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HOUSE BILL NO. 441

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Privileges and Elections
on February 2, 2024)

(Patrons Prior to Substitute—Delegates Bennett-Parker, Thomas [HB 43], and Higgins [HB 1222])
A BILL to amend and reenact §§ 24.2-101 and 24.2-649.1 of the Code of Virginia, relating to assistance for certain voters outside of the polling place; definition of "person with a disability"; training.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-101 and 24.2-649.1 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 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, § 4 of the Constitution of Virginia: clerk of the circuit court, attorney for the Commonwealth, sheriff, commissioner of the revenue, and treasurer.

"Department of Elections" or "Department" 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.

"General registrar" means the person appointed by the electoral board of a county or city pursuant to § 24.2-110 to be responsible for all aspects of voter registration, in addition to other duties prescribed by this title. When performing duties related to the administration of elections, the general registrar is acting in his capacity as the director of elections for the locality in which he serves.

"Machine-readable ballot" means a tangible ballot that is marked by a voter or by a system or device operated by a voter, is available for verification by the voter at the time the ballot is cast, and is then fed into and scanned by a separate 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.

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

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

66 "Person with a disability" means a person with a disability as defined by the Virginians with
67 Disabilities Act (~~§ 51.5-1 et seq.~~) in § 51.5-40.1.

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

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

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

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

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

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

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

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

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

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

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

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

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

117 "Voting system" means the electronic voting and counting machines used at elections, including
118 direct recording electronic machines (DRE), ballot scanner machines, and on-demand ballot printing
119 systems and ballot marking devices used to manufacture or mark ballots to be cast by voters on
120 electronic voting and counting machines.

121 **§ 24.2-649.1. Assistance for certain voters outside of the polling place.**

A. Any *qualified* voter who is a person with a disability or who is age 65 or older shall be entitled to vote outside of the polling place in accordance with the provisions of this section. However, during a declared state of emergency related to a communicable disease of public health threat, any voter, regardless of age or disability, shall be entitled to vote outside of the polling place in accordance with the provisions of this section. For purposes of this section, a disability shall include a permanent physical disability, a *or* temporary physical disability, or an injury.

B. The area designated for voting outside of the polling place shall be within 150 feet of the entrance to the polling place. This area shall be clearly marked, and instructions on how to notify an officer of election of the voter's request to vote outside of the polling place shall be prominently displayed. The Department shall prescribe the form and content of such instructions, but in no case shall the voter be required to enter the polling place to provide such notice.

C. A voter eligible pursuant to subsection A shall be handed a printed ballot by an officer of election. He shall mark the ballot in the officer's presence but in a secret manner and, obscuring his vote, shall return the ballot to the officer. The officer shall immediately return to the polling place and shall deposit a paper ballot in the ballot container in accordance with § 24.2-646 or a machine-readable ballot in the ballot scanner machine in accordance with the instructions of the State Board.

D. Any county or city that has acquired an electronic voting machine that is so constructed as to be easily portable may use the voting machine in lieu of a printed ballot for voting outside of the polling place, so long as: (i) the voting 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 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 § 24.2-649.

After the voter has completed voting his ballot, the officer or officers shall immediately return the voting machine to its assigned location inside the polling place, and shall record (a) the machine number, (b) the time that the machine was removed and the time that it was returned, (c) 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 (d) the name or names of the officer or officers who accompanied the machine on the statement of results. The names of the voters who used the machine while it was removed shall also be recorded, provided that secrecy of the ballot is maintained in accordance with guidance from the State Board. If a polling place fails to record the information required in clause (a), (b), (c), or (d), or it is later proven that the information recorded was intentionally falsified, the local electoral board or general registrar 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.

E. *Training on providing assistance for voters outside of the polling place pursuant to this section shall be provided to all officers of election as part of the training required by subsection A of § 24.2-115.2.*

2. That the Department of Elections shall incorporate into guidance documents for election officials the processes and procedures for voting outside of the polling place pursuant to § 24.2-649.1 of the Code of Virginia, as amended by this act, including best practices for providing assistance for voters with disabilities.