

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 438

An Act to amend and reenact §§ 24.2-653 and 24.2-668 of the Code of Virginia, relating to election-day and post-election procedures; votes by persons not shown as registered.

[S 933]

Approved March 16, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-653 and 24.2-668 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-653. Voter whose name does not appear on precinct registered voter list.

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.

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 in § 24.2-652. The officers of election shall enter the appropriate information for the person on the precinct registered voter list but not mark his name as having voted nor enter it on the precinct pollbook.

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 be placed in the ballot box by an officer of election.

An officer of election shall inform the voter that a determination of his right to vote shall be made by the electoral board on the following day and advise the voter of the beginning time and place for the board's meeting.

B. The votes cast pursuant to subsection A, in their unopened envelopes, shall be sealed in a special envelope marked "~~Challenged~~ Conditional Votes," inscribed with the number of envelopes contained therein, and signed by the officers of election who counted them. All ~~challenged~~ conditional 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 cast such a ballot was entitled to do so. One authorized representative of each political party or independent candidate in a general election or one authorized representative of each candidate in a primary or special election, who is a qualified voter of the city or county, shall be permitted to remain in the room in which the determination is being made so long as he does not impede the orderly conduct of the determination.

If the electoral board determines that such person was not entitled to vote, or is unable to determine his right to vote, the envelope containing his ballot shall not be opened and his vote shall not be counted. The general registrar shall notify in writing pursuant to § 24.2-114 those persons found not properly registered.

If the electoral board determines that such person was entitled to vote, the precinct registered voter list shall be so marked, the name of the voter shall be entered in a ~~challenged~~ conditional votes pollbook, the envelope shall be opened, and the ballot placed in a ballot box without any inspection further than that provided for in § 24.2-646.

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

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

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

A. After ascertaining the results and before adjourning, the officers shall put the pollbooks, the duplicate statements of results, and any printed inspection and return sheets in the envelopes provided by the State Board. The officers shall seal the envelopes and direct them to the clerk of the circuit court for the county or city. The pollbooks, statements, and sheets thus sealed and directed, the sealed counted ballots envelope or container, and the unused, defaced, spoiled and set aside ballots properly accounted for, packaged and sealed, shall be conveyed by one of the officers to be determined by lot, if they cannot otherwise agree, to the clerk of court by noon on the day following the election.

The clerk shall retain custody of the pollbooks until the time has expired for initiating a recount,

contest, or other proceeding in which the pollbooks may be needed as evidence and there is no proceeding pending. After that time the clerk shall deliver the pollbooks to the general registrar who shall preserve them for five years from the date of the election. The clerk shall retain the statement of results and any printed inspection and return sheets for two years and may then destroy them.

B. The local electoral board may direct that the officers of election, in lieu of conveying the materials to the clerk of the circuit court as provided in subsection A of this section, shall convey the materials to the principal office of the general registrar on the night of the election. The general registrar shall secure and retain the materials in his office and shall convey to the clerk of the court by noon of the day following the election all of the election materials, except the envelopes containing the "~~Challenged~~ *Conditional Votes*," and the envelopes containing the pollbooks, the statements of results and, if mechanical voting machines are used, one copy of the printed return sheet from each machine. Following the ascertainment of the results of the election by the electoral board, the general registrar shall retain for public inspection one copy of the statement of results and shall immediately convey to the clerk sealed envelopes containing all remaining election materials.