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## HOUSE BILL NO. 1073

Offered January 26, 1998

*A BILL to amend and reenact §§ 24.2-101 and 24.2-803 of the Code of Virginia, relating to election law definitions and contested elections to the General Assembly.*

\_\_\_\_\_  
Patron—Melvin

\_\_\_\_\_  
Referred to Committee on Privileges and Elections

**Be it enacted by the General Assembly of Virginia:****1. That §§ 24.2-101 and 24.2-803 of the Code of Virginia are amended and reenacted as follows:**

§ 24.2-101. Definitions.

As used in this title, unless the context requires a different meaning:

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. "Candidate" shall include a person who seeks the nomination of a political party or who, by reason of receiving the nomination of a political party for election to an office, is referred to as its nominee. For the purposes of Chapters 8 (§ 24.2-800 et seq.) and 9 (§ 24.2-900 et seq.) of this title, "candidate" shall include any write-in candidate. *However, no write-in candidate who has received less than twenty-five percent of the votes cast for the office shall be eligible to initiate an election contest pursuant to Article 2 (§ 24.2-803 et seq.) of Chapter 8 of this title.*

"Central absentee voter precinct" means a precinct established by a county or city pursuant to § 24.2-712 for the processing of absentee ballots for the county or city or any combination of precincts within the county or city.

"Constitutional officer" or "constitutional officer" means a county or city office or officer referred to in Article VII, Section 4 of the Constitution of Virginia: clerk of the circuit court, attorney for the Commonwealth, sheriff, commissioner of the revenue, and treasurer.

"Election" means a general, primary, or special election.

"Election district" means the territory designated by proper authority or by law which is represented by an official elected by the people, including the Commonwealth, a congressional district, a General Assembly district, or a district for the election of an official of a county, city, town, or other governmental unit.

"Electoral board" or "local electoral board" means a board appointed pursuant to § 24.2-106 to administer elections for a county or city. The electoral board of the county in which a town or the greater part of a town is located shall administer the town's elections.

"General election" means an election held in the Commonwealth on the Tuesday after the first Monday in November or on the first Tuesday in May for the purpose of filling offices regularly scheduled by law to be filled at those times.

"Officer of election" means a person appointed by an electoral board pursuant to § 24.2-115 to serve at a polling place for any election.

"Party" or "political party" means an organization of citizens of the Commonwealth which, at either of the two preceding statewide general elections, received at least ten percent of the total vote cast for any statewide office filled in that election. The organization shall have a state central committee and an office of elected state chairman which have been continually in existence for the six months preceding the filing of a nominee for any office.

"Polling place" means the one place provided for each precinct at which the qualified voters who are residents of the precinct may vote.

"Precinct" means the territory designated by the governing body of a county, city, or town to be served by one polling place.

"Primary" or "primary election" means an election held for the purpose of selecting a candidate to be the nominee of a political party for election to office.

"Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and who is (i) eighteen years of age, (ii) a resident of the Commonwealth and of the precinct in which he offers to vote, and (iii) registered to vote. No person who has been convicted of a felony shall be a qualified voter unless his civil rights have been restored by the Governor or other appropriate authority. No person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as provided by law.

"Qualified voter in a town" means a person who is a resident within the corporate boundaries of the town in which he offers to vote, duly registered in the county of his residence, and otherwise a qualified

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60 voter.

61 "Referendum" means any election held pursuant to law to submit a question to the voters for  
62 approval or rejection.

63 "Registered voter" means any person who is maintained on the Virginia voter registration system. All  
64 registered voters shall be maintained on the Virginia voter registration system with active status unless  
65 assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.) *of*  
66 *this title*. For purposes of applying the precinct size requirements of § 24.2-307, calculating election  
67 machine requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6 *of this title* and  
68 determining the number of signatures required for candidate and voter petitions, "registered voter" shall  
69 include only persons maintained on the Virginia voter registration system with active status.

70 "Registration records" means all official records concerning the registration of qualified voters and  
71 shall include all records, lists, and files, whether maintained in books, on cards, on automated data  
72 bases, or by any other legally permitted record-keeping method.

73 "Residence" or "resident," for all purposes of qualification to register and vote, means and requires  
74 both domicile and a place of abode. In determining domicile, consideration may be given to a person's  
75 expressed intent, conduct, and all attendant circumstances including, but not limited to, financial  
76 independence, business pursuits, employment, income sources, residence for income tax purposes,  
77 marital status, residence of parents, spouse and children, if any, leasehold, sites of personal and real  
78 property owned by the person, motor vehicle and other personal property registration, and other factors  
79 reasonably necessary to determine the qualification of a person to register or vote.

80 "Special election" means any election which is held pursuant to law to fill a vacancy in office or to  
81 hold a referendum.

82 "State Board" or "Board" means the State Board of Elections.

83 "Virginia voter registration system" or "voter registration system" means the automated central  
84 record-keeping system for all voters registered within the Commonwealth which is maintained as  
85 provided in Article 2 (§ 24.2-404 et seq.) of Chapter 4 of this title.

86 § 24.2-803. Contest of election to General Assembly.

87 A. This section applies to any general or special election of members to the General Assembly.

88 B. A contest of the election of any member to the General Assembly may be initiated by an  
89 unsuccessful candidate in the election, referred to hereafter as the contestant.

90 To initiate a contest, the contestant shall give written notice, in the manner provided in subsection D,  
91 of his intent to contest the election to the person or persons apparently elected, referred to hereafter as  
92 the contestee, and to the Clerk of the House of Delegates if he is contesting a House election or of the  
93 Senate if he is contesting a Senate election, within twenty days following the date of the election.

