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**HOUSE BILL NO. 2239**

Offered January 13, 2021

Prefiled January 13, 2021

*A BILL to amend and reenact §§ 24.2-101, 24.2-709.1, and 24.2-712 of the Code of Virginia, relating to elections; absentee voting; ballots to be processed before election day and sorted and counted by precinct.*

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Patron—Robinson

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Referred to Committee on Privileges and Elections

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

**1. That §§ 24.2-101, 24.2-709.1, and 24.2-712 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:

"Ballot scanner machine" means the electronic counting machine in which a voter inserts a marked ballot to be scanned and the results tabulated.

"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.), 9.3 (§ 24.2-945 et seq.), and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any write-in candidate. However, no write-in candidate who has received less than 15 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. For the purposes of Chapters 9.3 (§ 24.2-945 et seq.) and 9.5 (§ 24.2-955 et seq.), "candidate" shall include any person who raises or spends funds in order to seek or campaign for an office of the Commonwealth, excluding federal offices, or one of its governmental units in a party nomination process or general, primary, or special election; and such person shall be considered a candidate until a final report is filed pursuant to Article 3 (§ 24.2-947 et seq.) of Chapter 9.3.

"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 office" 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.

"Department of Elections" or "Department" means the state agency headed by the Commissioner of Elections.

"Direct recording electronic machine" or "DRE" means the electronic voting machine on which a voter touches areas of a computer screen, or uses other control features, to mark a ballot and his vote is recorded electronically.

"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.

"Entrance of polling place" or "entrance to polling place" means an opening in the wall used for ingress to a structure.

"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.

"General registrar" means the person appointed by the electoral board of a county or city pursuant to § 24.2-110 to be responsible for all aspects of voter registration, in addition to other duties prescribed by this title. When performing duties related to the administration of elections, the general registrar is acting in his capacity as the director of elections for the locality in which he serves.

INTRODUCED

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59 "Machine-readable ballot" means a tangible ballot that is marked by a voter or by a system or device  
60 operated by a voter, is available for verification by the voter at the time the ballot is cast, and is then  
61 fed into and scanned by a separate counting machine capable of reading ballots and tabulating results.

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

64 "Paper ballot" means a tangible ballot that is marked by a voter and then manually counted.

65 "Party" or "political party" means an organization of citizens of the Commonwealth which, at either  
66 of the two preceding statewide general elections, received at least 10 percent of the total vote cast for  
67 any statewide office filled in that election. The organization shall have a state central committee and an  
68 office of elected state chairman which have been continually in existence for the six months preceding  
69 the filing of a nominee for any office.

70 "Person with a disability" means a person with a disability as defined by the Virginians with  
71 Disabilities Act (§ 51.5-1 et seq.).

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

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

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

78 "Printed ballot" means a tangible ballot that is printed on paper and includes both machine-readable  
79 ballots and paper ballots.

80 "Qualified voter" means a person who is entitled to vote pursuant to the Constitution of Virginia and  
81 who is (i) 18 years of age on or before the day of the election or qualified pursuant to § 24.2-403 or  
82 subsection D of § 24.2-544, (ii) a resident of the Commonwealth and of the precinct in which he offers  
83 to vote, and (iii) a registered voter. No person who has been convicted of a felony shall be a qualified  
84 voter unless his civil rights have been restored by the Governor or other appropriate authority. No  
85 person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as  
86 provided by law. Whether a signature should be counted towards satisfying the signature requirement of  
87 any petition shall be determined based on the signer of the petition's qualification to vote. For purposes  
88 of determining if a signature on a petition shall be included in the count toward meeting the signature  
89 requirements of any petition, "qualified voter" shall include only persons maintained on the Virginia  
90 voter registration system (a) with active status and (b) with inactive status who are qualified to vote for  
91 the office for which the petition was circulated.

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

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

97 "Registered voter" means any person who is maintained on the Virginia voter registration system. All  
98 registered voters shall be maintained on the Virginia voter registration system with active status unless  
99 assigned to inactive status by a general registrar in accordance with Chapter 4 (§ 24.2-400 et seq.). For  
100 purposes of applying the precinct size requirements of § 24.2-307, calculating election machine  
101 requirements pursuant to Article 3 (§ 24.2-625 et seq.) of Chapter 6, mailing notices of local election  
102 district, precinct or polling place changes as required by subdivision 13 of § 24.2-114 and § 24.2-306,  
103 and determining the number of signatures required for candidate and voter petitions, "registered voter"  
104 shall include only persons maintained on the Virginia voter registration system with active status. For  
105 purposes of determining if a signature on a petition shall be included in the count toward meeting the  
106 signature requirements of any petition, "registered voter" shall include only persons maintained on the  
107 Virginia voter registration system (i) with active status and (ii) on inactive status who are qualified to  
108 vote for the office for which the petition was circulated.

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

112 "Residence" or "resident," for all purposes of qualification to register and vote, means and requires  
113 both domicile and a place of abode. To establish domicile, a person must live in a particular locality  
114 with the intention to remain. A place of abode is the physical place where a person dwells.

