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SENATE BILL NO. 270

Senate Amendments in [ ] - February 9, 2024

A BILL to amend and reenact § 24.2-545 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 5 of Title 24.2 an article numbered 8, consisting of sections numbered 24.2-546 through 24.2-550, relating to elections; presidential primaries; ranked choice voting.

Patrons Prior to Engrossment—Senators Subramanyam and Salim

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That § 24.2-545 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 5 of Title 24.2 an article numbered 8, consisting of sections numbered 24.2-546 through 24.2-550, as follows:

§ 24.2-545. Presidential primary.

A. The duly constituted authorities of the state political party shall have the right to determine the method by which the state party will select its delegates to the national convention to choose the party's nominees for President and Vice President of the United States including a presidential primary or another method determined by the party.

A party that intends to hold a presidential primary shall determine whether it intends to use ranked choice voting pursuant to Article 8 (§ 24.2-546 et seq.) and, if so determining, shall indicate whether the party will award delegates on a winner-take-all basis or a proportional basis. If the party chooses to award delegates on a proportional basis, the party shall indicate (i) the applicable percentage of votes that is required for a candidate to receive delegates and (ii) whether delegates are allocated on the basis of primary results in individual congressional districts. If a party notifies the State Board that it intends to hold a presidential primary using ranked choice voting but fails to specify how to award its delegates, the presidential primary for that party shall be tabulated using ranked choice voting on a winner-take-all basis.

The state chairman shall notify the State Board of the party's determination at least ~~90~~ *150* days before the primary date.

If the party has determined that it will hold a presidential primary, each registered voter of the Commonwealth shall be given an opportunity to participate in the presidential primary of the political party, as defined in § 24.2-101, subject to requirements determined by the political party for participation in its presidential primary. The requirements may include, but shall not be limited to, the signing of a pledge by the voter of his intention to support the party's candidate when offering to vote in the primary. The requirements applicable to a party's primary shall be determined at least ~~90~~ *120* days prior to the primary date and certified to, and approved by, the State Board.

At least 90 days before the date of the presidential primary, the Department of Elections shall confirm with the state committee of each political party that the Commonwealth is capable of implementing the party's preferences or shall notify the state committee of any feasibility constraints that could prevent the Commonwealth from implementing the party's preferences.

If the party has determined that it will hold a presidential primary using ranked choice voting, then the primary shall be conducted according to the provisions of Article 8 (§ 24.2-546 et seq.) unless fewer than three candidates qualify to have their names appear on the ballot.

B. Any person seeking the nomination of the national political party for the office of President of the United States, or any group organized in the Commonwealth on behalf of, and with the consent of such person, may file with the State Board petitions signed by at least 5,000 qualified voters, including at least 200 qualified voters from each congressional district in the Commonwealth, who attest that they intend to participate in the primary of the same political party as the candidate for whom the petitions are filed. Such petitions shall be filed with the State Board by the primary filing deadline. The petitions shall be on a form prescribed by the State Board and shall be sealed in one or more containers to which is attached a written statement giving the name of the presidential candidate and the number of signatures on the petitions contained in the containers. Such person or group shall also attach a list of the names of persons who would be elected delegates and alternate delegates to the political party's national convention if the person wins the primary and the party has determined that its delegates will be selected pursuant to the primary. The slate of delegates and alternates shall comply with the rules of the national and state party.

The State Board shall transmit the material so filed to the state chairman of the party of the candidate immediately after the primary filing deadline. The sealed containers containing the petitions

for a candidate may be opened only by the state chairman of the party of the candidate. The state chairman of the party shall, by the deadline set by the State Board, furnish to the State Board the names of all candidates who have satisfied the requirements of this section. In furnishing the name of each such candidate, the state chairman shall certify that a review of the filed candidate petitions found the required minimum number of signatures of qualified voters for that office to have been met. Whenever only one candidate for a party's nomination for President of the United States has met the requirements to have his name on the ballot, he will be declared the winner and no presidential primary for that party will be held.

C. The names of all candidates in the presidential primary of each political party shall appear on the ballot in an order determined by lot by the State Board.

D. The State Board shall certify the results of the presidential primary to the state chairman. ~~If the party has determined that its delegates and alternates will be selected pursuant to the primary, the slate of delegates and alternates of the candidate receiving the most votes in the primary shall be deemed elected by the state party unless the party has determined another method for allocation of delegates and alternates. If the party has determined to use another method for selecting delegates and alternates, those delegates and alternates shall be bound to vote on the first ballot at the national convention for the candidate receiving the most votes in the primary unless that candidate releases those delegates and alternates from such vote.~~

E. The election, or binding of votes, of delegates to a political party's national convention for the nomination of that party's candidates for President and Vice President of the United States through the presidential primary process shall be considered to be equivalent to a primary for the nomination of a party's candidate.

F. The cost of the presidential primary shall be paid by the Commonwealth pursuant to the provisions of the appropriation act.

Article 8.

Ranked Choice Voting in Presidential Primaries.

