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HOUSE BILL NO. 1938

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Privileges and Elections
on January 31, 2025)

(Patron Prior to Substitute—Delegate Reid)

*A BILL to amend and reenact §§ 24.2-310, 24.2-604, 24.2-604.4, 24.2-604.5, 24.2-671, and 24.2-802.1 of the Code of Virginia, relating to elections; general provisions; prohibited area; 100 feet.***Be it enacted by the General Assembly of Virginia:****1. That §§ 24.2-310, 24.2-604, 24.2-604.4, 24.2-604.5, 24.2-671, and 24.2-802.1 of the Code of Virginia are amended and reenacted as follows:****§ 24.2-310. Requirements for polling places.**

A. The polling place for each precinct shall be located within the county or city and either within the precinct or within one mile of the precinct boundary, unless a waiver has been granted pursuant to subsection G. The polling place for a county precinct may be located within a city (i) if the city is wholly contained within the county election district served by the precinct or (ii) if the city is wholly contained within the county and the polling place is located on property owned by the county. The polling place for a town precinct may be located within one mile of the precinct and town boundary. For town elections held in November, the town shall use the polling places established by the county for its elections.

B. The governing body of each county, city, and town shall provide funds to enable the general registrar to provide adequate facilities at each polling place for the conduct of elections. Each polling place shall be located in a public building whenever practicable. If more than one polling place is located in the same building, each polling place shall be located in a separate room or separate and defined space.

C. Polling places 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. If an emergency makes a polling place unusable or inaccessible, the electoral board or the general registrar shall provide an alternative polling place and give notice of the change in polling place, including to all candidates, or such candidate's campaign, appearing on the ballot to be voted at the alternative polling place, subject to the prior approval of the State Board. The general registrar shall provide notice to the voters appropriate to the circumstances of the emergency. For the purposes of this subsection, an "emergency" means a rare and unforeseen combination of circumstances, or the resulting state, that calls for immediate action.

E. It shall be permissible to distribute campaign materials on the election day on the property on which a polling place is located and outside of the building containing the room where the election is conducted except as specifically prohibited by law including, without limitation, the prohibitions of § 24.2-604 and the establishment of the "Prohibited Area" within ~~40~~ 100 feet of any entrance to the polling place *and within 5 feet of any area designated for voting outside the polling place pursuant to § 24.2-649.1*. However, and notwithstanding the provisions of clause (i) of subsection A of § 24.2-604, and upon the approval of the local electoral board, campaign materials may be distributed outside the polling place and inside the structure where the election is conducted, provided that the "Prohibited Area" (i) includes the area within the structure that is beyond ~~40~~ 100 feet of any entrance to the polling place and the area within the structure that is within ~~40~~ 100 feet of any entrance to the room where the election is conducted and (ii) is maintained and enforced as provided in § 24.2-604. The local electoral board may approve campaigning activities inside the building where the election is conducted when an entrance to the building is from an adjoining building, or if establishing the ~~40-foot~~ 100-foot prohibited area outside the polling place would hinder or delay a qualified voter from entering or leaving the building.

F. Any local government, local electoral board, or the State Board may make monetary grants to any non-governmental entity furnishing facilities under the provisions of § 24.2-307 or 24.2-308 for use as a polling place. Such grants shall be made for the sole purpose of meeting the accessibility requirements of this section. Nothing in this subsection shall be construed to obligate any local government, local electoral board, or the State Board to appropriate funds to any non-governmental entity.

G. The general registrar or the governing body of the locality may request from the Department of Elections a waiver to establish a polling place that does not meet the location requirements of subsection A in the event that there is no suitable building that could be used within the precinct or within one mile of the precinct boundary. The Department shall grant such a waiver and may impose any conditions on the waiver that it deems necessary or appropriate to ensure accessibility and security of the polling place and compliance with any other requirements of state or federal law.

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§ 24.2-604. Polling places; prohibited activities; prohibited area; penalties.

A. During the times the polls are open and ballots are being counted, or within one hour of opening or after closing, it is unlawful for any person (i) to loiter or congregate within ~~40~~ 100 feet of any entrance of any polling place *or within 5 feet of any area designated for voting outside the polling place pursuant to § 24.2-649.1*; (ii) within such distance to give, tender, or exhibit any ballot, ticket, or other campaign material to any person or to solicit or in any manner attempt to influence any person in casting his vote; (iii) to hinder or delay a qualified voter in entering or leaving a polling place; or (iv) to knowingly possess any firearm as defined in § 18.2-308.2:2 within ~~40~~ 100 feet of any building, or part thereof, used as a polling place.

