

13103420D

**SENATE BILL NO. 1072**

Offered January 9, 2013

Prefiled January 9, 2013

*A BILL to amend and reenact §§ 24.2-404, 24.2-611, 24.2-643, 24.2-651, and 46.2-208.1 of the Code of Virginia, relating to elections; electronic pollbooks; photographs.*

Patron—Obenshain

Referred to Committee on Privileges and Elections

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

**1. That §§ 24.2-404, 24.2-611, 24.2-643, 24.2-651, and 46.2-208.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 24.2-404. Duties of State Board.**

A. The State Board shall provide for the continuing operation and maintenance of a central recordkeeping system, the Virginia Voter Registration System, for all voters registered in the Commonwealth.

In order to operate and maintain the system, the Board shall:

1. Maintain a complete, separate, and accurate record of all registered voters in the Commonwealth.  
2. Require the general registrars to enter the names of all registered voters into the system and to change or correct registration records as necessary.

3. Provide to each general registrar, voter registration cards for newly registered voters and for notice to registered voters on the system of changes and corrections in their registration records and polling places.

4. Require the general registrars to delete from the record of registered voters the name of any voter who (i) is deceased, (ii) is no longer qualified to vote in the county or city where he is registered due to removal of his residence, (iii) has been convicted of a felony, (iv) has been adjudicated incapacitated, (v) is known not to be a United States citizen by reason of reports from the Department of Motor Vehicles pursuant to § 24.2-410.1, or (vi) is otherwise no longer qualified to vote as may be provided by law. Such action shall be taken no later than 30 days after notification from the Board. The Board shall promptly provide the information referred to in this subdivision, upon receiving it, to general registrars.

5. Retain on the system for four years a separate record for registered voters whose names have been deleted, with the reason for deletion.

6. Retain on the system permanently a separate record for information received regarding deaths, felony convictions, and adjudications of incapacity pursuant to §§ 24.2-408 through 24.2-410.

7. Provide to each general registrar, at least 16 days prior to a general or primary election and three days prior to a special election, an alphabetical list of all registered voters in each precinct or portion of a precinct in which the election is being held in the county, city, or town. These precinct lists shall be used as the official lists of qualified voters and shall constitute the pollbooks. The State Board shall provide instructions for the division of the pollbooks and precinct lists into sections to accommodate the efficient processing of voter lines at the polls. Prior to any general, primary, or special election, the State Board shall provide any general registrar, upon his request, with a separate electronic list of all registered voters in the registrar's county or city. If electronic pollbooks are used in the locality or electronic voter registration inquiry devices are used in precincts in the locality, the State Board shall provide a regional or statewide list of registered voters to the general registrar of the locality. The State Board shall determine whether regional or statewide data is provided. Neither the pollbook nor the regional or statewide list of registered voters shall include the day and month of birth of the voter, but shall include the voter's year of birth.

8. Acquire by purchase, lease, or contract equipment necessary to execute the duties of the Board.

9. Use any source of information that may assist in carrying out the purposes of this section. All agencies of the Commonwealth shall cooperate with the State Board in procuring and exchanging identification information for the purpose of maintaining the voter registration system. The State Board may share any information that it receives from another agency of the Commonwealth with any Chief Election Officer of another state for the maintenance of the voter registration system.

10. Reprint and impose a reasonable charge for the sale of any part of Title 24.2, lists of precincts and polling places, statements of election results by precinct, and any other items required of the State Board by law. Receipts from such sales shall be credited to the Board for reimbursement of printing expenses.

INTRODUCED

SB1072

59 11. Enter into an agreement with the Department of Motor Vehicles and an agreement with the  
60 Department's credentials vendor for the purpose of electronically requesting and receiving a customer's  
61 image, including the date such image was created, and identifying information regarding a customer's  
62 height, color of hair, and color of eyes stored in his record in the office of the Department necessary  
63 for the purpose of including such image and identifying information in the electronic pollbook.

64 B. The State Board shall be authorized to provide for the production, distribution, and receipt of  
65 information and lists through the Virginia Voter Registration System by any appropriate means  
66 including, but not limited to, paper and electronic means.

67 C. The State Board shall institute procedures to ensure that each requirement of this section is  
68 fulfilled. As part of its procedures, the State Board shall provide that the general registrar shall mail  
69 notice of any cancellation pursuant to clause (v) of subdivision A 4 to the person whose registration is  
70 cancelled.

