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**HOUSE BILL NO. 76**

Offered January 8, 2014

Prefiled December 9, 2013

*A BILL to amend and reenact § 24.2-653 of the Code of Virginia, relating to provisional voting; attendance of meetings of the electoral board to determine validity of provisional ballots.*

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Patron—Simon

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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 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

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59 remain in the room in which the determination is being made as an observer so long as he does not  
60 participate in the proceedings and does not impede the orderly conduct of the determination. Each  
61 authorized representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each  
62 representative, who is not himself a candidate or party chairman, shall present to the electoral board a  
63 written statement designating him to be a representative of the party or candidate and signed by the  
64 county or city chairman of his political party, the independent candidate, or the primary candidate, as  
65 appropriate. Such statement, bearing the chairman's or candidate's original signature, may be photocopied  
66 and such photocopy shall be as valid as if the copy had been signed.

67 Notwithstanding the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.),  
68 attendance at meetings of the electoral board to determine the validity of provisional ballots shall be  
69 permitted only for the authorized representatives provided for in this subsection, for the ~~persons~~ *person*  
70 whose provisional ~~votes are~~ *vote is* being considered ~~and their~~, *for the* representative or legal counsel *of*  
71 *the person whose vote is being considered either with or without that person*, and for appropriate staff  
72 and legal counsel for the electoral board.

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

84 If the electoral board determines that such person was entitled to vote, the name of the voter shall be  
85 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and  
86 the ballot placed in a ballot container without any inspection further than that provided for in  
87 § 24.2-646.

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

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

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