§ 24.2-546. Definitions.

As used in this article, unless the context requires a different meaning:

"Active candidate" means any candidate who has not been eliminated during tabulation or has not withdrawn.

"Ranking" means the ordinal number available to be assigned by a voter to a candidate to express the voter's choice for that candidate. The number "1" is the highest ranking, followed by "2," and then "3," and so on, down to the lowest allowable ranking.

§ 24.2-547. Form of ballot.

A. A ballot in an election conducted pursuant to this article shall allow voters to rank a party's candidates in order of preference.

B. A ballot in an election conducted pursuant to this article shall allow a voter to rank as many preferences as there are qualified candidates on the ballot. However, if any voting equipment used within the Commonwealth cannot accommodate a number of rankings on the ballot equal to the number of qualified candidates, the State Board may limit the number of rankings a voter may assign on the ballot to the maximum number allowed by the equipment, provided that the number of rankings allowed is no fewer than three and is uniform across the state.

§ 24.2-548. Tabulation of ranked choice ballots.

A. In any ranked choice voting election conducted under this article, each ballot counts as one vote for the highest-ranked active candidate on that ballot.

B. If a party awards all of the state's delegates to a single candidate on a winner-take-all basis using ranked choice voting, tabulation shall proceed as follows:

1. If there are more than two active candidates, the active candidate with the fewest votes is eliminated, and votes for the eliminated candidate are counted for each ballot's next-ranked active candidate.

2. If there are two or fewer active candidates, tabulation is complete.

C. If a party awards the state's delegates to multiple candidates on a proportional basis using ranked choice voting, tabulation shall proceed as follows:

1. If the vote total of any active candidate is below the amount of votes necessary for a candidate to receive delegates, as prescribed by the party, then the active candidate with the fewest votes is eliminated, and votes for the eliminated candidate are counted for each ballot's next-ranked active candidate.

2. If the vote total of every active candidate is above the amount of votes necessary for a candidate to receive delegates, as prescribed by the party, then tabulation is complete.

D. An undervote is a ballot that does not rank any candidates in a particular election. An undervote does not count as an active or inactive ballot in any round of tabulation of that election.

E. An inactive ballot is a ballot that ceases in a round of tabulation to count for any candidate for

the remainder of the tabulation of the election because either:

1. All candidates ranked on the ballot have become inactive; or

2. The ballot includes an overvote and any candidates ranked higher than the overvote have become inactive. An overvote occurs when a voter ranks more than one candidate at the same ranking.

F. During tabulation, a ballot shall remain active and continue to count for its highest-ranked active candidate notwithstanding any skipped or repeated rankings on the ballot. A skipped ranking occurs when a voter leaves a ranking unassigned but ranks a candidate at a subsequent ranking. A repeated ranking occurs when a voter ranks the same candidate at multiple rankings.

G. If two or more candidates are tied with the fewest votes and tabulation cannot continue until the candidate with the fewest votes is eliminated, then the State Board shall proceed publicly to determine by lot the candidate to be eliminated.

§ 24.2-549. Results reporting.

A. The Department of Elections shall promulgate rules or guidance to ensure the release of unofficial preliminary results after the polls close, including:

1. Round-by-round results, which shall be (i) released as soon as a reasonable number of precincts have reported but in no event later than 11:59 p.m. on election night, (ii) periodically released at regular intervals until the counting of ballots is complete, and (iii) clearly labeled as preliminary and include the number of counted and uncounted ballots to date; and

2. Ballot-level ranking data on an election-by-election basis, which shall be (i) released no later than the counting of ballots is complete; (ii) published online in a machine-readable, open format that can be retrieved, downloaded, indexed, sorted, and searched by commonly used Internet search applications and commonly used open format software; (iii) identifiable by precinct to the extent such identification is feasible and can be provided consistent with the need to maintain voter privacy; and (iv) clearly labeled as preliminary.

B. In adopting rules or guidance under this section, the Department of Elections shall consult with and allow for input from local election officials and national and state party representatives.

C. In addition to any other information required by law to be reported with final results, the Department of Elections shall make public:

1. The total number and percentage of votes each candidate received in each round of the official tabulation, including votes for withdrawn candidates;

2. The total number of ballots that became inactive in each round of tabulation for the reasons set out in subsection E of § 24.2-548, reported as separate figures; and

3. Ballot-level ranking data on an election-by-election basis in a machine-readable, open format that can be retrieved, downloaded, indexed, sorted, and searched by commonly used Internet search applications and commonly used open format software, and in a manner identifiable by precinct to the extent such identification is feasible and can be provided consistent with the need to maintain voter privacy.

D. If a party has chosen to award delegates by congressional districts, the Department of Elections shall make public the results in accordance with subsection C for each congressional district in addition to statewide results.

§ 24.2-550. Rulemaking authority.

The State Board shall have the authority to promulgate whatever rules are necessary to implement the provisions of this article.

[2. That the provisions of this act shall not become effective unless reenacted by the 2025 Session of the General Assembly.]