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HOUSE BILL NO. 623

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Privileges and Elections
 on February 27, 2024)

(Patron Prior to Substitute—Delegate Price)

A BILL to amend and reenact §§ 24.2-126, 24.2-128, 24.2-129, 24.2-130, 24.2-701.1, and 24.2-701.2 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1.1 of Title 24.2 a section numbered 24.2-132, relating to rights of voters; covered practices; civil cause of action; standing, jurisdiction, and venue.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-126, 24.2-128, 24.2-129, 24.2-130, 24.2-701.1, and 24.2-701.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1.1 of Title 24.2 a section numbered 24.2-132 as follows:

§ 24.2-126. Vote denial or dilution.

A. No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by the state or any locality in a manner that results in a denial or abridgement of the right of any citizen of the United States to vote based on race or color or membership in a language minority group.

B. A violation of subsection A is established if, on the basis of the totality of circumstances, it is shown that the political processes leading to nomination or election in the state or a locality are not equally open to participation by members of a protected class in that its members have less opportunity than other members of the electorate to participate in the political processes or to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the state or locality is one circumstance that may be considered.

C. Any voter who is a member of a protected class, as defined in § 24.2-125, any organization whose membership includes voters who are members of a protected class, any organization whose mission, in whole or in part, is to ensure voting access and such mission would be hindered by a violation of this section, or the Attorney General shall be entitled to initiate a cause of action in accordance with § 24.2-132.

D. Nothing in this section shall be construed to establish a right to have members of a protected class elected in numbers equal to their proportion in the population.

§ 24.2-128. Minority language accessibility.

A. The State Board shall designate a county, city, or town as a covered locality if it determines, in consultation with the Director of the Census, on the basis of the 2010 American Community Survey census data and subsequent American Community Survey data in five-year increments, or comparable census data, that (i) more than five percent of the citizens of voting age of such county, city, or town are members of a single language minority and are unable to speak or understand English adequately enough to participate in the electoral process; (ii) more than 10,000 of the citizens of voting age of such county, city, or town are members of a single language minority and are unable to speak or understand English adequately enough to participate in the electoral process; or (iii) in the case of a county, city, or town containing all or any part of an Indian reservation, more than five percent of the American Indian citizens of voting age within the Indian reservation are members of a single language minority and are unable to speak or understand English adequately enough to participate in the electoral process.

B. Whenever a covered locality provides any voting or election materials, it shall provide such materials in the language of the applicable minority group as well as in the English language. For purposes of this requirement, "voting or election materials" means registration or voting notices, forms, instructions, assistance, voter information pamphlets, ballots, sample ballots, candidate qualification information, and notices regarding changes to local election districts, precincts, or polling places. For purposes of this requirement, "registration notices" means any notice of voter registration approval, denial, or cancellation required by the provisions of Chapter 4 (§ 24.2-400 et seq.). A covered locality may distribute such materials in the preferred language identified by the voter.

C. ~~The Attorney General, or any~~ Any qualified voter who is a member of a language minority group for whom a covered locality is required to provide voting or election materials in such language, ~~any organization whose membership includes such voters, any organization whose mission, in whole or in part, is to ensure voting access and such mission would be hindered by a violation of this section, or the Attorney General may institute a cause of action in the circuit court of the covered locality to compel the provision of the voting or election materials in the language of the applicable minority group. In such action, the court may, in its discretion, allow a private plaintiff a reasonable attorney fee as part of the costs, if such plaintiff is the prevailing party in accordance with § 24.2-132.~~

§ 24.2-129. Covered practices; actions required prior to enactment or administration.

A. For the purposes of this section:

"Certification of no objection" means a certification issued by the Attorney General that there is no objection to the enactment or administration of a covered practice by a locality because the covered practice neither has the purpose or effect of denying or abridging the right to vote based on race or color or membership in a language minority group nor will result in the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise.

"Covered practice" means:

1. Any change to the method of election of members of a governing body or an elected school board by adding seats elected at large or by converting one or more seats elected from a single-member district to one or more at-large seats or seats from a multi-member district;

2. Any change, or series of changes within a 12-month period, to the boundaries of the locality that reduces by more than five percentage points the proportion of the locality's voting age population that is composed of members of a single racial or language minority group, as determined by the most recent American Community Survey data;

3. Any change to the boundaries of election districts or wards in the locality, including changes made pursuant to a decennial redistricting measure;

4. Any change that restricts the ability of any person to provide interpreter services to voters in any language other than English or that limits or impairs the creation or distribution of voting or election materials in any language other than English; or

5. Any change that reduces the number of or consolidates or relocates polling places or voter satellite offices in the locality, except where permitted by law in the event of an emergency or when such change is made in accordance with the plan established pursuant to subsection C of § 24.2-701.2; or

6. Any change that reduces the days or hours of operation of any voter satellite office in the locality or deviates from the plan established pursuant to subsection C of § 24.2-701.2 outside of the parameters set forth in such plan.

