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SENATE BILL NO. 605

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend the Code of Virginia by adding a section numbered 24.2-671.2, relating to elections; conduct of election; election results; post-election forensic audits.

Patron—Chase

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 24.2-671.2 as follows:

§ 24.2-671.2. Post-election forensic audits.

A. A forensic audit of an election in a county or city shall be conducted at the request of any elected official representing individuals in that county or city or of any election official who worked in the election in question or upon a petition signed by at least 1,000 residents of the county or city. Such request or petition shall be filed with the clerk of the circuit court for that county or city after the day of the election and no later than seven days after the certification of results for that election by the local electoral board. The request shall identify a qualified and independent third party that has agreed to be responsible for coordinating the audit.

B. Forensic audits conducted pursuant to this section shall be for the purpose of determining the accuracy and legality of the election in question and shall include a review of all materials, equipment, and procedures used during any part of the election, including ballots, pollbooks, voting machines, and routers. The audit shall be open to the public and may provide for the participation of residents of the county or city in the audit process.

C. The results of the audit shall be presented to a jury composed of randomly selected residents of the county or city in which the election results are being audited. The jury shall have the power to declare the validity or invalidity of the election based on the evidence presented. If the jury decides that the election is invalid, the jury shall declare the election void, and any vacancies shall be filled in conformity with §§ 24.2-226 and 24.2-227.

D. The cost of a forensic audit conducted pursuant to this section shall be assessed to the county or city in which the audit is conducted and may be reimbursed by federal, state, or private funds.

2. § 1. A. The State Inspector General shall coordinate and manage an audit of the 2020 general election conducted in the Commonwealth. The audit shall include statistically significant samples chosen from each county in the Commonwealth.

B. The State Inspector General shall issue a report to accompany the audit that shall include the following data related to the administration of the 2020 general election by the State Board of Elections, the Department of Elections, a local electoral board, or local general registrar:

1. For each locality and the sum for the Commonwealth, the number of applications for an absentee ballot that were received by the local registrar;

2. For each locality and the sum for the Commonwealth, the number of applications for an a absentee ballot that were approved by the local general registrar;

3. For each locality and the sum for the Commonwealth, the number of absentee ballots returned by qualified voters that were canvassed;

4. For each locality and the sum for the Commonwealth, the number of qualified voters voting by provisional ballot pursuant to § 24.2-651.1 of the Code of Virginia;

5. For each locality and the sum for the Commonwealth, the number of qualified voters voting by provisional ballot pursuant to § 24.2-652 of the Code of Virginia;

6. For each locality and the sum for the Commonwealth, the number of qualified voters voting by provisional ballot pursuant to § 24.2-653 of the Code of Virginia;

7. For each locality and the sum for the Commonwealth, the number of qualified voters voting by provisional ballot pursuant to § 24.2-653.1 of the Code of Virginia;

8. For each locality and the sum for the Commonwealth, the number of qualified voters voting by provisional ballot pursuant to § 24.2-653.2 of the Code of Virginia;

9. For each locality and the sum for the Commonwealth, the number of qualified voters voting by provisional ballot pursuant to § 24.2-653.3 of the Code of Virginia;

10. For each locality and the sum for the Commonwealth, the number of applications for an absentee ballot submitted by an individual who was not a registered voter at the time of the application and for whom a voter registration application was timely received;

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59 11. For each locality and the sum for the Commonwealth, the number of voter registration  
60 applications received:

61 a. Fewer than 30 days before the 2020 general election; and

62 b. Fewer than 15 days before the 2020 general election;

63 12. For each locality, the date and time that the general registrar began processing absentee ballots;

64 13. The number of incidents known to the State Board of Elections, the Department of Elections, a  
65 local electoral board, or a local general registrar relating to each of the following categories:

66 a. An absentee ballot that was sent to the wrong individual or wrong address;

67 b. An absentee ballot that was voted by an individual other than the individual who applied for the  
68 absentee ballot; or

