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SENATE BILL NO. 1380

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact § 24.2-545 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 5 of Title 24.2 an article numbered 8, consisting of sections numbered 24.2-546 through 24.2-550, relating to elections; presidential primaries; ranked choice voting.

Patrons—Deeds, Boysko, McClellan and McPike

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That § 24.2-545 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 5 of Title 24.2 an article numbered 8, consisting of sections numbered 24.2-546 through 24.2-550, as follows:

§ 24.2-545. Presidential primary.

A. The duly constituted authorities of the state political party shall have the right to determine the method by which the state party will select its delegates to the national convention to choose the party's nominees for President and Vice President of the United States including a presidential primary or another method determined by the party.

A party that intends to hold a presidential primary shall determine whether it intends to use ranked choice voting pursuant to Article 8 (§ 24.2-546 et seq.) and, if so determining, shall indicate whether the party will award delegates on a winner-take-all basis or a proportional basis. If the party chooses to award delegates on a proportional basis, the party shall indicate (i) the applicable amount of votes that is required for a candidate to receive delegates and (ii) whether delegates are allocated on the basis of primary results in individual congressional districts. If a party notifies the State Board that it intends to hold a presidential primary using ranked choice voting but fails to specify how to award its delegates, the presidential primary for that party shall be tabulated using ranked choice voting on a winner-take-all basis.

The state chairman shall notify the State Board of the party's determination at least ~~90~~ 150 days before the primary date.

If the party has determined that it will hold a presidential primary, each registered voter of the Commonwealth shall be given an opportunity to participate in the presidential primary of the political party, as defined in § 24.2-101, subject to requirements determined by the political party for participation in its presidential primary. The requirements may include, but shall not be limited to, the signing of a pledge by the voter of his intention to support the party's candidate when offering to vote in the primary. The requirements applicable to a party's primary shall be determined at least ~~90~~ 120 days prior to the primary date and certified to, and approved by, the State Board.

At least 90 days before the date of the presidential primary, the Department of Elections shall confirm with the state committee of each political party that the Commonwealth is capable of implementing the party's preferences or shall notify the state committee of any feasibility constraints that could prevent the Commonwealth from implementing the party's preferences.

If the party has determined that it will hold a presidential primary using ranked choice voting, then the primary shall be conducted according to the provisions of Article 8 (§ 24.2-546 et seq.) unless fewer than three candidates qualify to have their names appear on the ballot.

B. Any person seeking the nomination of the national political party for the office of President of the United States, or any group organized in the Commonwealth on behalf of, and with the consent of such person, may file with the State Board petitions signed by at least 5,000 qualified voters, including at least 200 qualified voters from each congressional district in the Commonwealth, who attest that they intend to participate in the primary of the same political party as the candidate for whom the petitions are filed. Such petitions shall be filed with the State Board by the primary filing deadline. The petitions shall be on a form prescribed by the State Board and shall be sealed in one or more containers to which is attached a written statement giving the name of the presidential candidate and the number of signatures on the petitions contained in the containers. Such person or group shall also attach a list of the names of persons who would be elected delegates and alternate delegates to the political party's national convention if the person wins the primary and the party has determined that its delegates will be selected pursuant to the primary. The slate of delegates and alternates shall comply with the rules of the national and state party.

The State Board shall transmit the material so filed to the state chairman of the party of the

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59 candidate immediately after the primary filing deadline. The sealed containers containing the petitions
60 for a candidate may be opened only by the state chairman of the party of the candidate. The state
61 chairman of the party shall, by the deadline set by the State Board, furnish to the State Board the names
62 of all candidates who have satisfied the requirements of this section. In furnishing the name of each
63 such candidate, the state chairman shall certify that a review of the filed candidate petitions found the
64 required minimum number of signatures of qualified voters for that office to have been met. Whenever
65 only one candidate for a party's nomination for President of the United States has met the requirements
66 to have his name on the ballot, he will be declared the winner and no presidential primary for that party
67 will be held.

68 C. The names of all candidates in the presidential primary of each political party shall appear on the
69 ballot in an order determined by lot by the State Board.

70 D. The State Board shall certify the results of the presidential primary to the state chairman. If the
71 party has determined that its delegates and alternates will be selected pursuant to the primary, the slate
72 of delegates and alternates of the candidate receiving the most votes in the primary shall be deemed
73 elected by the state party unless the party has determined another method for allocation of delegates and
74 alternates. If the party has determined to use another method for selecting delegates and alternates, those
75 delegates and alternates shall be bound to vote on the first ballot at the national convention for the
76 candidate receiving the most votes in the primary unless that candidate releases those delegates and
77 alternates from such vote.

78 E. The election, or binding of votes, of delegates to a political party's national convention for the
79 nomination of that party's candidates for President and Vice President of the United States through the
80 presidential primary process shall be considered to be equivalent to a primary for the nomination of a
81 party's candidate.

