

HOUSE BILL NO. 1847

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Privileges and Elections

on _____)

(Patron Prior to Substitute--Delegate LaRock)

A BILL to amend and reenact §§ 24.2-404 and 24.2-671.2 of the Code of Virginia and to repeal § 24.2-403.1, relating to elections; registration, absentee, and conduct of election.

Be it enacted by the General Assembly of Virginia:

1. That §§ § 24.2-404 and 24.2-671.2 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-404. Duties of Department of Elections.

A. The Department of Elections shall provide for the continuing operation and maintenance of a central recordkeeping system, the Virginia voter registration system, for all voters registered in the Commonwealth.

In order to operate and maintain the system, the Department shall:

1. Maintain a complete, separate, and accurate record of all registered voters in the Commonwealth. ~~Such system shall automatically register a person who has preregistered pursuant to § 24.2-403.1 upon that person becoming eligible for registration under § 24.2-403 or reaching 18 years of age, whichever comes first.~~

2. Require the general registrars to enter the names of all registered voters into the system and to change or correct registration records as necessary.

3. Provide to each general registrar voter confirmation documents for newly registered voters, including voters who were automatically registered pursuant to subdivision 1, and for notice to registered voters on the system of changes and corrections in their registration records and polling places.

4. Require the general registrars to delete from the record of registered voters the name of any voter who (i) is deceased, (ii) is no longer qualified to vote in the county or city where he is registered due to removal of his residence, (iii) has been convicted of a felony, (iv) has been adjudicated incapacitated,

27 (v) is known not to be a United States citizen by reason of reports from the Department of Motor Vehicles
28 pursuant to § 24.2-410.1 or from the Department of Elections based on information received from the
29 Systematic Alien Verification for Entitlements Program (SAVE Program) pursuant to subsection E, or
30 (vi) is otherwise no longer qualified to vote as may be provided by law. Such action shall be taken no later
31 than 30 days after notification from the Department. The Department shall promptly provide the
32 information referred to in this subdivision, upon receiving it, to general registrars.

33 5. Retain on the system for four years a separate record for registered voters whose names have
34 been deleted, with the reason for deletion.

35 6. Retain on the system permanently a separate record for information received regarding deaths,
36 felony convictions, and adjudications of incapacity pursuant to §§ 24.2-408 through 24.2-410.

37 7. Provide to each general registrar, at least 16 days prior to a general or primary election and three
38 days prior to a special election, an alphabetical list of all registered voters in each precinct or portion of a
39 precinct in which the election is being held in the county, city, or town. These precinct lists shall be used
40 as the official lists of qualified voters and shall constitute the pollbooks. The Department shall provide
41 instructions for the division of the pollbooks and precinct lists into sections to accommodate the efficient
42 processing of voter lines at the polls. Prior to any general, primary, or special election, the Department
43 shall provide any general registrar, upon his request, with a separate electronic list of all registered voters
44 in the registrar's county or city. If electronic pollbooks are used in the locality or electronic voter
45 registration inquiry devices are used in precincts in the locality, the Department shall provide a regional
46 or statewide list of registered voters to the general registrar of the locality. The Department shall determine
47 whether regional or statewide data is provided. Neither the pollbook nor the regional or statewide list of
48 registered voters shall include the day and month of birth of the voter, but shall include the voter's year of
49 birth.

50 8. Acquire by purchase, lease, or contract equipment necessary to execute the duties of the
51 Department.

52 9. Use any source of information that may assist in carrying out the purposes of this section. All
53 agencies of the Commonwealth shall cooperate with the Department in procuring and exchanging

54 identification information for the purpose of maintaining the voter registration system. The Department
55 may share any information that it receives from another agency of the Commonwealth with any Chief
56 Election Officer of another state for the maintenance of the voter registration system.

57 10. Cooperate with other states and jurisdictions to develop systems to compare voters, voter
58 history, and voter registration lists to ensure the accuracy of the voter registration rolls, to identify voters
59 whose addresses have changed, to prevent duplication of registration in more than one state or jurisdiction,
60 and to determine eligibility of individuals to vote in Virginia.

