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HOUSE BILL NO. 907

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact § 24.2-629 of the Code of Virginia, relating to elections; voting equipment and systems; State Board of Elections approval process; printed receipt for cast ballot.

Patrons—Kent, Green, Lovejoy and Walker; Senator: Stuart

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:**1. That § 24.2-629 of the Code of Virginia is amended and reenacted as follows:****§ 24.2-629. State Board approval process of electronic voting systems.**

A. Any person, firm, or corporation, referred to in this article as the "vendor," manufacturing, owning, or offering for sale any electronic voting or counting machine and ballots designed to be used with such equipment may apply to the State Board, in the manner prescribed by the Board, to have examined a production model of such equipment and the ballots used with it. The Board may require the vendor to pay a reasonable application fee when he files his request for testing or certification of new or upgraded voting equipment. Receipts from such fees shall be credited to the Board for reimbursement of testing and certification expenses. In addition to any other materials that may be required, a current statement of the financial status of the vendor, including any assets and liabilities, shall be filed with the Board; if the vendor is not the manufacturer of the equipment for which application is made, such a statement shall also be filed for the manufacturer. These statements shall be exempt from the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The Board shall require, at a site of its choosing, a demonstration of such equipment and ballots and may require that a production model of the equipment and a supply of ballots be provided to the Board for testing purposes. The Board shall also require the vendor to provide documentation of the practices recommended by the vendor to ensure the optimum security and functionality of the system.

B. The Board may approve any kind of electronic voting system that meets the following requirements:

1. It shall provide clear instructions for voters on how to mark or select their choice and cast that vote.

2. It shall provide facilities for voting for all offices at any election and on as many questions as may be submitted at any election.

3. It shall be capable of processing ballots for all parties holding a primary election on the same day, but programmable in such a way that an individual ballot cast by a voter is limited to the party primary election in which the voter chooses to participate.

4. It shall require votes for presidential and vice presidential electors to be cast for the presidential and vice presidential electors of one party by one operation. The ballot shall contain the words "Electors for" preceded by the name of the party or other authorized designation and followed by the names of the candidates for the offices of President and Vice President.

5. It shall enable the voter to cast votes for as many persons for an office as lawfully permitted, but no more. It shall prevent the voter from casting a vote for the same person more than once for the same office. However, ballot scanner machines shall not be required to prevent a voter from voting for a greater number of candidates than he is lawfully entitled to.

6. It shall enable the voter to cast a vote on any question on which he is lawfully permitted to vote, but no other.

7. It shall provide the voter with an opportunity to correct any error before a ballot is cast.

8. It shall correctly register or record and accurately count all votes cast for candidates and on questions.

9. It shall be provided with a "protective counter," whereby any operation of the machine before or after the election will be detected.

10. It shall be provided with a counter that at all times during an election shall show how many persons have voted.

11. It shall ensure voting in absolute secrecy. Ballot scanner machines shall provide for the secrecy of the ballot and a method to conceal the voted ballot.

12. It shall be programmable to allow ballots to be separated when necessary.

13. It shall retain each printed ballot cast.

14. Ballot scanner machines shall report, if possible, the number of ballots on which a voter

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59 undervoted or overvoted.

60 *15. It shall produce a printed receipt for each voter who casts a ballot that shows the date and time*
61 *the voter cast his ballot, the voter's number corresponding to the order in which ballots were cast, and*
62 *a list of all the voter's selections on the ballot as recorded by the voting system.*

63 C. After its examination of the equipment, ballots, and other materials submitted by the vendors, the
64 Board shall prepare and file in its office a report of its finding as to (i) the apparent capability of such
65 equipment to accurately count, register, and report votes; (ii) whether the system can be conveniently
66 used without undue confusion to the voter; (iii) its accessibility to voters with disabilities; (iv) whether
67 the system can be safely used without undue potential for fraud; (v) the ease of its operation and
68 transportation by voting equipment custodians and officers of election; (vi) the financial stability of the
69 vendor and manufacturer; (vii) whether the system meets the requirements of this title; (viii) whether the
70 system meets federal requirements; (ix) whether issues of reliability and security identified with the
71 system by other state governments have been adequately addressed by the vendor; and (x) whether, in
72 the opinion of the Board, the potential for approval of such system is such as to justify further
73 examination and testing.

74 D. If the Board determines that there is such potential and prior to its final determination as to
75 approval or disapproval of such system, the Board shall obtain a report by an independent electronics or
76 engineering consultant as to (i) whether the system accurately counts, registers, and reports votes; (ii)
77 whether it is capable of storing and retaining existing votes in a permanent memory in the event of
78 power failure during and after the election; (iii) the number of separate memory capabilities for the
79 storage of recorded votes; (iv) its mechanical and electronic perfections and imperfections; (v) the audit
80 trail provided by the system; (vi) the anticipated frequency of repair; (vii) the ease of repair; (viii) the
81 anticipated life of the equipment; (ix) its potential for fraudulent use; (x) its accessibility to voters with
82 disabilities; (xi) the ease of its programming, transportation, and operation by voting equipment
83 custodians and officers of election; and (xii) any other matters deemed necessary by the Board. Failure
84 by an applicant to cooperate with the consultant by furnishing information and production equipment
85 and ballots requested shall be deemed a withdrawal of the application, but nothing in this section shall
86 require the disclosure of trade secrets by the applicant. If such trade secrets are essential to the proper
87 analysis of the system and are provided for that reason, the consultant shall subscribe to an oath subject
88 to the penalty for perjury that he will neither disclose nor make use of such information except as
89 necessary for the system analysis. The report of the consultant shall be filed in the office of the Board.

90 E. In preparing the reports cited in subsections C and D, the Board shall require, as a condition of
91 certification, that the system is comprehensively examined by individuals including at least one expert in
92 election management and one in computer system security. The Board shall develop, in conjunction with
93 the above listed individuals, a specific set of items to be examined and tested as part of the certification
94 process to further elaborate on the requirements identified in this section.

95 F. If the Board determines that there is potential for approval of the system and prior to its final
96 determination, the Board shall also require that the system be tested in an actual election in one or more
97 counties or cities. Its use at such election shall be as valid for all purposes as if it had been legally
98 approved by the Board and adopted by the counties or cities.

99 G. If, following testing, the Board approves any voting system and its ballots for use, the Board shall
100 so notify the electoral boards of each county and city. Systems so approved may be adopted for use at
101 elections as herein provided. No form of voting system and ballots not so approved shall be adopted by
102 any county or city. Any voting system and ballots approved for use by the Board shall be deemed to
103 meet the requirements of this title and any applicable federal laws, and their use in any election shall be
104 valid.

105 H. A vendor whose voting system is approved for use shall provide updates concerning its
106 recommended practices for optimum security and functionality of the system, as may be requested by
107 the Board. Any product for which requested updates are not provided shall be deemed non-compliant
108 and may be decertified at the discretion of the Board.

109 I. The Board shall have the authority to investigate, at its discretion, any voting system certified in
110 Virginia to ensure that it continues to meet the standards outlined in subsections C and D. The Board
111 may, at its discretion, decertify any voting system based on significant problems detected with the
112 voting system in Virginia or on reports provided by federal authorities or other state election officials.