"Voting age population" means the resident population of persons who are 18 years of age or older, as determined by the most recent American Community Survey data available at the time any change to a covered practice is published pursuant to subsection B.

B. Prior to enacting or seeking to administer any voting qualification or prerequisite to voting, or any standard, practice, or procedure with respect to voting, that is a covered practice, the a local governing body shall cause to be published on the official website for the locality the proposed covered practice and general notice of opportunity for public comment on the proposed covered practice. The governing body shall also publicize the notice through press releases and such other media as will best serve the purpose and subject involved. Such notice shall be made at least 45 days in advance of the last date prescribed in the notice for public comment.

Public comment shall be accepted for a period of no fewer than 30 days. During this period, the governing body shall afford interested persons an opportunity to submit data, views, and arguments in writing by mail, fax, or email, or through an online public comment forum on the official website for the locality if one has been established. The governing body shall conduct at least one public hearing during this period to receive public comment on the proposed covered practice.

The governing body may make changes to the proposed covered practice in response to public comment received. If doing so, the revised covered practice shall be published and public comment shall be accepted in accordance with this subsection, except the public comment period shall be no fewer than 15 days.

C. Following the public comment period or periods prescribed in subsection B, the governing body shall publish the final covered practice, which shall include a plain English description of the practice and the text of an ordinance giving effect to the practice, maps of proposed boundary changes, or other relevant materials, and notice that the covered practice will take effect in 30 days. During this 30-day waiting period, any person who will be subject to or affected by the covered practice, any organization whose membership includes persons who will be subject to or affected by the covered practice, or any organization whose mission, in whole or in part, is to ensure voting access and such mission would be hindered by the covered practice, may challenge in the circuit court of the locality where the covered practice is to be implemented the covered practice as (i) having the purpose or effect of denying or abridging the right to vote on the basis of race or color or membership in a language minority group or (ii) resulting in the retrogression in the position of members of a racial or ethnic group with respect to their effective exercise of the electoral franchise. In such action, the court may, in its discretion, allow a private plaintiff a reasonable attorney fee as part of the costs, if such plaintiff is the prevailing party. Such challenge shall be made by initiating a cause of action in accordance with § 24.2-132.

D. The governing body of a locality seeking to administer or implement a covered practice, in lieu of following the provisions of subsections B and C, may submit the proposed covered practice to the

Office of the Attorney General for issuance of a certification of no objection. Such practice shall not be given effect until the Attorney General has issued such certification. A certification of no objection shall be deemed to have been issued if the Attorney General does not interpose an objection within 60 days of the governing body's submission or if, upon good cause shown and to facilitate an expedited approval within 60 days of the governing body's submission, the Attorney General has affirmatively indicated that no such objection will be made. An affirmative indication by the Attorney General that no objection will be made or the absence of an objection to the covered practice by the Attorney General shall not bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

§ 24.2-130. At-large method of election; limitations; violations.

A. An at-large method of election, including one that combines at-large elections with district- or ward-based elections, shall not be imposed or applied by the governing body of any locality in a manner that impairs the ability of members of a protected class, as defined in § 24.2-125, to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class.

B. A violation of subsection A is established if it is shown that racially polarized voting occurs in local elections and that this, in combination with the method of election, dilutes the voting strength of members of a protected class. For purposes of this subsection, "racially polarized voting" refers to the extent to which the candidate preferences of members of the protected class and other voters in the jurisdiction have differed in recent elections for the office at issue and other offices in which the voters have been presented with a choice between candidates who are members of the protected class and candidates who are not members of the protected class. A finding of racially polarized voting or a violation of subsection A shall not be precluded by the fact that members of a protected class are not geographically compact or concentrated in a locality. Proof of an intent on the part of voters or elected officials to discriminate against members of a protected class shall not be required to prove a violation of subsection A.

