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SENATE BILL NO. 428

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections
on January 30, 2024)

(Patron Prior to Substitute—Senator VanValkenburg)

A *BILL to amend and reenact § 24.2-673.1 of the Code of Virginia, relating to elections; conduct of election; ranked choice voting; locally elected offices; report.*

Be it enacted by the General Assembly of Virginia:

1. That § 24.2-673.1 of the Code of Virginia is amended and reenacted as follows:

§ 24.2-673.1. (Expires July 1, 2031) Ranked choice voting.

A. For purposes of this section:

"Ranked choice voting" means a method of casting and tabulating votes in which (i) voters rank candidates in order of preference, (ii) tabulation proceeds in rounds such that in each of round either a candidate or candidates are elected or the last-place candidate is defeated, (iii) votes for voters' next-ranked candidates are transferred from elected or defeated candidates, and (iv) tabulation ends when the number of candidates elected equals the number of offices to be filled. "Ranked choice voting" is known as "instant runoff voting" when electing a single office and "single transferable vote" when electing multiple offices.

"Ranking" means the ordinal number assigned on a ballot by a voter to a candidate to express the voter's preference for that candidate. ~~Ranking number one~~ The first ranking is the highest ranking, the ~~second ranking number two~~ is the next-highest ranking, and so on, consecutively, up to the number of candidates indicated on the ballot.

B. Elections of ~~members of a county board of supervisors or a city council~~ for any local or constitutional office may be conducted by ranked choice voting pursuant to this section. The decision to conduct an election by ranked choice voting shall be made, in consultation with the local electoral board and general registrar, by a majority vote of the ~~board of supervisors or city council~~ that the office being elected serves local governing body and shall be subject to a determination of feasibility by the State Board. The decision to use ranked choice voting in an election for any constitutional office that is shared by two or more units of government shall require a majority vote of the governing body of each county or city that shares such office. Any decision to conduct an election by ranked choice voting made by a local governing body shall be transmitted to the State Board, which shall provide a determination of feasibility within 10 days of receipt of the decision or, in the case of a shared office, within 10 days of receipt of the decisions of all of the localities that share the office.

If a majority of the members of a town council vote to conduct an election for town council by ranked choice voting, the board of supervisors may require the town to reimburse the county for costs associated with conducting the election by ranked choice voting that would not have been incurred by the county absent the town council's decision to conduct the election by ranked choice voting.

C. In any election conducted by ranked choice voting, as soon as the polls are closed on the day of the election, the officers of election for each precinct shall proceed to ascertain the vote and prepare returns for the first rankings made for such election in the same manner as provided for votes in other elections under this article. The results for elections conducted by ranked choice voting shall be reported along with other results reported on election night, except that such results shall clearly be identified as preliminary and based on the first rankings in a ranked choice voting election.

D. In any election conducted by ranked choice voting for a local or constitutional office that is not shared by more than one county or city, final tabulation of votes shall be conducted at the meeting of the electoral board held pursuant to § 24.2-671.

E. In any election conducted by ranked choice voting for a local or constitutional office that is shared by more than one county or city, the electoral boards shall agree on a suitable tabulation facility in which to securely store the election materials and conduct the final tabulation of votes in the ranked choice voting election after the local electoral boards have met pursuant to § 24.2-671. The electoral boards shall provide for secure delivery of the election materials to the tabulation facility by at least one election official representing each party. The State Board shall (i) promulgate rules and forms to document the chain of custody from the office of the general registrar to the tabulation facility and (ii) specify the materials required to accomplish such transmittal, including tamper evident packaging and seals.

The final tabulation of votes shall be conducted by the electoral boards of the relevant localities and their officers of election pursuant to standards developed by the State Board. The final tabulation shall be open to the public. The electoral boards shall provide public notice of the place and time of the final

60 *tabulation.*

61 *F. If, in the process of tabulating final results for an election conducted by ranked choice voting, any*
62 *machine readable ballot is damaged or defective so that it cannot properly be counted by the electronic*
63 *voting systems, a true duplicate copy shall be made of the damaged ballot by a team of election officials*
64 *representing both parties. The duplicate ballot shall be substituted for the damaged ballot. Every*
65 *duplicate ballot shall be clearly labeled as such and shall bear an identifier that shall be recorded on*
66 *the damaged ballot.*

67 *G. The Department shall make public the total number and percentage of votes each candidate*
68 *received in each round of the official tabulation, including votes for candidates who have withdrawn*
69 *pursuant to § 24.2-612.2, and ballot-level ranking data on an election-by-election basis to the extent*
70 *feasible and consistent with the need to maintain voter privacy.*

71 *H. The State Board shall provide standards for vote tabulating software for use with existing voting*
72 *systems in elections conducted by ranked choice voting. Any person, firm, or corporation manufacturing,*
73 *owning, or offering for sale any vote tabulation software designed to be used with existing voting*
74 *systems may apply to the State Board, in the manner prescribed by the Board, to have examined a*
75 *production version of such software. A governing body that makes the decision to conduct elections by*
76 *ranked choice voting shall provide for the use of vote tabulating software approved by the Board in any*
77 *such elections.*

78 *I. The State Board may shall promulgate regulations for the proper and efficient administration of*
79 *elections determined by ranked choice voting, including (i) procedures for tabulating and reporting votes*
80 *in rounds, (ii) procedures for determining winners in elections for offices to which only one candidate is*
81 *being elected and to which more than one candidate is being elected, and (iii) standards for ballots*
82 *pursuant to § 24.2-613, notwithstanding the provisions of subsection E of that section.*

83 ~~D.~~ *J. The State Board may administer or prescribe standards for a voter outreach and public*
84 *information program for use by any locality conducting ranked choice voting pursuant to this section.*
85 *The State Board shall produce generalized voter education materials on ranked choice voting that shall*
86 *be published on its website and shall assist any locality that has made the decision to conduct elections*
87 *by ranked choice voting in developing voter education materials specific to that locality upon request.*

88 *K. Any risk-limiting audit of elections conducted by ranked choice voting pursuant to § 24.2-671.2*
89 *shall be limited to an audit of first rankings reported by voting systems.*

90 *L. For the purposes of conducting a recount pursuant to Article 1 (§ 24.2-800 et seq.) of Chapter 8,*
91 *the State Board shall have the authority to create and modify recount procedures to the extent necessary*
92 *to accommodate a recount of an election conducted by ranked choice voting.*

93 **2. That the Department of Elections (the Department) shall review the testing and approval**
94 **framework for voting equipment in the Commonwealth. In conducting its review, the Department**
95 **shall (i) review the types of voting equipment covered by state law; (ii) review emerging forms of**
96 **voting equipment, such as electronic pollbooks, risk-limiting audit tools, and tabulation software,**
97 **including such audit tools and software that can be purchased and operated separate from existing**
98 **voting systems; (iii) review the roles and responsibilities of state and local election officials in the**
99 **testing and approval of voting equipment; (iv) review any existing testing and approval**
100 **frameworks for emerging forms of voting equipment; (v) develop recommendations for objective**
101 **methods of evaluating the performance of emerging forms of voting equipment to determine if**
102 **they are appropriately executing the elections tasks for which they are intended; and (vi) make**
103 **other recommendations as necessary and review other issues as warranted. The Department shall**
104 **submit to the Division of Legislative Automated Systems an executive summary and report of its**
105 **review no later than the first day of the 2025 Regular Session of the General Assembly. The**
106 **executive summary and report shall be submitted for publication as a report document as**
107 **provided in the procedures of the Division of Legislative Automated Systems for the processing of**
108 **legislative documents and reports and shall be posted on the General Assembly's website.**