B. Prior to opening the polls, the officers of election shall post, in the area within ~~40~~ 100 feet of any entrance to the polling place *and within 5 feet of any area designated for voting outside the polling place pursuant to § 24.2-649.1*, sufficient notices that state "Prohibited Area" in two-inch type. The notices shall also state the provisions of this section in not less than 24-point type. The officers of election shall post the notices within the prohibited area to be visible to voters and the public.

C. It is unlawful for any authorized representative permitted in the polling place pursuant to § 24.2-604.4, any voter, or any other person in the room to (i) hinder or delay a qualified voter; (ii) give, tender, or exhibit any ballot, ticket, or other campaign material to any person; (iii) solicit or in any manner attempt to influence any person in casting his vote; (iv) hinder or delay any officer of election; (v) be in a position to see the marked ballot of any other voter; or (vi) otherwise impede the orderly conduct of the election.

D. The provisions of subsections A and C shall not be construed to prohibit a person who approaches or enters the polling place for the purpose of voting from wearing a shirt, hat, or other apparel on which a candidate's name or a political slogan appears or from having a sticker or button attached to his apparel on which a candidate's name or a political slogan appears. This exemption shall not apply to candidates, representatives of candidates, or any other person who approaches or enters the polling place for any purpose other than voting.

E. This section shall not be construed to prohibit a candidate from entering any polling place on the day of the election to vote, or to visit a polling place for no longer than 10 minutes per polling place per election day, provided that he complies with the restrictions stated in subsections A, C, and D.

F. The provisions of clause (iv) of subsection A shall not apply to (i) any law-enforcement officer or any retired law-enforcement officer qualified pursuant to subsection C of § 18.2-308.016; (ii) any person occupying his own private property that falls within ~~40~~ 100 feet of a polling place; or (iii) an armed security officer, licensed pursuant to Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, whose employment or performance of his duties occurs within ~~40~~ 100 feet of any building, or part thereof, used as a polling place.

G. The officers of election may require any person who is found by a majority of the officers present to be in violation of this section to remain outside of the prohibited area. Any person violating subsection A or C is guilty of a Class 1 misdemeanor.

§ 24.2-604.4. Polling places; authorized representatives of party or candidate; prohibited activities.

A. The officers of election shall permit one authorized representative of each political party or independent candidate in a general or special election, or one authorized representative of each candidate in a primary election, to remain in the room in which the election is being conducted at all times. A representative may serve part of the day and be replaced by successive representatives. The officers of election shall have discretion to permit up to three authorized representatives of each political party or independent candidate in a general or special election, or up to three authorized representatives of each candidate in a primary election, to remain in the room in which the election is being conducted. The officers shall permit one such representative for each pollbook station. However, no more than one such representative for each pollbook station or three representatives of any political party or independent candidate, whichever number is larger, shall be permitted in the room at any one time.

B. Each authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. No candidate whose name is printed on the ballot shall serve as a representative of a party or candidate for purposes of this section.

Each representative shall present to the officers of election a written statement designating him to be a representative of the party or candidate that is signed by the county or city chairman of his political party, the independent candidate, or the primary candidate, as appropriate. If the county or city chairman is unavailable to sign such a written designation, such a designation may be made by the state or district chairman of the political party. However, no written designation made by a state or district chairman shall take precedence over a written designation made by the county or city chairman. Such statement, bearing the chairman's or candidate's original signature, may be photocopied, and such photocopy shall be as valid as if the copy had been signed.

C. Authorized representatives shall be allowed, whether in a regular polling place or central absentee voter precinct, to be close enough to the voter check-in table to be able to hear and see what is occurring; however, such observation shall not violate the secret vote provision of Article II, Section 3 of the Constitution of Virginia or otherwise interfere with the orderly process of the election. Any representative

who complains to the chief officer of election that he is unable to hear or see the process may accept the chief officer's decision or, if dissatisfied, he may immediately appeal the decision to the local electoral board or general registrar.

D. Authorized representatives shall be allowed, whether in a regular polling place or central absentee voter precinct, to use a handheld wireless communications device but shall not be allowed to use such a device to capture a digital image inside the polling place or central absentee voter precinct. The officers of election may prohibit the use of cellular telephones or other handheld wireless communications devices if such use will result in a violation of subsection A or C of § 24.2-604 or § 24.2-607.

