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SENATE BILL NO. 717

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Privileges and Elections
on February 21, 2020)

(Patron Prior to Substitute—Senator McClellan)

A BILL to amend and reenact §§ 24.2-304.1, 30-265, and 53.1-10 of the Code of Virginia and to amend the Code of Virginia by adding in Article 2 of Chapter 3 of Title 24.2 a section numbered 24.2-304.04, by adding in Chapter 3 of Title 24.2 an article numbered 5, consisting of a section numbered 24.2-314, and by adding a section numbered 53.1-5.2, relating to redistricting; congressional and state legislative districts; standards and criteria; population data.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-304.1, 30-265, and 53.1-10 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 2 of Chapter 3 of Title 24.2 a section numbered 24.2-304.04, by adding in Chapter 3 of Title 24.2 an article numbered 5, consisting of a section numbered 24.2-314, and by adding a section numbered 53.1-5.2 as follows:

§ 24.2-304.04. Standards and criteria for congressional and state legislative districts.

Every congressional and state legislative district shall be constituted so as to adhere to the following criteria:

1. Districts shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. A deviation of no more than five percent shall be permitted for state legislative districts.

2. Districts shall be drawn in accordance with the requirements of the Constitution of the United States, including the Equal Protection Clause of the Fourteenth Amendment, and the Constitution of Virginia; federal and state laws, including the federal Voting Rights Act of 1965, as amended; and relevant judicial decisions relating to racial and ethnic fairness.

3. No district shall be drawn that results in a denial or abridgement of the right of any citizen to vote on account of race or color or membership in a language minority group. No district shall be drawn that results in a denial or abridgement of the rights of any racial or language minority group to participate in the political process and to elect representatives of their choice. A violation of this subdivision is established if, on the basis of the totality of the circumstances, it is shown that districts were drawn in such a way that members of a racial or language minority group are dispersed into districts in which they constitute an ineffective minority of voters or are concentrated into districts where they constitute an excessive majority. The extent to which members of a racial or language minority group have been elected to office in the state or the political subdivision is one circumstance that may be considered. Nothing in this subdivision shall establish a right to have members of a racial or language minority group elected in numbers equal to their proportion in the population.

4. Districts shall be drawn to give racial and language minorities an equal opportunity to participate in the political process and shall not dilute or diminish their ability to elect candidates of choice either alone or in coalition with others.

5. Districts shall be drawn to preserve communities of interest. For purposes of this subdivision, a "community of interest" means a neighborhood or any geographically defined group of people living in an area who share similar social, cultural, and economic interests. A "community of interest" does not include a community based upon political affiliation or relationship with a political party, elected official, or candidate for office.

6. Districts shall be composed of contiguous territory, with no district contiguous only by connections by water running downstream or upriver, and political boundaries may be considered.

7. Districts shall be composed of compact territory and shall be drawn employing one or more standard numerical measures of individual and average district compactness, both statewide and district by district.

8. A map of districts shall not, when considered on a statewide basis, unduly favor or disfavor any political party.

9. The whole number of persons reported in the most recent federal decennial census by the United States Bureau of the Census shall be the basis for determining district populations, except that no person shall be deemed to have gained or lost a residence by reason of conviction and incarceration in a federal, state, or local correctional facility. Persons incarcerated in a federal, state, or local correctional facility shall be counted in the locality of their address at the time of incarceration, and the Division of Legislative Services shall adjust the census data pursuant to § 24.2-314 for this purpose.

§ 24.2-304.1. At-large and district elections; reapportionment and redistricting of districts or wards; limits.

60 A. Except as otherwise specifically limited by general law or special act, the governing body of each
61 county, city, or town may provide by ordinance for the election of its members on any of the following
62 bases: (i) at large from the county, city, or town; (ii) from single-member or multi-member districts or
63 wards, or any combination thereof; or (iii) from any combination of at-large, single-member, and
64 multi-member districts or wards. A change in the basis for electing the members of the governing body
65 shall not constitute a change in the form of county government.

66 B. If the members are elected from districts or wards and other than entirely at large from the
67 locality, the districts or wards shall be composed of contiguous and compact territory and shall be so
68 constituted as to give, as nearly as is practicable, representation in proportion to the population of the
69 district or ward. In 1971 and every 10 years thereafter, the governing body of each such locality shall
70 reapportion the representation among the districts or wards, including, if the governing body deems it
71 appropriate, increasing or diminishing the number of such districts or wards, in order to give, as nearly
72 as is practicable, representation on the basis of population.

