

14104820D

## SENATE BILL NO. 361

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections  
on February 4, 2014)

(Patron Prior to Substitute—Senator Saslaw)

*A BILL to amend and reenact §§ 24.2-653 and 24.2-671 of the Code of Virginia, relating to provisional ballots and meetings of electoral board following elections.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 24.2-653 and 24.2-671 of the Code of Virginia are amended and reenacted as follows:**

**§ 24.2-653. Voter whose name does not appear on pollbook or who is marked as having voted; handling of provisional ballots; ballots cast after normal close of polls due to court order extending polling hours.**

A. When a person offers to vote pursuant to § 24.2-652 and the general registrar is not available or cannot state that the person is registered to vote, then such person shall be allowed to vote by paper ballot in the manner provided in this section. This procedure shall also apply when required by § 24.2-643 or 24.2-651.1.

Such person shall be given a paper ballot and provide, subject to the penalties for making false statements pursuant to § 24.2-1016, on a green envelope supplied by the State Board, the identifying information required on the envelope, including his social security number, if any, full name including the maiden or any other prior legal name, date of birth, complete address, and signature. Such person shall be asked to present one of the forms of identification specified in subsection B of § 24.2-643. The officers of election shall note on the green envelope whether or not the voter has presented one of the specified forms of identification. The officers of election shall enter the appropriate information for the person in the precinct provisional ballots log in accordance with the instructions of the State Board but shall not enter a consecutive number for the voter on the pollbook nor otherwise mark his name as having voted. The officers of election shall provide an application for registration to the person offering to vote in the manner provided in this section.

The voter shall then, in the presence of an officer of election, but in a secret manner, mark the ballot as provided in § 24.2-644 and seal it in the green envelope. The envelope containing the ballot shall then promptly be placed in the ballot container by an officer of election.

An officer of election, by a written notice given to the voter, shall (i) inform him that a determination of his right to vote shall be made by the electoral board, (ii) advise the voter of the beginning time and place for the board's meeting and of the voter's right to be present at that meeting, and (iii) inform a voter voting provisionally when required by § 24.2-643 that he may submit a copy of one of the forms of identification specified in subsection B of § 24.2-643 to the electoral board by facsimile, electronic mail, in-person submission, or timely United States Postal Service or commercial mail delivery, to be received by the electoral board no later than noon on the third day after the election. At the meeting, the voter may request an extension of the determination of the provisional vote to the following day in order to provide information to prove that the voter is entitled to vote in the precinct pursuant to § 24.2-401. The electoral board shall have the authority to grant such extensions which it deems reasonable to determine the status of a provisional vote.

B. The provisional votes submitted pursuant to subsection A, in their unopened envelopes, shall be sealed in a special envelope marked "Provisional Votes," inscribed with the number of envelopes contained therein, and signed by the officers of election who counted them. All provisional votes envelopes shall be delivered either (i) to the clerk of the circuit court who shall deliver all such envelopes to the secretary of the electoral board or (ii) to the general registrar in localities in which the electoral board has directed delivery of election materials to the general registrar pursuant to § 24.2-668.

The electoral board shall meet on the day following the election and determine whether each person having submitted such a provisional vote was entitled to do so as a qualified voter in the precinct in which he offered the provisional vote. If the board is unable to determine the validity of all the provisional ballots offered in the election, or has granted any voter who has offered a provisional ballot an extension to the following day as provided in subsection A, the meeting shall stand adjourned from day to day, not to exceed seven calendar days from the date of the election, until the board has determined the validity of all provisional ballots offered in the election.

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 shall be permitted to remain in the room in which the determination is being made as an observer so long as he does not participate in the proceedings and does not impede the orderly conduct of the determination. Each authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each

60 representative, who is not himself a candidate or party chairman, shall present to the electoral board a  
61 written statement designating him to be a representative of the party or candidate and signed by the  
62 county or city chairman of his political party, the independent candidate, or the primary candidate, as  
63 appropriate. Such statement, bearing the chairman's or candidate's original signature, may be photocopied  
64 and such photocopy shall be as valid as if the copy had been signed.

