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**HOUSE BILL NO. 104**

Offered January 13, 2016

Prefiled December 15, 2015

*A BILL to amend and reenact § 24.2-659 of the Code of Virginia, relating to voting equipment; locking and sealing of voting and counting machines after election.*

\_\_\_\_\_  
Patron—O'Bannon

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Referred to Committee on Privileges and Elections

**Be it enacted by the General Assembly of Virginia:****1. That § 24.2-659 of the Code of Virginia is amended and reenacted as follows:****§ 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 machine is secured by the use of equipment keys, after the officers of election lock and seal each machine, the equipment keys 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 machine, the number on the seal, and the number of the protective counter, if one, on the 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.

B. If the voting or counting machines are secured by the use of equipment keys or electronic activation devices that are not specific to a particular machine, after the officers of election lock and seal each 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.

C. If the voting or counting machine is secured by removal of the data storage device used in that election, the officers shall remove the data storage device and proceed to lock and seal each machine. The data storage 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 machine, the number on the seal, and the number of the protective counter, if one, on the 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~~ *subsection F*.

D. If the voting or counting machine provides for the creation of a separate master electronic back-up on a data storage device that combines the data for all of the voting or counting machines in a given precinct, that data storage 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 data storage device for the individual machines may remain sealed in its individual machine until the expiration of the time specified by ~~this section~~ *subsection F*. 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~~ *subsection F*.

E. *If the voting or counting machine is secured by removal of the data storage device used in that election, and the only record of votes cast for any office or on any question is saved on that data storage device and not on the machine itself, the officers shall remove the data storage device and proceed to lock and seal each machine. The data storage 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 machine, the number on the seal, and the number of the protective counter, if one, on the 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 electoral board no later than noon on the day after the election.*

F. The voting and counting machines described in subsections A, B, C, and D shall remain locked and sealed until the deadline to request a recount under Chapter 8 (§ 24.2-800 et seq.) has passed and, if

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59 any contest or recount is pending thereafter, until it has been concluded. ~~The~~ *Such machines and any*  
60 *envelope containing data storage devices* shall be opened and all data examined only (i) on the order of  
61 a court of competent jurisdiction or (ii) on the request of an authorized representative of the State Board  
62 or the electoral board at the direction of the State Board in order to ensure the accuracy of the returns.  
63 In the event that machines *and data storage devices* are examined under clause (ii) ~~of this paragraph,~~  
64 each political party and each independent candidate on the ballot, or each primary candidate, shall be  
65 entitled to have a representative present during such examination. The representatives and observers  
66 lawfully present shall be prohibited from interfering with the officers of election in any way. The State  
67 Board or local electoral board shall provide such parties and candidates reasonable advance notice of the  
68 examination.

69 When recounts occur in precincts using direct recording electronic machines with printed return  
70 sheets, the printed return sheets delivered to the clerk may be used as the official evidence of the  
71 results.

72 When the required time has expired, the clerk of the circuit court shall return all voting equipment  
73 keys *and data storage devices* to the electoral board.

74 ~~B. G.~~ The local electoral board may direct ~~that~~ the officers of election and custodians, ~~in lieu of~~  
75 ~~conveying the~~ *that any sealed equipment keys or data storage devices that are otherwise required by*  
76 *the provisions of this section to be delivered* to the clerk of the circuit court ~~as provided in subsection~~  
77 ~~A, shall convey them~~ *shall instead be delivered* to the principal office of the general registrar ~~on the~~  
78 ~~night of~~ *no later than noon on the day following* the election. The general registrar shall secure and  
79 retain the sealed equipment keys and any other electronic locking or activation devices in his office and  
80 shall convey them to the clerk of the court by noon ~~of~~ *on* the day following the ascertainment of the  
81 results of the election by the electoral board.

82 *H. The provisions of this section requiring the locking and sealing of voting and counting machines*  
83 *shall not apply to any ballot marking device and its data storage device provided pursuant to*  
84 *§ 24.2-626.1, where the number of persons voting in the election or the number of votes cast for any*  
85 *office or on any question are not recorded by the ballot marking device.*