73 C. For the purposes of redistricting and reapportioning representation in 2001 2021 and every 10
74 years thereafter, the governing body of a county, city, or town shall use the most recent decennial
75 population figures for such county, city, or town from the United States Bureau of the Census, ~~which~~
76 ~~figures are identical to those from the actual enumeration conducted by the United States Bureau of the~~
77 ~~Census for the apportionment of representatives in the United States House of Representatives, except~~
78 ~~that the as adjusted by the Division of Legislative Services pursuant to § 24.2-314. The census data for~~
79 these redistricting and apportionment purposes will not include any population figure that is not
80 allocated to specific census blocks within the Commonwealth, even though that population may have
81 been included in the apportionment population figures of the Commonwealth for the purpose of
82 allocating United States House of Representatives seats among the states. ~~The governing body of any~~
83 ~~county, city, or town may elect to exclude the adult inmate population of any federal, state, or regional~~
84 ~~adult correctional facility located in the locality from the population figures used for the purposes of the~~
85 ~~decennial reapportionment and redistricting. The adult inmate population so excluded shall be based on~~
86 ~~information provided by the facility as to the adult inmate population at the facility on the date of the~~
87 ~~decennial census.~~

88 D. Notwithstanding any other provision of general law or special act, the governing body of a
89 county, city, or town shall not reapportion the representation in the governing body at any time other
90 than that required following the decennial census, except as (i) provided by law upon a change in the
91 boundaries of the county, city, or town that results in an increase or decrease in the population of the
92 county, city, or town of more than one percent, (ii) the result of a court order, (iii) the result of a
93 change in the form of government, or (iv) the result of an increase or decrease in the number of districts
94 or wards other than at-large districts or wards. The foregoing provisions notwithstanding, the governing
95 body subsequent to the decennial redistricting may adjust district or ward boundaries in order that the
96 boundaries might coincide with state legislative or congressional district boundaries; however, no
97 adjustment shall affect more than five percent of the population of a ward or district or 250 persons,
98 whichever is lesser. If districts created by a reapportionment enacted subsequent to a decennial
99 reapportionment are invalid under the provisions of this subsection, the immediately preexisting districts
100 shall remain in force and effect until validly reapportioned in accordance with law.

101 Article 5.

102 Population Data.

103 § 24.2-314. Population data; reallocation of prison populations.

104 A. Persons incarcerated in federal correctional facilities and in state and local correctional facilities,
105 as those terms are defined in § 53.1-1, shall be counted and reallocated for redistricting and
106 reapportionment purposes in accordance with the provisions of this section and the following:

107 1. A person incarcerated in a federal, state, or local correctional facility whose address at the time
108 of incarceration was located within the Commonwealth shall be deemed to reside at such address.

109 2. A person incarcerated in a federal, state, or local correctional facility whose address at the time
110 of incarceration was located outside of the Commonwealth or whose address at the time of
111 incarceration cannot be determined shall be deemed to reside at the location of the facility in which he
112 is incarcerated.

113 B. By July 1 of any year in which the decennial census is taken, the Department of Corrections and
114 the Board of Corrections shall provide to the Division of Legislative Services, in a format specified by
115 the Division of Legislative Services, the following information for each person who was incarcerated in
116 a state or local correctional facility on April 1 of that year:

117 1. A unique identifier, other than his name or offender identification number, assigned by the
118 Department of Corrections or the Board of Corrections for this purpose;

119 2. His residential street address at the time of incarceration, or other legal residence, if known;

120 3. His race, his ethnicity as identified by him, and whether he is 18 years of age or older; and

121 4. The street address of the correctional facility in which he was incarcerated on April 1 of that

year.

C. The Division of Legislative Services shall request each agency operating a federal correctional facility in the Commonwealth that incarcerates persons convicted of a criminal offense to provide to the Division of Legislative Services by July 1 of any year in which the decennial census is taken a record containing the information specified in subsection B for each person who was incarcerated in the facility on April 1 of that year. Any person incarcerated in a federal correctional facility for whom a record is not received by the Division of Legislative Services shall be deemed to have an address at the time of incarceration that cannot be determined.

D. The Division of Legislative Services shall prepare adjusted population data, including race and ethnicity data, in a manner that reflects the inclusion of incarcerated persons in the population count of the locality in which he is deemed to reside pursuant to subdivision A 1 or 2.

This adjusted population data shall be used for purposes of redistricting and reapportionment and shall be the basis for congressional, state Senate, House of Delegates, and local government election districts. This adjusted population data shall not be used in the distribution of any federal or state aid.