E. Authorized representatives shall not be allowed in any case to provide assistance to any voter as permitted under § 24.2-649 or to wear any indication that they are authorized to assist voters either inside the polling place or within ~~40~~ 100 feet of any entrance to the polling place *or within 5 feet of any area designated for voting outside the polling place pursuant to § 24.2-649.1.*

F. The officers of election may require any person who is found by a majority of the officers present to be in violation of this section to remain outside of the prohibited area.

§ 24.2-604.5. Polling places; presence of additional persons authorized.

A. A local electoral board or general registrar may authorize in writing the presence in the polling place of additional neutral observers as may be deemed appropriate, except as otherwise prohibited or limited by the provisions of § 24.2-604. Such observers shall comply with the restrictions in subsections A and C of § 24.2-604 and shall not be allowed in any case to provide assistance to any voter as permitted under § 24.2-649 or to wear any indication that they are authorized to assist voters either inside the polling place or within ~~40~~ 100 feet of any entrance to the polling place *or within 5 feet of any area designated for voting outside the polling place pursuant to § 24.2-649.1.* The officers of election may require any person who is found by a majority of the officers present to be in violation of this subsection to remain outside of the prohibited area.

B. The officers of election shall permit representatives of the news media to visit and film or photograph inside the polling place for a reasonable and limited period of time while the polls are open. However, the media (i) shall comply with the restrictions in subsections A and C of § 24.2-604; (ii) shall not film or photograph any person who specifically asks the media representative at that time that he not be filmed or photographed; (iii) shall not film or photograph the voter or the ballot in such a way that divulges how any individual voter is voting; and (iv) shall not film or photograph the voter list or any other voter record or material at the precinct in such a way that it divulges the name or other information concerning any individual voter. Any interviews with voters, candidates, or other persons; live broadcasts; or taping of reporters' remarks shall be conducted outside of the polling place and the prohibited area. The officers of election may require any person who is found by a majority of the officers present to be in violation of this subsection to leave the polling place and the prohibited area.

§ 24.2-671. Electoral board to meet and ascertain results; conclusiveness of results.

A. Each electoral board shall meet at the clerk's or general registrar's office of the county or city for which they are appointed at or before 5:00 p.m. on the day after any election. The board may adjourn to another room of sufficient size in a public building to ascertain the results, and may adjourn as needed, not to exceed 10 calendar days from the date of the election unless an extension has been granted to accommodate a risk-limiting audit conducted pursuant to § 24.2-671.2. Written directions to the location of any room other than the clerk's or general registrar's office where the board will meet shall be posted at the doors of the clerk's and general registrar's offices prior to the beginning of the meeting.

If the electoral board has exercised the option provided by § 24.2-668 for delivery of the election materials to the office of the general registrar on the night of the election, the electoral board shall meet at the office of the general registrar at or before 5:00 p.m. on the day after any election.

B. The board shall open the returns delivered by the officers and ascertain from the returns the total votes in the county or city, or town in a town election, for each candidate and for and against each question and complete the abstract of votes cast at such election, as provided for in § 24.2-675. For any office in which no person was elected by write-in votes, and for which the total number of write-in votes for that office is less than (i) 10 percent of the total number of votes cast for that office and (ii) the total number of votes cast for the candidate receiving the most votes, the electoral board shall ascertain the total votes for each write-in candidate for the office within one week following the election. For offices for which the electoral board issues the certificate of election, the result so ascertained, signed and attested, shall be conclusive and shall not thereafter be subject to challenge except as specifically provided in Chapter 8 (§ 24.2-800 et seq.).

Once the result is so ascertained, the secretary of the electoral board shall deliver one copy of each statement of results to the general registrar to be available for inspection when his office is open for business. The secretary shall then return all pollbooks, any printed inspection and return sheets, and one copy of each statement of results to the clerk.

C. A report of any changes made by the local electoral board to the unofficial results ascertained by the officers of election or any subsequent change to the official abstract of votes made by the local electoral

board shall be forwarded to the State Board of Elections and the explanation of such change shall be posted on the State Board website.