71 D. The State Board shall promulgate rules and regulations to ensure the uniform application of the  
72 law for determining a person's residence.

73 **§ 24.2-611. Form and signing of pollbooks; records of persons voting; electronic pollbooks.**

74 A. The following oath shall be on a form prescribed by the State Board, administered to all officers  
75 of election, and kept by the officers of election with the pollbook:

76 "I do solemnly swear (or affirm) that I will perform the duties for this election according to law and  
77 the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in  
78 conducting this election."

79 The oath shall be administered to each officer of election by the general registrar, a member of the  
80 electoral board, or an officer of election designated by the general registrar and secretary of the electoral  
81 board, who shall be so identified on the form. The oath shall be signed by each officer of election and  
82 the person administering the oath. The pollbook shall be marked to identify the election for which it is  
83 used.

84 B. The State Board shall provide the pollbook pursuant to subdivision A 7 of § 24.2-404. The  
85 pollbook shall (i) provide a space for the officer of election to record the name and consecutive number  
86 of the voter at the time he offers to vote and (ii) be retained in accordance with the provisions  
87 governing pollbooks in this title. The State Board shall make available a numerical check sheet required  
88 to be used with pollbooks in printed form to determine the consecutive number to be recorded with the  
89 name of the voter by the officer of election. In electronic pollbooks, the consecutive number shall be  
90 entered automatically when the officer of election records that the voter has voted. When the name and  
91 number of the last qualified voter have been entered on the pollbook, the officer of election responsible  
92 for that pollbook shall sign a statement on the check sheet, or on a separate form if an electronic  
93 pollbook is used, certifying the number of qualified registrants who have voted. The State Board shall  
94 provide instructions to the local electoral boards, general registrars, and officers of election for the  
95 conduct of the election and for procedures for entering a voting record for each voter and recording each  
96 voter's name, including voters unable to enter the polling place, and for verifying the accurate entry of  
97 the voting record for each registrant on the Virginia Voter Registration System. Notwithstanding any  
98 other provision of this title, for any election held on or after November 1, 2010, all pollbooks provided  
99 by the State Board shall be in electronic form only.

100 C. The electronic pollbook shall contain a photograph, with the date the photograph was created,  
101 and identifying information for each voter concerning the voter's height, color of hair, and color of eyes  
102 received from the Department of Motor Vehicles or obtained by an officer of election pursuant to  
103 subsection B of § 24.2-643. Such photograph and identifying information shall be accessible by the  
104 officer of election responsible for the pollbook. Except for official use, no photograph or identifying  
105 information contained in the electronic pollbook shall be disclosed to any party.

106 D. The State Board shall incorporate safeguards to assure that the records of the election, including  
107 the pollbook, voter count sheets, or other alternative records, will provide promptly an accurate and  
108 secure record of those who have voted.

109 ~~D.~~ E. Any locality may expend its own funds to purchase electronic pollbooks that have been  
110 approved for use in elections by the State Board.

111 ~~E.~~ F. In the event that the electronic pollbooks for a precinct fail to operate properly and no  
112 alternative voter list or pollbook is available, the officers of election, in accordance with the instructions  
113 and materials approved by the State Board, shall (i) maintain a written list of the persons voting and (ii)  
114 provide to each person voting a provisional ballot to be cast as provided in § 24.2-653.

115 **§ 24.2-643. Qualified voter permitted to vote; procedures at polling place; voter identification.**

116 A. After the polls are open, each qualified voter at a precinct shall be permitted to vote. The officers  
117 of election shall ascertain that a person offering to vote is a qualified voter before admitting him to the  
118 voting booth and furnishing an official ballot to him.

119 B. An officer of election shall ask the voter for his full name and current residence address and  
120 repeat, in a voice audible to party and candidate representatives present, the full name and address stated

by the voter. The officer shall ask the voter to present any one of the following forms of identification: his Commonwealth of Virginia voter registration card, his social security card, his valid Virginia driver's license, his concealed handgun permit issued pursuant to § 18.2-308, or any other identification card issued by a government agency of the Commonwealth, one of its political subdivisions, or the United States; any valid student identification card issued by any institution of higher education located in the Commonwealth of Virginia; any valid employee identification card containing a photograph of the voter and issued by an employer of the voter in the ordinary course of the employer's business; or a copy of a current utility bill, bank statement, government check, or paycheck that shows the name and address of the voter.