E. The Division of Legislative Services shall make the adjusted population data available no later than 30 days following receipt of population data from the United States Bureau of the Census pursuant to P.L. 94-171. In making this data available, the Division of Legislative Services shall ensure no information regarding a specific incarcerated person's address at the time of incarceration is made public.

§ 30-265. Reapportionment of congressional and state legislative districts; United States Census population counts.

For the purposes of redrawing the boundaries of the congressional, state Senate, and House of Delegates districts after the United States Census for the year 2000 2020 and every 10 years thereafter, the General Assembly shall use the population data provided by the United States Bureau of the Census identical to those from the actual enumeration conducted by the Bureau for the apportionment of the Representatives of the United States House of Representatives following the United States decennial census, except that the as adjusted by the Division of Legislative Services pursuant to § 24.2-314. The census data used for this apportionment purpose shall not include any population figure which is not allocated to specific census blocks within the Commonwealth, even though that population may have been included in the apportionment population figures of the Commonwealth for the purpose of allocating United States House of Representatives seats among the states.

§ 53.1-5.2. Compilation of certain data for redistricting purposes.

A. The Board shall direct the sheriffs of all local jails and the jail superintendents of all regional jails to provide to it, no later than May 1 of any year in which the decennial census is taken, information regarding each person incarcerated in a local or regional jail on April 1 of that year. Such information shall include, for each person incarcerated, (i) his residential street address at the time of incarceration, or other legal residence, if known; (ii) his race, his ethnicity as identified by him, and whether he is 18 years of age or older; and (iii) the street address of the correctional facility in which he was incarcerated on April 1 of that year. Upon receipt of such information, the Board shall assign to each person a unique identifier, other than his name or offender identification number.

B. Pursuant to § 24.2-314, the Board shall provide to the Division of Legislative Services, not later than July 1 of any year in which the decennial census is taken and in a format specified by the Division of Legislative Services, the information specified in subsection A, including the Board-assigned unique identifier.

§ 53.1-10. Powers and duties of Director.

The Director shall be the chief executive officer of the Department and shall have the following duties and powers:

1. To supervise and manage the Department and its system of state correctional facilities;
2. To implement the standards and goals of the Board as formulated for local and community correctional programs and facilities and lock-ups;
3. To employ such personnel and develop and implement such programs as may be necessary to carry out the provisions of this title, subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2, and within the limits of appropriations made therefor by the General Assembly;
4. To establish and maintain a general system of schools for persons committed to the institutions and community-based programs for adults as set forth in § 53.1-67.9. Such system shall include, as applicable, elementary, secondary, postsecondary, career and technical education, adult, and special education schools.

a. The Director shall employ a Superintendent who will oversee the operation of educational and vocational programs in all institutions and community-based programs for adults as set forth in § 53.1-67.9 operated by the Department. The Department shall be designated as a local education agency (LEA) but shall not be eligible to receive state funds appropriated for direct aid to public education.

183 b. When the Department employs a teacher licensed by the Board of Education to provide instruction
184 in the schools of the correctional centers, the Department of Human Resource Management shall
185 establish salary schedules for the teachers which endeavor to be competitive with those in effect for the
186 school division in which the correctional center is located.

187 c. The Superintendent shall develop a functional literacy program for inmates testing below a
188 selected grade level, which shall be at least at the twelfth grade level. The program shall include
189 guidelines for implementation and test administration, participation requirements, criteria for satisfactory
190 completion, and a strategic plan for encouraging enrollment at an institution of higher education or an
191 accredited vocational training program or other accredited continuing education program.

192 d. For the purposes of this section, the term "functional literacy" shall mean those educational skills
193 necessary to function independently in society, including, but not limited to, reading, writing,
194 comprehension, and arithmetic computation.

195 e. In evaluating a prisoner's educational needs and abilities pursuant to § 53.1-32.1, the
196 Superintendent shall create a system for identifying prisoners with learning disabilities.

197 5. a. To make and enter into all contracts and agreements necessary or incidental to the performance
198 of the Department's duties and the execution of its powers under this title, including, but not limited to,
199 contracts with the United States, other states, and agencies and governmental subdivisions of this
200 Commonwealth, and contracts with corporations, partnerships, or individuals which include, but are not
201 limited to, the purchase of water or wastewater treatment services or both as necessary for the expansion
202 or construction of correctional facilities, consistent with applicable standards and goals of the Board;