69 c. An absentee ballot that was returned to the general registrar by a means other than that which is  
70 permissible by law, notwithstanding any court opinion or order;

71 14. To the extent consistent with federal and state law, a review of any action taken by the State  
72 Board of Elections, the Department of Elections, a local electoral board, or a local general registrar in  
73 response to an incident identified under subdivision 13, including determinations made on the incident,  
74 legal actions filed, and referrals to law enforcement;

75 15. A review of issues or incidents encountered with an electronic voting system that received the  
76 approval of the State Board of Elections pursuant to § 24.2-629 of the Code of Virginia, including any  
77 technical issues or software problems encountered in polling places and recommendations for spot  
78 verifications of tabulated votes as compared with reported votes;

79 16. A review of the audit logs (i) of any contractor having access to pollbooks, cloud storage, or  
80 any other network access in or around a central absentee precinct during early voting and (ii) of the  
81 voter registration system at any time during the 45 days prior to the election through the certification of  
82 results.

83 17. A review of any actions taken with respect to voting equipment during the 45 days prior to the  
84 election through the certification of results, including any testing, software or hardware update, moving  
85 of equipment, swapping of machines during the election and the appropriateness of such actions in light  
86 of Department of Elections and local electoral board equipment security protocols;

87 18. A review of any inconsistent treatment of absentee ballots received by localities after 7 p.m. on  
88 November 3, 2020, under Chapter 7 (§ 24.2-700 et seq.) of Title 24.2 of the Code of Virginia;

89 19. A review of any inconsistencies in the manner in which localities processed returned absentee  
90 ballots determined to be incomplete or otherwise deficient under Chapter 7 (§ 24.2-700 et seq.) of Title  
91 24.2 of the Code of Virginia;

92 20. A review of access given to authorized representatives as provided for under § 24.2-604.4 of the  
93 Code of Virginia, including any inconsistencies in the standards used in allowing access or disparate  
94 treatment of authorized representatives due to political affiliation;

95 21. A review of access given to additional persons authorized to observe elections as provided for  
96 under § 24.2-604.5 of the Code of Virginia, including any inconsistencies in the standards used in  
97 allowing access or disparate treatment of such observers due to political affiliation;

98 22. A review of issues or incidents regarding the use of drop boxes, the monitoring of drop boxes,  
99 and any inconsistencies in the monitoring and usage of drop boxes by localities; and

100 23. A review of issues or incidents of the review process of absentee ballots submitted by mail,  
101 absentee ballots submitted in person, and provisional ballots and any inconsistencies in the standards  
102 applied to determine eligibility of voters or the validity of ballots by each locality.

103 C. The State Inspector General may issue subpoenas requiring the attendance of witnesses and the  
104 production of books, accounts, papers, records, documents, and files and may examine such witnesses  
105 and documents to the extent that they are relevant to matters covered under this section.

106 D. The State Inspector General or his representative may invoke the aid of any court of record of  
107 the Commonwealth to enforce subpoenas issued pursuant to subsection C. Failure to obey an order of  
108 the court may be punished by contempt of court.

109 E. 1. Except as provided in subdivision 3, documentary material produced under this section may  
110 not, unless otherwise ordered by a court for good cause, be produced for inspection or copying to a  
111 person other than an authorized employee of the State Inspector General without the consent of the  
112 person who produced the material.

113 2. Except as provided in subdivision 3, the content of documentary material produced under this  
114 section may not, unless ordered by a court for good cause, be disclosed to a person other than an  
115 authorized employee of the State Inspector General without the consent of the person who produced the  
116 material.

117 3. Documentary material produced under this section shall be provided in a reasonable manner as  
118 determined by the State Inspector General. A person shall not be required to compile, maintain, format,  
119 or organize documentary material in a manner in which the person does not currently compile,  
120 maintain, or format, or organize the documentary material.

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