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HOUSE BILL NO. 43

Offered January 8, 2020

Prefiled November 20, 2019

A BILL to amend and reenact § 24.2-653 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-653.2, relating to provisional voting; persons voting in split precincts.

Patrons—Cole, M.L., Carter, Cole, J.G., Fowler, Hurst, LaRock, McNamara, Orrock, Sickles and Webert; Senators: Chase and Peake

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That § 24.2-653 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-653.2 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 printed 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 printed ballot and provide, subject to the penalties for making false statements pursuant to § 24.2-1016, on a green envelope supplied by the Department of Elections, the identifying information required on the envelope, including the last four digits of 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 printed 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 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. *In the case of persons voting provisionally pursuant to § 24.2-653.2, the electoral board shall determine of which district the person is a qualified voter.* 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 as provided in subsection A, the

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58 meeting shall stand adjourned, not to exceed seven calendar days from the date of the election, until the
59 board has determined the validity of all provisional ballots offered in the election.

60 One authorized representative of each political party or independent candidate in a general or special
61 election or one authorized representative of each candidate in a primary election shall be permitted to
62 remain in the room in which the determination is being made as an observer so long as he does not
63 participate in the proceedings and does not impede the orderly conduct of the determination. Each
64 authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each
65 representative, who is not himself a candidate or party chairman, shall present to the electoral board a
66 written statement designating him to be a representative of the party or candidate and signed by the
67 county or city chairman of his political party, the independent candidate, or the primary candidate, as
68 appropriate. If the county or city chairman is unavailable to sign such a written designation, such a
69 designation may be made by the state or district chairman of the political party. However, no written
70 designation made by a state or district chairman shall take precedence over a written designation made
71 by the county or city chairman. Such statement, bearing the chairman's or candidate's original signature,
72 may be photocopied and such photocopy shall be as valid as if the copy had been signed.

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

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

89 If the electoral board determines that such person was entitled to vote, the name of the voter shall be
90 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and
91 the ballot placed in a ballot container without any inspection further than that provided for in
92 § 24.2-646.

93 On completion of its determination, the electoral board shall proceed to count such ballots and certify
94 the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671. No
95 adjustment shall be made to the statement of results for the precinct in which the person offered to vote.
96 However, any voter who cast a provisional ballot and is determined by the electoral board to have been
97 entitled to vote shall have his name included on the list of persons who voted that is submitted to the
98 Department of Elections pursuant to § 24.2-406.

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

102 C. Whenever the polling hours are extended by an order of a court of competent jurisdiction, any
103 ballots marked after the normal polling hours by persons who were not already in line at the time the
104 polls would have closed, notwithstanding the court order, shall be treated as provisional ballots under
105 this section. The officers of election shall mark the green envelope for each such provisional ballot to
106 indicate that it was cast after normal polling hours due to the court order, and when preparing the
107 materials to deliver to the registrar or electoral board, shall separate these provisional ballots from any
108 provisional ballots used for any other reason. The electoral board shall treat these provisional ballots as
109 provided in subsection B; however, the counted and uncounted provisional ballots marked after the
110 normal polling hours shall be kept separate from all other ballots and recorded in a separate provisional
111 ballots pollbook. The Department of Elections shall provide instructions to the electoral boards for the
112 handling and counting of such provisional ballots pursuant to this section.

113 **§ 24.2-653.2. Voters assigned to split precinct; provisional ballots.**

114 A. Any voter who is assigned to a precinct that is split between two or more election districts and
115 believes he was given a ballot for the district of which he is not a qualified voter may request, prior to
116 casting the ballot, and shall be permitted to cast, a provisional ballot for the district of which he
117 believes he is a qualified voter and for the district in which the pollbook indicates he is registered. The
118 provisional ballots shall be cast in accordance with the provisions of § 24.2-653, except that the voter
119 shall be given a printed ballot for the district of which he believes he is a qualified voter and for the

120 district in which the pollbook indicates he is registered, and an envelope for each ballot, which shall be
121 labeled with the corresponding district number. After marking each printed ballot, the voter shall seal
122 each ballot in its corresponding envelope, and the ballot envelopes shall then be sealed in the green
123 envelope provided for in § 24.2-653.

124 B. At the meeting of the electoral board to determine the validity of all provisional ballots offered in
125 the election, the electoral board shall verify in which district a voter who voted provisionally pursuant
126 to this section is a qualified voter, and the provisional ballot cast by the voter for that district shall be
127 counted. The electoral board shall process the ballot in accordance with the provisions of § 24.2-653
128 and the instructions of the State Board.