94 The notice shall state the grounds on which the contestant intends to contest the election. The  
95 grounds shall include (i) objections to the eligibility of the contestee based on specific allegations, (ii)  
96 objections to the conduct or results of the election accompanied by specific allegations which, if proven  
97 true, would have a probable impact on the outcome of the election, or (iii) both.

98 The notice shall state that an answer by the contestee must be filed with the clerk of the appropriate  
99 house within ten days following service of the notice. The contestant shall sign and verify the notice by  
100 his oath or affirmation.

101 C. Within ten days after service of the contestant's notice on the contestee, the contestee shall file  
102 with the clerk of the appropriate house a written answer. His answer shall admit or deny the allegations  
103 on which the contestant relies, or state that he has no knowledge or information concerning an allegation  
104 which shall be deemed denial, and state any other defenses, in law or fact, on which he relies. The  
105 contestee shall sign and verify his answer by his oath or affirmation.

106 D. The notice of intent to contest shall be filed by the contestant with the clerk of the appropriate  
107 house and copies thereof served by the contestant as provided under § 8.01-296 on each contestee. The  
108 answer, petition, and any reply and copies thereof shall be filed with the appropriate clerk, and ~~the~~  
109 ~~copies shall be served by the clerk on the counsel of record as provided under~~ *on the opposing party or*  
110 *his counsel, if any, in the manner prescribed by Rule 1:12 of the Rules of the Supreme Court of*  
111 *Virginia.*

112 After service of the notice of intent, any party, after reasonable notice to the other party or parties,  
113 shall be authorized to take depositions to sustain or invalidate the election. The contestant shall complete  
114 the taking of depositions to submit with his petition at any time within thirty days following the date of  
115 the election, and the contestee shall complete the taking of his depositions within forty-five days  
116 following the date of the election. By written stipulation of the parties, the testimony of any witness  
117 may be filed in the form of an affidavit by the witness within the same time limitations prescribed for  
118 the taking of depositions.

119 Subpoenas for witnesses shall be issued by the clerk of the circuit court of the county or city in  
120 which the contestee resides on the application of either party. Witnesses shall be entitled to the same  
121 allowances and privileges, and be subject to the same penalties, as witnesses summoned to attend the

122 courts.

123 Every deposition shall be taken before a person authorized by law to administer oaths, who shall  
124 certify and seal the deposition in the same manner as in judicial civil proceedings, and file the same  
125 with the clerk of the appropriate house.

126 *Subpoenas duces tecum requiring the production of documents and tangible things relevant and*  
127 *material to the allegations set forth in the notice of intent to contest the election and any answer thereto*  
128 *shall be issued by the clerk of the circuit court of the county or city in which the contestee resides on*  
129 *the application of either party. However, no subpoena shall be issued for the production of any ballots,*  
130 *pollbooks, registered voter lists, voting equipment, absentee voting materials, or other original election*  
131 *materials or equipment in the possession, control, or custody of the clerk of the circuit court, the voting*  
132 *equipment custodian, or the general registrar of any jurisdiction within the election district. No*  
133 *subpoena duces tecum shall be issued, or be returnable, after the date established by this subsection for*  
134 *the completion of the taking of depositions by the party applying for the subpoena.*

135 E. A written petition shall be filed by the contestant with the clerk of the appropriate house (i)  
136 within two days following the second Wednesday in January if the contested election was held at a  
137 November general election and (ii) within twenty days following the date of the election or within two  
138 days following the commencement of the next session of the General Assembly, whichever is later, if  
139 the election was held on a different date. The contestee may file a written reply to the petition within  
140 five days following its service on him.

141 *No affidavit may be made a part of, or filed in support of, a petition or reply thereto unless the*  
142 *affidavit has previously been filed with the clerk of the appropriate house, pursuant to the written*  
143 *stipulation of the parties or their counsel, on or before the date established by subsection D for the*  
144 *completion of the taking of depositions by the proponent of the affidavit.*

145 F. If the election was held during a regular session of the General Assembly, the times for filing the  
146 notice of intent to contest, the answer, petition, and reply and for taking depositions and affidavits shall  
147 be set by the Committee on Privileges and Elections of the appropriate house. The Committee may  
148 consider the contestant's and contestee's recommendations for the procedural schedule.

149 G. The clerk shall refer the notice, answer, petition, reply, depositions, and affidavits to the  
150 Committee on Privileges and Elections, which documents shall constitute the record in the contest.

151 Unless another committee has been designated by the rules of the house to hear contest matters, the  
152 Committee on Privileges and Elections shall hear the contest and conduct such investigation as has been  
153 directed by resolution of its house. It shall report its findings and recommendations to the house for its  
154 action.

155 H. The house, in its judgment, may find for the contestant and declare him elected, find for the  
156 contestee and confirm his election, or declare the election void and order a writ of election as in other  
157 cases of vacancy. If the house finds a tie vote has occurred, it shall direct a determination by lot in  
158 accordance with § 24.2-674, but no right to a recount shall be permitted. *If the house finds that the*  
159 *contestant has prosecuted the election contest in bad faith, the house may order the contestant to pay to*  
160 *the contestee a sum that is not more than the contestee's actual costs of defending against the contest,*  
161 *including, but not limited to, reasonable attorneys' fees, expert witnesses' fees, and such costs as would*  
162 *be taxable in an action at law.*