.

3. For ~~optical scan tabulators~~ *ballot scanner machines*, the recount officials shall rerun all the *machine-readable* ballots through a ~~tabulator~~ *scanner* 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~~ *scanner*, and any ballots for which a ~~tabulator~~ *scanner* 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. If the total number of ~~paper~~ *machine-readable* ballots reported as counted by the ~~tabulator~~ *scanner* plus the total number of ballots set aside by the ~~tabulator~~ *scanner* do not equal the total number of ballots rerun through the ~~tabulator~~ *scanner*, then all ballots cast on ~~optical scan equipment~~ *ballot scanner machines* for that precinct shall be set aside to be counted by hand using the standards promulgated by the State Board pursuant to subsection A. Prior to running the *machine-readable* ballots through the ~~tabulator~~ *ballot scanner machine*, the recount officials shall ensure that logic and accuracy tests have been successfully performed on each ~~tabulator~~ *scanner* after the ~~tabulator~~ *scanner* has been programmed. The result calculated for ballots accepted by the ~~tabulator~~ *ballot scanner machine* during the recount shall be considered the correct determination for those *machine-readable* ballots unless the court finds sufficient cause to rule otherwise.

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 direct ~~recording electronic voting devices~~ *machines*, 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~~ *voting machines*, the figures recorded by the ~~devices~~ *machines* 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 recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond shall be forfeit only to the extent of the assessed costs. If the assessed costs exceed the bond, he shall be liable for such excess.

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

I. For the purposes of this section:

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

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

**2. That §§ 24.2-628 and 24.2-640 of the Code of Virginia are repealed.**

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