

SENATE BILL NO. 1251

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections

on January 24, 2023)

(Patron Prior to Substitute--Senator Marsden)

A BILL to amend and reenact §§ 24.2-659 and 24.2-668 of the Code of Virginia, relating to elections; conduct of election; election results to be delivered on election night; election results to be delivered by officers representing both major parties when practical.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-659 and 24.2-668 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-659. Locking voting systems after election and delivering keys to clerk; printed returns as evidence.

A. If the voting system is secured by the use of equipment keys, after the officers of election lock and seal each machine, the equipment keys shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct, the number of each machine, the number on the seal, and the number of the protective counter, if one, on the machine. The sealed envelope shall be delivered by ~~one of the officers of the~~ an officer of election to the clerk of the circuit court where the election was held. The sealed envelope shall be delivered by one officer of election representing each political party whenever practical. The custodians of the voting equipment shall enclose and seal in an envelope, properly endorsed, all other keys to all voting equipment in their jurisdictions and deliver the envelope to the clerk of the circuit court by noon on the day following the election.

B. If the voting systems are secured by the use of equipment keys or electronic activation devices that are not specific to a particular machine, after the officers of election lock and seal each machine, the equipment keys and electronic activation devices shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an officer of election stating the election precinct. The sealed

27 envelope shall be delivered by ~~one of the officers~~ an officer of election to the clerk of the circuit court
28 where the election was held. The sealed envelope shall be delivered by one officer of election
29 representing each political party whenever practical.

30 C. If the voting system is secured by removal of the data storage device used in that election, the
31 officers shall remove the data storage device and proceed to lock and seal each machine. The data
32 storage device shall be enclosed in an envelope that shall be sealed and have endorsed thereon a
33 certificate of an officer of election stating the election precinct, the number of each machine, the number
34 on the seal, and the number of the protective counter, if one, on the machine. The sealed envelope shall
35 be delivered by ~~one of the officers~~ an officer of election to the clerk of the circuit court where the
36 election was held. The sealed envelope shall be delivered by one officer of election representing each
37 political party whenever practical. The equipment keys used at the polls shall be sealed in a different
38 envelope and delivered to the clerk who shall release them to the general registrar upon request or at the
39 expiration of the time specified by subsection F.

40 D. If the voting system provides for the creation of a separate master electronic back-up on a data
41 storage device that combines the data for all of the voting systems in a given precinct, that data storage
42 device shall be enclosed in an envelope that shall be sealed and have endorsed thereon a certificate of an
43 officer of election stating the name of the precinct. The sealed envelope shall be delivered by ~~one of the~~
44 ~~officers~~ an officer of election to the clerk of the circuit court where the election was held. The sealed
45 envelope shall be delivered by one officer of election representing each political party whenever
46 practical. The data storage device for the individual machines may remain sealed in its individual
47 machine until the expiration of the time specified by subsection F. The equipment keys and the
48 electronic activation devices used at the polls shall be sealed together in a separate envelope and
49 delivered to the clerk who shall release them to the general registrar upon request or at the expiration of
50 the time specified by subsection F.

51 E. If the voting system is secured by removal of the data storage device used in that election, and
52 the only record of votes cast for any office or on any question is saved on that data storage device and
53 not on the machine itself, the officers shall remove the data storage device and proceed to lock and seal

54 each machine. Each such machine shall remain locked and sealed until it is returned to the site at which
55 voting systems are stored in the locality. The data storage device shall be enclosed in an envelope that
56 shall be sealed and have endorsed thereon a certificate of an officer of election stating the election
57 precinct, the number of each machine, the number on the seal, and the number of the protective counter,
58 if one, on the machine. The sealed envelope shall be delivered by ~~one of the officers~~ an officer of
59 election to the clerk of the circuit court where the election was held. The sealed envelope shall be
60 delivered by one officer of election representing each political party whenever practical. The equipment
61 keys used at the polls shall be sealed in a different envelope and delivered to the general registrar no
62 later than noon on the day after the election.

63 F. The voting systems described in subsections A, B, C, and D shall remain locked and sealed
64 until the deadline to request a recount under Chapter 8 (§ 24.2-800 et seq.) has passed and, if any contest
65 or recount is pending thereafter, until it has been concluded. Such machines and any envelope
66 containing data storage devices shall be opened and all data examined only (i) on the order of a court of
67 competent jurisdiction or (ii) on the request of an authorized representative of the State Board, or the
68 electoral board or general registrar at the direction of the State Board, in order to ensure the accuracy of
69 the returns. In the event that machines and data storage devices are examined under clause (ii), each
70 political party and each independent candidate on the ballot, or each primary candidate, shall be entitled
71 to have a representative present during such examination. The representatives and observers lawfully
72 present shall be prohibited from interfering with the officers of election in any way. The State Board,
73 local electoral board, or general registrar shall provide such parties and candidates reasonable advance
74 notice of the examination.

75 When the required time has expired, the clerk of the circuit court shall return all voting
76 equipment keys and data storage devices to the general registrar.

77 G. The local electoral board or general registrar may direct the officers of election and custodians
78 that any sealed equipment keys or data storage devices that are otherwise required by the provisions of
79 this section to be delivered to the clerk of the circuit court shall instead be delivered to the principal
80 office of the general registrar no later than noon on the day following the election. The general registrar

81 shall secure and retain the sealed equipment keys and any other electronic locking or activation devices
82 in his office and shall convey them to the clerk of the court by noon on the day following the
83 ascertainment of the results of the election by the electoral board.

84 H. The provisions of this section requiring the locking and sealing of voting systems shall not
85 apply to any ballot marking device and its data storage device provided pursuant to § 24.2-626.1, where
86 the number of persons voting in the election or the number of votes cast for any office or on any
87 question are not recorded by the ballot marking device.

88 **§ 24.2-668. Pollbooks, statements of results, and ballots to be sealed and delivered to clerk**
89 **or general registrar.**

90 A. After ascertaining the results and before adjourning, the officers shall put the pollbooks, the
91 duplicate statements of results, and any printed inspection and return sheets in the envelopes provided by
92 the State Board. The officers shall seal the envelopes and direct them to the clerk of the circuit court for
93 the county or city. The pollbooks, statements, and sheets thus sealed and directed, the sealed counted
94 ballots envelope or container, and the unused, defaced, spoiled, and set aside ballots properly accounted
95 for, packaged and sealed, shall be conveyed by ~~one of the officers to be determined by lot, if they cannot~~
96 ~~otherwise agree, an officer of election~~ to the clerk of court by noon on the day following the election.
97 The packaged and sealed election materials shall be delivered by one officer of election representing
98 each political party whenever practical.

99 The clerk shall retain custody of the pollbooks, printed ballots, and other elections materials until
100 the time has expired for initiating a recount, contest, or other proceeding in which the pollbooks, printed
101 ballots, and other elections materials may be needed as evidence and there is no proceeding pending.
102 The clerk shall (i) secure all pollbooks, printed ballots and other election materials in sealed boxes; (ii)
103 place all of the sealed boxes in a vault or room not open to the public or to anyone other than the clerk
104 and his staff; (iii) cause such vault or room to be securely locked except when access is necessary for the
105 clerk and his staff; and (iv) upon the initiation of a recount, certify that these security measures have
106 been taken in whatever form is deemed appropriate by the chief judge.