Any voter who does not show one of the forms of identification specified in this subsection shall be offered a provisional ballot under the provisions of § 24.2-653. The State Board of Elections shall provide an ID-ONLY provisional ballot envelope that requires no follow-up action by the registrar or electoral board other than matching submitted identification documents from the voter for the electoral board to make a determination on whether to count the ballot.

*In addition, the officer shall access the photograph and identifying information associated with the voter in the electronic pollbook, and if the voter does not appear to be the same person depicted in the photograph, the officer of election shall challenge the vote of such voter pursuant to § 24.2-651. If there is no photograph associated with the voter in the electronic pollbook, the officer shall require that the voter submit to the taking of a photograph of the voter and that the voter provide identifying information regarding his height, color of hair, and color of eyes for inclusion in the electronic pollbook. Upon the taking of the photograph and provision of the identifying information, the voter shall be permitted to vote. If the voter has a religious objection to being photographed, he shall be permitted to vote after signing a statement, subject to felony penalties for false statements pursuant to § 24.2-1016, that he is the named registered voter and that he has a religious objection to being photographed. Photographs and identifying information obtained pursuant to this subsection shall be submitted by the registrar to the State Board as soon as practicable after the date of the election.*

If the voter's name is found on the pollbook, if he presents one of the forms of identification listed above, if he is qualified to vote in the election, and if no objection is made, an officer shall enter, opposite the voter's name on the pollbook, the first or next consecutive number from the voter count form provided by the State Board, or shall enter that the voter has voted if the pollbook is in electronic form; an officer shall provide the voter with the official ballot; and another officer shall admit him to the voting booth. Each voter whose name has been marked on the pollbooks as present to vote and entitled to a ballot shall remain in the presence of the officers of election in the polling place until he has voted. If a line of voters who have been marked on the pollbooks as present to vote forms to await entry to the voting booths, the line shall not be permitted to extend outside of the room containing the voting booths and shall remain under observation by the officers of election.

A voter may be accompanied into the voting booth by his child age 15 or younger.

C. If the current residence address stated by the voter is different from the address shown on the pollbook, the officer of election shall furnish the voter with a change of address form prescribed by the State Board. Upon its completion, the voter shall sign the prescribed form, subject to felony penalties for making false statements pursuant to § 24.2-1016, which the officer of election shall then place in an envelope provided for such forms for transmission to the general registrar who shall then transfer or cancel the registration of such voter pursuant to Chapter 4 (§ 24.2-400 et seq.).

D. At the time the voter is asked his full name and current residence address, the officer of election shall ask any voter for whom the pollbook indicates that an identification number other than a social security number is recorded on the Virginia voter registration system if he presently has a social security number. If the voter is able to provide his social security number, he shall be furnished with a voter registration form prescribed by the State Board to update his registration information. Upon its completion, the form shall be placed by the officer of election in an envelope provided for such forms for transmission to the general registrar. Any social security numbers so provided shall be entered by the general registrar in the voter's record on the voter registration system.

E. For federal elections held after January 1, 2004, this subsection shall apply in the case of any voter who is required by subparagraph (b) of 42 U.S.C.S. § 15483 of the Help America Vote Act of 2002 to show identification the first time the voter votes in a federal election in the state. At such election, such voter shall present (i) a current and valid photo identification or (ii) a copy of a current utility bill, bank statement, government check, paycheck or other government document that shows the name and address of the voter. Such individual who desires to vote in person but who does not show one of the forms of identification specified in this subsection shall be offered a provisional ballot under the provisions of § 24.2-653. Neither the identification requirements of subsection B, nor the identification requirements of subsection A of § 24.2-653, shall apply to such voter at that election. The State Board of Elections shall provide instructions to the electoral boards for the handling and counting

182 of such provisional ballots pursuant to subsection B of § 24.2-653 and this section.

183 **§ 24.2-651. Voter who is challenged; how challenge tried.**

184 Any qualified voter may, and the officers of election shall, challenge the vote of any person who is  
185 listed on the pollbook but is known or suspected not to be a qualified voter.