C. Any voter who is a member of a protected class, as defined in § 24.2-125, and who resides in a locality where a violation of this section is alleged, *any organization whose membership includes voters who are members of a protected class, or any organization whose mission, in whole or in part, is to ensure voting access and such mission would be hindered by a violation of this section*, shall be entitled to initiate a cause of action in the circuit court of the county or city in which the locality is located. In such action, the court may, in its discretion, allow a private plaintiff a reasonable attorney fee as part of the costs, if such plaintiff is the prevailing party in accordance with § 24.2-132.

D. Upon a finding of a violation of this section, the court shall implement appropriate remedies that are tailored to remedy the violation.

§ 24.2-132. Causes of action for violations of chapter; jurisdiction and venue; expedited judicial proceedings and preliminary relief.

A. *The Circuit Court of the City of Richmond shall have jurisdiction over any cause of action initiated pursuant to this chapter. The venue of any such action shall be laid in the City of Richmond, Commonwealth of Virginia.*

B. *Actions brought pursuant to this chapter shall be subject to expedited pretrial and trial proceedings and shall receive an automatic calendar preference. In any action alleging a violation of this chapter in which a plaintiff party seeks preliminary relief with respect to an upcoming election, the court shall grant relief if it determines that such plaintiff party is more likely than not to succeed on the merits and that an appropriate remedy can be implemented to resolve the alleged violation in time for the upcoming election.*

C. *Upon a finding of a violation of any provision of this chapter, the court shall implement appropriate remedies that are tailored to remedy the violation. The court may, in its discretion, allow a private plaintiff a reasonable attorney fee as part of the costs, if such plaintiff is the prevailing party.*

§ 24.2-701.1. Absentee voting in person.

A. Absentee voting in person shall be available on the forty-fifth day prior to any election and shall continue until 5:00 p.m. on the Saturday immediately preceding the election. In the case of a special election, excluding for federal offices, if time is insufficient between the issuance of the writ calling for the special election and the date of the special election, absentee voting in person shall be available as soon as possible after the issuance of the writ.

Any registered voter offering to vote absentee in person shall provide his name and his residence address in the county or city in which he is offering to vote. After verifying that the voter is a registered voter of that county or city, the general registrar shall enroll the voter's name and address on the absentee voter applicant list maintained pursuant to § 24.2-706.

Except as provided in subsection F, a registered voter voting by absentee ballot in person shall provide one of the forms of identification specified in subsection B of § 24.2-643. If he does not show

one of the forms of identification specified in subsection B of § 24.2-643, he shall be allowed to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter he claims to be. A voter who requires assistance in voting by reason of a physical disability or an inability to read or write, and who requests assistance pursuant to § 24.2-649, may be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding voters who are unable to sign shall be followed when assisting a voter in completing this statement. A voter who does not show one of the forms of identification specified in this subsection or does not sign this statement shall be offered a provisional ballot under the provisions of § 24.2-653. The State Board shall provide instructions to the general registrar for the handling and counting of such provisional ballots pursuant to § 24.2-653.01 and this section.

B. Absentee voting in person shall be available during regular business hours. The electoral board of each county and city shall provide for absentee voting in person in the office of the general registrar or ~~a~~ *and in any* voter satellite office established pursuant to § 24.2-701.2. For purposes of this chapter, ~~such offices~~ *the office of the general registrar* shall be open to the public a minimum of eight hours between the hours of 8:00 a.m. and 5:00 p.m. on the first and second Saturday immediately preceding all elections. The electoral board or general registrar may provide for absentee voting in person in ~~such offices~~ *the office of the general registrar* on Sundays. Any applicant who is in line to cast his ballot when the office of the general registrar or ~~voter satellite office~~ closes shall be permitted to cast his absentee ballot that day.

C. The general registrar may provide for the casting of absentee ballots in person pursuant to this section on voting systems. The Department shall prescribe the procedures for use of voting systems. The procedures shall provide for absentee voting in person on voting systems that have been certified and are currently approved by the State Board. The procedures shall be applicable and uniformly applied by the Department to all localities using comparable voting systems.

D. At least two officers of election shall be present during all hours that absentee voting in person is available and shall represent the two major political parties, except in the case of a party primary, when they may represent the party conducting the primary. However, such requirement shall not apply when (i) voting systems that are being used pursuant to subsection C are located in the office of the general registrar or voter satellite office and (ii) the general registrar or a deputy registrar is present.

