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SENATE BILL NO. 390

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact §§ 24.2-669 and 24.2-671.1 of the Code of Virginia, relating to elections; conduct of elections; annual post-election audits.*

Patron—Obenshain

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 24.2-669 and 24.2-671.1 of the Code of Virginia are amended and reenacted as follows:
§ 24.2-669. Clerk to keep ballots; inspection; destruction.**

The clerk to whom the counted and uncounted ballots are delivered shall, without breaking the seal, deposit them in a secure place in his office, where they shall be kept for the time required by this section. He shall not allow the ballots to be inspected except (i) by an authorized representative of the State Board or by the electoral board at the direction of the State Board to ensure the accuracy of the returns or the purity of the election, (ii) by the officers of election, and then only at the direction of the electoral board in accordance with § 24.2-672 when the provisions of § 24.2-662 have not been followed, (iii) on the order of a court before which there is pending a proceeding for a contest or recount under Chapter 8 (§ 24.2-800 et seq.) of this title or before whom there is then pending a proceeding in which the ballots are necessary for use in evidence, or (iv) for the purpose of conducting an audit as part of a post-election pilot program pursuant to § 24.2-671.1. In the event that ballots are inspected under clause (i), (ii), or (iv) of this paragraph, each political party and each independent candidate on the ballot, or each primary candidate, shall be entitled to have a representative present during such inspection. The representatives and observers lawfully present shall be prohibited from interfering with the officers of election in any way. The State Board or local electoral board shall provide such parties and candidates reasonable advance notice of the inspection.

After the counted ballots for a federal election have remained in the clerk's office for two years, if no election contest or other proceeding is pending in which such ballots may be needed as evidence, the clerk shall destroy such ballots. After the counted ballots for any other election have remained in the clerk's office for one year, if no election contest or other proceeding is pending in which such ballots may be needed as evidence, the clerk shall destroy such ballots. After the unused ballots have remained in the clerk's office and the time has expired for initiating a recount, contest, or other proceeding in which such ballots may be needed as evidence and no such contest or proceeding is pending, the clerk may then destroy the unused ballots other than punchcard ballots, which shall be returned to the electoral board.

§ 24.2-671.1. Audits of ballot scanner machines.

A. ~~The Department of Elections~~ *Each local electoral board and general registrar shall coordinate conduct a post-election risk-limiting audit annually of at least one fifth of all ballot scanner machines in use in the Commonwealth. The localities selected for the audit shall be chosen at random with every locality participating in the Department's annual audit at least once during a five-year period locality such that all ballot scanner machines in use in the locality are audited at least once every five years.* The purpose of the audits shall be to study the accuracy of ballot scanner machines.

B. No audit conducted pursuant to this section shall commence until after the election has been certified and the period to initiate a recount has expired without the initiation of a recount. An audit shall have no effect on the election results.

C. All audits conducted pursuant to this section shall be performed by the local electoral boards and general registrars in accordance with the procedures prescribed by the ~~Department~~ *State Board*. The procedures established by the ~~Department~~ *State Board* shall include its procedures for conducting hand counts of ballots. Candidates and political parties may have representatives observe the audits.

D. The local electoral boards shall report the results of the audit of the ballot scanner machines in their jurisdiction to the ~~Department~~. ~~At the conclusion of each audit, the Department shall submit a report to the State Board.~~ The report shall include a comparison of the audited election results and the initial tally for each machine audited and an analysis of any detected discrepancies.

INTRODUCED

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