186 The individual making the challenge shall complete and sign the following statement on a form  
187 provided by the State Board:

188 "I do hereby state, subject to penalties for hindering, intimidating, or interfering with a qualified  
189 voter pursuant to § 24.2-607, that I am a qualified voter of this Commonwealth or an officer of election  
190 and that, to the best of my knowledge, information, and belief, \_\_\_\_\_ is not a qualified voter  
191 of this precinct by reason of (please check each of the following reasons that is applicable):

192 1. The named person is not a citizen of the United States;

193 2. The named person is not now 18 years of age or, in the case of a primary election or a special  
194 election held on a date other than a general election date, will not reach the age of 18 before the next  
195 general election;

196 3. The named person is not a resident of the Commonwealth (or, if he has not been a resident of the  
197 Commonwealth within the preceding 30 days, he is attempting to vote for an office or issue other than  
198 electors of President and Vice President of the United States);

199 4. The named person is not a resident of this precinct (or he has not been a resident of this precinct  
200 since the second preceding general federal election and has not continued to be a resident of this county  
201 or city and this congressional district);

202 5. The named person is not a resident of the town in the case of a town election;

203 6. The named person has been disqualified from voting by the Constitution and laws of the  
204 Commonwealth and this disqualification has not been removed by proper authority;

205 7. The named person is not the identical person he represents himself to be; or

206 8. *The named person does not appear to be the same person depicted in the photograph associated  
207 with that named person in the electronic pollbook; or*

208 9. The named person has voted in this election at this or another voting place (state when and where  
209 the named person previously voted in this election: \_\_\_\_\_)."

210 Upon receipt of a signed challenge from a qualified voter or officer of election, an officer of election  
211 shall explain to the challenged voter the qualifications of a voter and may examine him concerning his  
212 qualifications. The officers of election are hereby authorized to administer the necessary oath or  
213 affirmation to any witness brought before them to testify as to the qualifications of any person offering  
214 to vote.

215 If the person being challenged insists that he is qualified and the challenge is not withdrawn, one of  
216 the officers shall give him a form containing the following statement:

217 "I do hereby state, subject to felony penalties for making false statements pursuant to § 24.2-1016,  
218 that I am a citizen of the United States, that I am at least 18 years of age (or will be on the \_\_\_\_ day of  
219 \_\_\_\_\_, \_\_\_\_ ) that I am a resident of the Commonwealth of Virginia (or that I have been a  
220 resident of this Commonwealth within the preceding 30 days and am voting only for electors of  
221 President and Vice President of the United States), and that, according to the best of my knowledge,  
222 information and belief, I am not disqualified from voting by the Constitution and laws of this  
223 Commonwealth; that my full name is \_\_\_\_\_; that in such name I was duly registered as a  
224 voter of this precinct; that I am now or at some time since the last November general election have been  
225 an actual resident of this precinct or that I have been an actual resident of this precinct at some time  
226 since the second preceding general federal election and have been and continue to be a resident of this  
227 county or city and this congressional district; if I am voting in a town election today, that I am currently  
228 a resident of that town; that I am the identical person I represent myself to be; and that I have not voted  
229 in this election at this or any voting place and will not vote in this election at any other voting place."

230 If the person challenged refuses to sign the statement, he shall not be permitted to vote. If, however,  
231 he signs the statement, he shall be permitted to vote on the voting system in use at the precinct, unless  
232 he is required to cast a provisional ballot pursuant to § 24.2-651.1.

233 When the voter has signed the statement and is permitted to vote, the officers of election shall mark  
234 his name on the pollbook with the first or next consecutive number from the voter count form, or shall  
235 enter that the voter has voted if the pollbook is in electronic form, and shall indicate on the pollbook  
236 that he has signed the required statement in accordance with the instructions of the State Board.

237 If the envelope containing a voted absentee ballot has been properly signed by the voter, such ballot  
238 shall not be subject to challenge pursuant to this section.

239 **§ 46.2-208.1. Electronic transfer of information in Department records for voter registration  
240 purposes.**

241 A. Notwithstanding the provisions of § 46.2-208, the Commissioner shall provide for the electronic  
242 transfer of information from the Department's records to the State Board of Elections and the general  
243 registrars for the purpose of voter registration as required by Chapter 4 of Title 24.2, including but not

limited to the purposes of § 24.2-410.1. Except as provided in §§ 24.2-404 and 24.2-444, the State Board of Elections and the general registrars shall not make information provided by the Department available to the public and shall not provide such information to any third party.

*B. The Department shall establish a method by which the Department's credentials vendor and the State Board of Elections may electronically share a customer's image, including the date such image was created, and identifying information regarding a customer's height, color of hair, and color of eyes stored in his record in the office of the Department necessary for the purpose of including such image and identifying information in the electronic pollbook prepared by the State Board of Elections.*

**2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**