E. The Department shall include absentee ballots voted in person in its instructions for the preparation, maintenance, and reporting of ballots, pollbooks, records, and returns.

F. This subsection shall apply in the case of any individual who is required by subparagraph (b) of 52 U.S.C. § 21083 of the Help America Vote Act of 2002 to show identification the first time he votes in a federal election in the state. At such election, such individual shall present (i) a current and valid photo identification or (ii) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. Such individual who desires to vote in person but who does not show one of the forms of identification specified in this subsection shall be offered a provisional ballot under the provisions of § 24.2-653. The identification requirements of subsection B of § 24.2-643 and subsection A of § 24.2-653 shall not apply to such voter at such election. The Department of Elections shall provide instructions to the electoral boards for the handling and counting of such provisional ballots pursuant to § 24.2-653.01 and this section.

§ 24.2-701.2. Absentee voting in person; voter satellite offices.

A. The governing body of any county or city may establish, by ordinance, voter satellite offices to be used in the locality for absentee voting in person. The governing body may establish as many offices as it deems necessary. No change in, including the creation or abolishment of, any voter satellite office shall be enacted within 60 days next preceding any general election. Notice shall be published prior to enactment in a newspaper having general circulation in the locality once a week for two successive weeks.

B. Any voter satellite office shall be in a public building owned or leased by the county, city, or town within the county and may be in a facility that is owned or leased by the Commonwealth and used as a location for Department of Motor Vehicles facilities or as an office of the general registrar. Such location shall be deemed the equivalent of the office of the general registrar for the purposes of completing the application for an absentee ballot in person pursuant to §§ 24.2-701 and 24.2-706. Any such location shall have adequate facilities for the protection of all elections materials produced in the process of absentee voting in person, the voted and unvoted absentee ballots, and any voting systems in use at the location.

C. *The governing body of any county or city may establish, by ordinance, a plan each year for the number and location of voter satellite offices and the dates and hours of operations of such satellite offices for all elections to be held in the county or city that year. Such plans may differentiate the dates and hours of operation for voter satellite offices depending on the type of election and may include parameters for permissible deviations from the plan. If a governing body that has established voter satellite offices does not establish an annual plan pursuant to this subsection, the dates and hours of*

operation of the voter satellite offices shall be the same as the dates and hours of operation for the office of the general registrar for such locality. Any qualified voter who is in line to cast his absentee ballot when the voter satellite office closes shall be permitted to cast his absentee ballot that day.

D. Voter satellite offices shall be accessible to qualified voters as required by the provisions of the Virginians with Disabilities Act (§ 51.5-1 et seq.), the Voting Accessibility for the Elderly and Handicapped Act (52 U.S.C. § 20101 et seq.), and the Americans with Disabilities Act relating to public services (42 U.S.C. § 12131 et seq.). The State Board shall provide instructions to the local electoral boards and general registrars to assist the localities in complying with the requirements of the acts.

~~D.~~ E. The governing body of each county, city, and town shall provide funds to enable the general registrar to provide adequate facilities at each voter satellite office for the conduct of elections.

~~E.~~ F. Not later than 55 days prior to any election, the general registrar shall post notice of all voter satellite office locations in the locality and the dates and hours of operation of each location in the office of the general registrar and on the official website for the county or city. Such notice shall remain in the office of the general registrar and on the official website for the county or city for the duration of the period during which absentee voting in person is available. If the county or city does not have an official website, such notice shall be published in a newspaper of general circulation in the county or city at least once prior to the election but not later than 55 days prior to such election.

~~F.~~ G. If an emergency makes a voter satellite office unusable or inaccessible, the electoral board or the general registrar shall provide an alternative voter satellite office, subject to the approval of the State Board, and shall give notice of the change in the location of the voter satellite office. The general registrar shall provide notice to the voters appropriate to the circumstances of the emergency. For the purposes of this subsection, "emergency" means a rare and unforeseen combination of circumstances, or the resulting state, that calls for immediate action.

~~G.~~ H. The provisions of subsection E of § 24.2-310 providing certain limited circumstances in which a local electoral board may approve an exception to the prohibition on the distribution of campaign materials inside the prohibited area outside of a polling place shall apply to voter satellite offices and the building in which such offices may be located.

~~H.~~ I. A voter satellite office established pursuant to this section shall be deemed to be the equivalent of an office of the general registrar for purposes of completing an application for an absentee ballot in person pursuant to §§ 24.2-701, 24.2-701.1, and 24.2-706.