65 Notwithstanding the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.),  
66 attendance at meetings of the electoral board to determine the validity of provisional ballots shall be  
67 permitted only for the authorized representatives provided for in this subsection, for the persons whose  
68 provisional votes are being considered and their representative or legal counsel, and for appropriate staff  
69 and legal counsel for the electoral board.

70 If the electoral board determines that such person was not entitled to vote as a qualified voter in the  
71 precinct in which he offered the provisional vote, is unable to determine his right to vote, or has not  
72 been provided one of the forms of identification specified in subsection B of § 24.2-643, the envelope  
73 containing his ballot shall not be opened and his vote shall not be counted. The provisional vote shall be  
74 counted if (a) such person is entitled to vote in the precinct pursuant to § 24.2-401 or (b) the State  
75 Board or the voter presents proof that indicates the voter submitted an application for registration to the  
76 Department of Motor Vehicles or other state-designated voter registration agency prior to the close of  
77 registration pursuant to § 24.2-416 and the registrar determines that the person was qualified for  
78 registration based upon the application for registration submitted by the person pursuant to subsection A.  
79 The general registrar shall notify in writing pursuant to § 24.2-114 those persons found not properly  
80 registered or whose provisional vote was not counted.

81 If the electoral board determines that such person was entitled to vote, the name of the voter shall be  
82 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and  
83 the ballot placed in a ballot container without any inspection further than that provided for in  
84 § 24.2-646.

85 On completion of its determination, the electoral board shall proceed to count such ballots and certify  
86 the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671. No  
87 adjustment shall be made to the statement of results for the precinct in which the person offered to vote.

88 The certification of the results of the count together with all ballots and envelopes, whether open or  
89 unopened, and other related material shall be delivered by the electoral board to the clerk of the circuit  
90 court and retained by him as provided for in §§ 24.2-668 and 24.2-669.

91 C. Whenever the polling hours are extended by an order of a court of competent jurisdiction, any  
92 ballots marked after the normal polling hours by persons who were not already in line at the time the  
93 polls would have closed, notwithstanding the court order, shall be treated as provisional ballots under  
94 this section. The officers of election shall mark the green envelope for each such provisional ballot to  
95 indicate that it was cast after normal polling hours due to the court order, and when preparing the  
96 materials to deliver to the registrar or electoral board, shall separate these provisional ballots from any  
97 provisional ballots used for any other reason. The electoral board shall treat these provisional ballots as  
98 provided in subsection B; however, the counted and uncounted provisional ballots marked after the  
99 normal polling hours shall be kept separate from all other ballots and recorded in a separate provisional  
100 ballots pollbook. The State Board of Elections shall provide instructions to the electoral boards for the  
101 handling and counting of such provisional ballots pursuant to this section.

102 **§ 24.2-671. Electoral board to meet and ascertain results; conclusiveness of results.**

103 Each electoral board shall meet at the clerk's or general registrar's office of the county or city for  
104 which they are appointed at or before 5:00 p.m. on the day after any election. The board may adjourn to  
105 another room of sufficient size in a public building to ascertain the results, and may adjourn ~~from day to~~  
106 ~~day~~ as needed, not to exceed seven calendar days from the date of the election. Written directions to the  
107 location of any room other than the clerk's or general registrar's office where the board will meet shall  
108 be posted at the doors of the clerk's and general registrar's offices prior to the beginning of the meeting.

109 The board shall open the returns delivered by the officers.

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

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

122 title.

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

127 Beginning with the general election in November 2007, a report of any changes made by the local  
128 electoral board to the unofficial results ascertained by the officers of election or any subsequent change  
129 to the official abstract of votes made by the local electoral board shall be forwarded to the State Board  
130 of Elections and the explanation of such change shall be posted on the State Board website.

131 Each political party and each independent candidate on the ballot, or each primary candidate, shall be  
132 entitled to have representatives present when the local electoral board meets to ascertain the results of  
133 the election. Each such party and candidate shall be entitled to have at least as many representatives  
134 present as there are teams of officials working to ascertain the results, and the room in which the local  
135 electoral board meets shall be of sufficient size and configuration to allow the representatives reasonable  
136 access and proximity to view the ballots as the teams of officials work to ascertain the results. The  
137 representatives and observers lawfully present shall be prohibited from interfering with the officials in  
138 any way.