D. Each political party and each independent candidate on the ballot, or each primary candidate, shall be entitled to have representatives present when the local electoral board meets to ascertain the results of the election. Each such party and candidate shall be entitled to have at least as many representatives present as there are teams of officials working to ascertain the results, and the room in which the local electoral board meets shall be of sufficient size and configuration to allow the representatives reasonable access and proximity to view the ballots as the teams of officials work to ascertain the results. The representatives and observers lawfully present shall be prohibited from interfering with the officials in any way. It is unlawful for any person to knowingly possess any firearm as defined in § 18.2-308.2:2 within ~~40~~ 100 feet of any building, or part thereof, used as a meeting place for the local electoral board while the electoral board meets to ascertain the results of an election, unless such person is (a) any law-enforcement officer or any retired law-enforcement officer qualified pursuant to subsection C of § 18.2-308.016; (b) occupying his own private property that falls within ~~40~~ 100 feet of a polling place; or (c) an armed security officer, licensed pursuant to Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, whose employment or performance of his duties occurs within ~~40~~ 100 feet of any building, or part thereof, used as a meeting place for the local electoral board while the electoral board meets to ascertain the results of an election.

§ 24.2-802.1. Preliminary hearing; court to fix procedure for recount, appoint officers, and supervise the recount.

A. Within seven calendar days of the filing of the petition for a recount of any election other than an election for presidential electors, or within five calendar days of the filing of a petition for a recount of an election for presidential electors, the chief judge of the circuit court shall call a preliminary hearing at which (i) motions may be disposed of and (ii) the rules of procedure may be fixed, both subject to review by the full court. The petitioner and his counsel and each other party and their counsel under supervision of the electoral board and its agents shall have access to pollbooks and other materials used in the election for examination purposes, provided that individual ballots cast in the election shall not be examined at the preliminary hearing. The chief judge during the preliminary hearing shall review all security measures taken for all ballots and voting systems and direct, as he deems necessary, all appropriate measures to ensure proper security to conduct the recount.

The chief judge, subject to review by the full court, may set the place for the recount and may order the delivery of election materials to a central location and the transportation of voting systems to a central location in each county or city under appropriate safeguards. These safeguards shall include prohibiting any person from knowingly possessing any firearm as defined in § 18.2-308.2:2 within ~~40~~ 100 feet of any building or part thereof used as the place for the recount, unless such person is (a) any law-enforcement officer or any retired law-enforcement officer qualified pursuant to subsection C of § 18.2-308.016; (b) occupying his own private property that falls within ~~40~~ 100 feet of a polling place; or (c) an armed security officer, licensed pursuant to Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, whose employment or performance of his duties occurs within ~~40~~ 100 feet of any building, or part thereof, used as a place for the recount.

B. After the full court is appointed under § 24.2-801 or 24.2-801.1, it shall call a hearing at which all motions shall be disposed of and the rules of procedure shall be fixed finally, and it shall issue a written order setting out such rules of procedure. The court shall call for the advice and cooperation of the Department, the State Board, or any local electoral board, as appropriate, and such boards or agency shall have the duty and authority to assist the court. The court shall fix any additional procedures, that are not provided for in this chapter, that shall provide for the accurate counting of votes in the election. The recount procedures to be followed throughout the election district shall be as uniform as practicable, taking into account the types of ballots and voting systems in use in the election district.

C. The court shall permit each candidate, or petitioner and governing body or chief executive officer, to select an equal number of the officers of election to be recount officials and to count printed ballots. The number shall be fixed by the court and be sufficient to conduct the recount within a reasonable period. The court may permit each party to the recount to submit a list of alternate officials in the number the court directs. There shall be at least one team from each locality using ballot scanner machines to insert the ballots into one or more scanners. Each team shall be composed of one representative of each party.

The court may provide that if, at the time of the recount, any recount official fails to appear, the remaining recount officials present shall appoint substitute recount officials who shall possess the same qualifications as the recount officials for whom they substitute. The court may select pairs of recount coordinators to serve for each county or city in the election district who shall be members of the county or city electoral board and represent different political parties. The court shall have authority to summon such officials and coordinators. On the request of any party to the recount, the court shall allow that party to appoint one representative observer for each team of recount officials. The representative observers shall have an unobstructed view of the work of the recount officials. The expenses of its representatives shall be borne by each party.

D. The court (i) shall supervise the recount and (ii) may require delivery of any or all pollbooks used and

244 any or all ballots cast at the election, or may assume supervision thereof through the recount coordinators and
245 officials.