61 11. Reprint and impose a reasonable charge for the sale of any part of Title 24.2, lists of precincts
62 and polling places, statements of election results by precinct, and any other items required of the
63 Department by law. Receipts from such sales shall be credited to the Board for reimbursement of printing
64 expenses.

65 B. The Department shall be authorized to provide for the production, distribution, and receipt of
66 information and lists through the Virginia voter registration system by any appropriate means including,
67 but not limited to, paper and electronic means. The Virginia Freedom of Information Act (§ 2.2-3700 et
68 seq.) shall not apply to records about individuals maintained in this system.

69 C. The State Board shall institute procedures to ensure that each requirement of this section is
70 fulfilled. As part of its procedures, the State Board shall provide that the general registrar shall mail notice
71 of any cancellation pursuant to clause (v) of subdivision A 4 to the person whose registration is cancelled.

72 D. The State Board shall promulgate rules and regulations to ensure the uniform application of the
73 law for determining a person's residence.

74 E. The Department shall apply to participate in the Systematic Alien Verification for Entitlements
75 Program (SAVE Program) operated by U.S. Citizenship and Immigration Services of the U.S. Department
76 of Homeland Security for the purposes of verifying that voters listed in the Virginia voter registration
77 system are United States citizens. Upon approval of the application, the Department shall enter into any
78 required memorandum of agreement with U.S. Citizenship and Immigration Services. The State Board
79 shall promulgate rules and regulations governing the use of the immigration status and citizenship status
80 information received from the SAVE Program.

81 F. The Department shall report annually by October 1 for the preceding 12 months ending August
82 31 to the Committees on Privileges and Elections on each of its activities undertaken to maintain the
83 Virginia voter registration system and the results of those activities. The Department's report shall be
84 governed by the provisions of § 2.2-608 and shall encompass activities undertaken pursuant to
85 subdivisions A 9 and 10 and subsection E and pursuant to §§ 24.2-404.3, 24.2-404.4, 24.2-408, 24.2-409,
86 24.2-409.1, 24.2-410, 24.2-410.1, 24.2-427, and 24.2-428. This report shall contain the methodology used
87 in gathering and analyzing the data. The Commissioner of Elections shall certify that the data included in
88 the report is accurate and reliable.

89 **§ 24.2-671.2. Risk-limiting audits.**

90 A. For the purposes of this section:

91 "Contested race" means an election for an office where more names appear on the ballot than there
92 are vacancies to be filled or a statewide referendum or proposed constitutional amendment.

93 "Risk limit" means the largest probability that the risk-limiting audit will fail to correct an election
94 outcome that differs from the outcome that would be found by a full manual tabulation of the votes on all
95 ballots cast in the contested race.

96 "Risk-limiting audit" means an audit protocol conducted after an election and prior to the
97 certification of the election results with a pre-specified minimum probability of requiring a full hand count
98 of votes cast if the outcome reported by the voting system differs from the outcome that would be found
99 by a full hand count of the votes in a contested race. A "risk-limiting audit" requires a hand count of
100 randomly sampled printed ballots that continues until there is either strong statistical evidence that the
101 reported outcome is correct or, in the absence of such evidence, a full hand count of all ballots cast in the
102 contested race that determines the outcome.

103 B. Risk-limiting audits conducted pursuant to this section shall be performed by the local electoral
104 boards and general registrars under the supervision of the Department and in accordance with the
105 procedures prescribed by the State Board, including:

106 1. Processes for randomly selecting contested races and determining the risk limit.

107 2. Procedures for preparing for a risk-limiting audit, including guidelines for organizing ballots,
108 selecting venues, and securing appropriate materials by local electoral boards and general registrars.

109 3. Procedures for ballot custody, accounting, security, and written record retention that ensure that
110 the collection of cast ballots from which samples are drawn is complete and accurate throughout the audit.

111 4. Procedures for hand counting of the audited ballots.

112 5. Processes and methods for conducting the risk-limiting audit.

113 6. Procedures for ensuring transparency and understanding of the process by participants and the
114 public, including guidelines for direct observation by members of the public, representatives of the
115 candidates involved in the risk-limiting audit, and representatives of the political parties.