82 F. The cost of the presidential primary shall be paid by the Commonwealth pursuant to the
83 provisions of the appropriation act.

84 Article 8.

85 Ranked Choice Voting in Presidential Primaries.

86 § 24.2-546. Definitions.

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

88 "Active candidate" means any candidate who has not been eliminated during tabulation or has not
89 withdrawn.

90 "Ranking" means the ordinal number available to be assigned by a voter to a candidate to express
91 the voter's choice for that candidate.

92 "Undervote" means a ballot that does not contain any candidates at any ranking in a particular
93 contest.

94 § 24.2-547. Form of ballot.

95 A. A ballot in an election conducted pursuant to this article shall allow a voter to rank a party's
96 candidates in his order of choice. Rankings shall be consecutive starting with the number "1"
97 representing the highest ranking, followed by "2," and then "3," and so on, down to the lowest
98 allowable ranking.

99 B. A ballot in an election conducted pursuant to this article shall allow a voter to assign as many
100 rankings as there are qualified candidates on the ballot. However, if any voting equipment used within
101 the Commonwealth cannot accommodate a number of rankings on the ballot equal to the number of
102 qualified candidates, the State Board may limit the number of rankings a voter may assign on the ballot
103 to the maximum number allowed by the equipment, provided that the number of rankings allowed is no
104 fewer than three and is uniform across the state.

105 § 24.2-548. Tabulation of ranked choice ballots.

106 A. A ballot is inactive if it (i) does not contain an active candidate at any ranking and is not an
107 undervote, (ii) has reached an instance in which a voter has ranked more than one candidate at the
108 same ranking, or (iii) has left two or more consecutive rankings unassigned before the next highest
109 ranking. An inactive ballot does not count for any candidate.

110 B. An undervote does not count as an active or inactive ballot in any round of tabulation.

111 C. If a party awards all of the state's delegates to a single candidate on a winner-take-all basis
112 using ranked choice voting, tabulation shall proceed as follows:

113 1. Each ballot counts as one vote for the highest ranked active candidate on that ballot. If a
114 candidate receives a majority of the votes counting toward active candidates, that candidate shall be
115 declared the winner. If no candidate receives a majority of the votes counting toward active candidates,
116 tabulation proceeds to subdivision 2.

117 2. The active candidate with the fewest votes is eliminated, and a new round of tabulation begins
118 with subdivision 1.

119 D. If a party awards the state's delegates to multiple candidates on a proportional basis using
120 ranked choice voting, tabulation shall proceed as follows:

1. Each ballot counts as one vote for the highest ranked active candidate on that ballot. If the vote total of every active candidate is above the amount of votes necessary for a candidate to receive delegates, as prescribed by the party, then tabulation is complete. If the vote total of any active candidate is below the threshold for election, tabulation proceeds to subdivision 2.

2. The active candidate with the fewest votes is eliminated, and a new round of tabulation begins with subdivision 1.

E. If two or more candidates are tied with the fewest votes and tabulation cannot continue until the candidate with the fewest votes is eliminated, then the State Board shall proceed publicly to determine by lot the candidate to be eliminated.

§ 24.2-549. Results reporting.

A. The Department of Elections shall provide instructions for the release of unofficial preliminary round-by-round tabulation results and unofficial preliminary cast vote records as soon as feasible after the polls close and at regular intervals thereafter until the counting of ballots is complete. Unofficial preliminary round-by-round tabulation results shall be clearly labeled as preliminary and, to the extent feasible, shall include the percentage of ballots counted to date. Unofficial preliminary cast vote records shall be (i) clearly labeled as preliminary and, to the extent feasible, shall include the percentage of ballots counted to date; (ii) published online in a publicly accessible, electronic format; and (iii) identifiable by precinct. In adopting rules or guidance under this subsection, the Department of Elections shall consult with and allow for input from local election officials and national and state party representatives.

B. In addition to any other information required by law to be reported with final results, the Department of Elections shall make public:

1. The total number of votes each candidate received in each round of tabulation, including votes for withdrawn candidates;

2. The total number of ballots that became inactive in each round of tabulation because they (i) did not contain an active candidate at any ranking and were not undervotes, (ii) reached an instance in which a voter has ranked more than one candidate at the same ranking, or (iii) left two or more consecutive rankings unassigned before the next highest ranking; and

3. Whether the party has chosen to award delegates on a winner-take-all basis or a proportional basis, and, with the consent of a majority of the State Board, the national party chair, and the state party chair, the total round-by-round tabulation results for the election had the party chosen to award delegates differently.

C. If a party has chosen to award delegates by congressional districts, the Department of Elections shall make public the results in accordance with subsection B for each congressional district in addition to statewide results.

D. As soon as feasible, the Department of Elections shall publish final results data by precinct.

§ 24.2-550. Rulemaking authority.

The State Board shall have the authority to promulgate whatever rules are necessary to implement the provisions of this article.