203 b. Notwithstanding the Director's discretion to make and enter into all contracts and agreements
204 necessary or incidental to the performance of the Department's duties and the execution of its powers
205 under this title, upon determining that it shall be desirable to contract with a public or private entity for
206 the provision of community-based residential services pursuant to Chapter 5 (§ 53.1-177 et seq.), the
207 Director shall notify the local governing body of the jurisdiction in which the facility is to be located of
208 the proposal and of the facility's proposed location and provide notice, where requested, to the chief
209 law-enforcement officer for such locality when an offender is placed in the facility at issue;

210 c. Notwithstanding the Director's discretion to make and enter into all contracts and agreements
211 necessary or incidental to the performance of the Department's duties and the execution of its powers
212 under this title, upon determining that it is necessary to transport Virginia prisoners through or to
213 another state and for other states to transport their prisoners within the Commonwealth, the Director may
214 execute reciprocal agreements with other states' corrections agencies governing such transports that shall
215 include provisions allowing each state to retain authority over its prisoners while in the other state.

216 6. To accept, hold and enjoy gifts, donations and bequests on behalf of the Department from the
217 United States government and agencies and instrumentalities thereof, and any other source, subject to the
218 approval of the Governor. To these ends, the Director shall have the power to comply with such
219 conditions and execute such agreements as may be necessary, convenient or desirable, consistent with
220 applicable standards and goals of the Board;

221 7. To collect data pertaining to the demographic characteristics of adults, and juveniles who are
222 adjudicated as adults, incarcerated in state correctional institutions, including, but not limited to, the race
223 or ethnicity, age, and gender of such persons, whether they are a member of a criminal gang, and the
224 types of and extent to which health-related problems are prevalent among such persons. Beginning July
225 1, 1997, such data shall be collected, tabulated quarterly, and reported by the Director to the Governor
226 and the General Assembly at each regular session of the General Assembly thereafter. The report shall
227 be submitted as provided in the procedures of the Division of Legislative Automated Systems for the
228 processing of legislative documents and reports;

229 8. To make application to the appropriate state and federal entities so as to provide any prisoner who
230 is committed to the custody of the state a Department of Motor Vehicles approved identification card
231 that would expire 90 days from issuance, a copy of his birth certificate if such person was born in the
232 Commonwealth, and a social security card from the Social Security Administration;

233 9. To forward to the Commonwealth's Attorneys' Services Council, updated on a monthly basis, a list
234 of all identified criminal gang members incarcerated in state correctional institutions. The list shall
235 contain identifying information for each criminal gang member, as well as his criminal record;

236 10. To give notice, to the attorney for the Commonwealth prosecuting a defendant for an offense that
237 occurred in a state correctional facility, of that defendant's known gang membership. The notice shall
238 contain identifying information for each criminal gang member as well as his criminal record;

239 11. To designate employees of the Department with internal investigations authority to have the same
240 power as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior
241 affecting the operations of the Department. Such employees shall be subject to any minimum training
242 standards established by the Department of Criminal Justice Services under § 9.1-102 for
243 law-enforcement officers prior to exercising any law-enforcement power granted under this subdivision.
244 Nothing in this section shall be construed to grant the Department any authority over the operation and

245 security of local jails not specified in any other provision of law. The Department shall investigate
246 allegations of criminal behavior in accordance with a written agreement entered into with the
247 Department of State Police. The Department shall not investigate any action falling within the authority
248 vested in the Office of the State Inspector General pursuant to Chapter 3.2 (§ 2.2-307 et seq.) of Title
249 2.2 unless specifically authorized by the Office of the State Inspector General;

250 12. To enforce and direct the Department to enforce regulatory policies promulgated by the Board
251 prohibiting the possession of obscene materials, as defined in Article 5 (§ 18.2-372 et seq.) of Chapter 8
252 of Title 18.2, by prisoners incarcerated in state correctional facilities; ~~and~~

253 13. To develop and administer a survey of each correctional officer, as defined in § 53.1-1, who
254 resigns, is terminated, or is transitioned to a position other than correctional officer for the purpose of
255 evaluating employment conditions and factors that contribute to or impede the retention of correctional
256 officers; *and*

257 14. *To provide, pursuant to § 24.2-314, to the Division of Legislative Services, not later than July 1*
258 *of any year in which the decennial census is taken and in a format specified by the Division of*
259 *Legislative Services, information regarding each person incarcerated in a state correctional facility on*
260 *April 1 of that year. Such information shall include, for each person incarcerated, (i) a unique*
261 *identifier, other than his name or offender identification number, assigned by the Director; (ii) his*
262 *residential street address at the time of incarceration, or other legal residence, if known; (iii) his race,*
263 *his ethnicity as identified by him, and whether he is 18 years of age or older; and (iv) the street address*
264 *of the correctional facility in which he was incarcerated on April 1 of that year.*