116 C. The Department shall provide that the following risk-limiting audits be conducted:

117 1. In the year of a general election for members of the United States House of Representatives, a
118 risk-limiting audit of at least one randomly selected contested race for such office;

119 2. (Effective July 1, 2023) In the year of a general election for members of the General Assembly,
120 a risk-limiting audit of at least one randomly selected contested race for such office;

121 3. (Effective July 1, 2024) In any year in which there is not a general election for a statewide office,
122 a risk-limiting audit of at least one randomly selected contested race for a local office, including
123 constitutional offices, for which certification by the State Board is required under § 24.2-680; and

124 4. (Effective July 1, 2023) In any year, any other risk-limiting audit of a contested race that is
125 necessary to ensure that each locality participates in a risk-limiting audit of an office within its jurisdiction
126 at least once every five years or that the State Board finds appropriate. Such audits must be approved by
127 at least a two-thirds majority vote of all members of the Board.

128 D. A local electoral board may request that the State Board approve the conduct of a risk-limiting
129 audit for a contested race within the local electoral board's jurisdiction, which may include an audit of the
130 portion of ballots cast in a district or statewide contested race that occurs within the locality represented
131 by the local electoral board. The state board shall promulgate regulations for submitting such requests.
132 The State Board shall grant an extension of the local electoral board's certification deadline under § 24.2-
133 671 as necessary to accommodate the conduct of a risk-limiting audit conducted pursuant to this

134 subsection. The Department may count a risk-limiting audit conducted pursuant to this subsection toward
135 the requirement in subdivision C 4.

136 E. Notwithstanding the provisions of subsections C and D, no contested race shall be selected to
137 receive a risk-limiting audit if the tabulation of the unofficial result for the contested race shows a
138 difference of not more than one percent of the total vote cast for the top two candidates.

139 F. Upon the tabulation of the unofficial results of an election, the State Board shall determine, in
140 accordance with subsection C, all the contested races for that election that will receive a risk-limiting audit
141 and shall set the risk limit to be applied in such audits. As soon as practicable after selection of the contests
142 to be audited, the Department shall publish a notice of the contested races in accordance with the
143 requirements for public meetings in § 2.2-3707. The Department shall provide support to local electoral
144 boards and general registrars in preparing to hold the risk-limiting audits.

145 G. The local electoral board and general registrar shall conduct a risk-limiting audit within their
146 jurisdiction at the date, time, and location noticed by the Department. At least one member of the local
147 electoral board representing each party shall participate in the risk-limiting audit and be present for the
148 duration of the risk-limiting audit when ballots are being selected and counted and calculations are being
149 made. All risk-limiting audits shall be conducted in a place and manner that is open to the public. At the
150 conclusion of a risk-limiting audit, all audit materials, including ballots and any records generated during
151 the course of the audit, shall be delivered to the clerk of the circuit court and retained as election materials
152 pursuant to § 24.2-668.

153 H. The local electoral board in coordination with the general registrar shall promptly report the
154 results of a risk-limiting audit of any contested races subject to § 24.2-680 in their jurisdiction to the
155 Department. The results of any risk-limiting audit for a local contested race shall also be retained by the
156 local electoral board. At the conclusion of each risk-limiting audit requiring certification by the State
157 Board, the Department shall submit to the State Board a report, which shall include all data generated by
158 the risk-limiting audit and all information required to confirm that the risk-limiting audit was conducted
159 in accordance with the procedures adopted by the State Board. The Department shall publish the results
160 of all risk-limiting audits pursuant to this section on the Department's website.

161 I. If a risk-limiting audit of a contested race escalates to a full hand count, the results of the hand
162 count shall be used to certify the election in lieu of the tabulation of the unofficial results obtained prior
163 to the conduct of the risk-limiting audit. A full hand count conducted pursuant to this section shall not be
164 construed as a recount under Chapter 8 (§ 24.2-800 et seq.). Nothing in this section shall be construed to
165 limit the rights of a candidate under Chapter 8.

166 J. The State Board shall include in the permissible processes and methods for conducting a risk-
167 limiting audit a batch comparison method where (i) the sums of the subtotals of batched ballots are
168 compared to the results of a contested race and (ii) hand counts of randomly selected ballot batches are
169 compared with corresponding machine counts.

170 **2. That § 24.2-403.1 of the Code of Virginia is repealed.**

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