115 "Special election" means any election that is held pursuant to law to fill a vacancy in office or to  
116 hold a referendum.

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

118 "Virginia voter registration system" or "voter registration system" means the automated central  
119 record-keeping system for all voters registered within the Commonwealth that is maintained as provided  
120 in Article 2 (§ 24.2-404 et seq.) of Chapter 4.

"Voting system" means the electronic voting and counting machines used at elections. This term includes direct recording electronic machines (DRE) and ballot scanner machines.

**§ 24.2-709.1. Processing returned absentee ballots before election day.**

Each general registrar shall take ~~one or more of~~ the following measures as needed to expedite counting absentee ballots returned by mail before election day: (i) examine the ballot envelopes to verify completion of the required voter affirmation; (ii) mark the pollbook, or the absentee voter applicant list if the pollbook is not available, that the voter has voted; ~~or and~~ (iii) open the sealed ballot envelopes and insert the ballots in optical scan counting equipment or other secure ballot container without initiating any ballot count totals. ~~If the general registrar proceeds to open sealed ballot envelopes as provided in clause (iii), at~~ At least two officers of election, one representing each political party, shall be present during all hours when a general registrar uses the expedited procedures authorized in this section ~~opens sealed ballot envelopes as provided in clause (iii)~~. No person present while sealed ballot envelopes are opened and ballots are inserted into counting equipment or other secure ballot container pursuant to clause (iii) shall disclose any information concerning the ballots.

**§ 24.2-712. Central absentee voter precincts; counting ballots.**

A. Notwithstanding any other provision of law, the *office of the general registrar shall be a central absentee voter precinct, and the governing body of each county or city may establish one or more additional central absentee voter precincts in the courthouse or other public buildings for the purpose of receiving, counting, and recording absentee ballots cast in the county or city. The decision to establish any additional absentee voter precinct shall be made by the governing body by ordinance; the ordinance shall state for which elections the precinct shall be used. The decision to abolish any absentee voter precinct other than the central absentee voter precinct established in the office of the general registrar shall be made by the governing body by ordinance. Immediate notification of either decision shall be sent to the Department of Elections and the electoral board.*

B. Each central absentee voter precinct shall have at least three officers of election as provided for other precincts. The number of officers shall be determined by the electoral board and general registrar.

C. If any voter brings an unmarked ballot to the central absentee voter precinct on the day of the election, he shall be allowed to vote it. If any voter brings an unmarked ballot to the general registrar on or before the day of the election, he shall be allowed to vote it, and his ballot shall be delivered to the absentee voter precinct pursuant to § 24.2-710.

The officers at the absentee voter precinct shall determine any appeal by any other voter whose name appears on the absentee voter applicant list and who offers to vote in person. If the officers at the absentee voter precinct produce records showing the receipt of his application and the certificate or other evidence of mailing for the ballot, they shall deny his appeal. If the officers cannot produce such records, the voter shall be allowed to vote in person at the absentee voter precinct and have his vote counted with other absentee votes. If the voter's appeal is denied, the provisions of § 24.2-708 shall be applicable, and the officers shall advise the voter that he may vote on presentation of a statement signed by him that he has not received an absentee ballot and subject to felony penalties for making false statements pursuant to § 24.2-1016.

D. Absentee ballots may be processed as required by § 24.2-711 by the officers of election at the central absentee voter precinct prior to the closing of the polls; *however, such absentee ballots shall be sorted by the precinct to which the voter who cast the absentee ballot is assigned upon removal of the ballot from the ballot envelope.* In the case of machine-readable ballots, the ballot container may be opened and the absentee ballots may be inserted in the counting machines prior to the closing of the polls in accordance with procedures prescribed by the Department of Elections, including procedures to preserve ballot secrecy, but no ballot count totals by the machines shall be initiated prior to the closing of the polls.

In the case of absentee ballots that are counted by hand, the officers of election may begin tallying such ballots at any time after 3:00 p.m. on the day of the election in accordance with the procedures prescribed by the Department of Elections, including procedures to preserve ballot secrecy. No counts of such tallies shall be determined or transmitted outside of the central absentee voter precinct until after the closing of the polls. The use of cellular telephones or other communication devices shall be prohibited in the central absentee voter precinct during such tallying and until the closing of the polls. Any person present in the central absentee voter precinct shall sign a statement under oath that he will not transmit any counts prior to the closing of the polls. Any person who transmits any counts in violation of this section is guilty of a Class 1 misdemeanor.

As soon as the polls are closed in the county or city, the officers of election at the central absentee voter precinct shall proceed promptly to *separately* ascertain and record the total vote given by all absentee ballots *associated with each precinct* and report the results in the manner provided for counting and reporting ballots generally in Article 4 (§ 24.2-643 et seq.) of Chapter 6. *The counted absentee ballots associated with each precinct shall be sealed separately from the counted absentee ballots*

182 *associated with any other precinct for delivery to the clerk of court.*

183 E. The electoral board or general registrar may provide that the officers of election for a central  
184 absentee voter precinct may be assigned to work all or a portion of the time that the precinct is open on  
185 election day subject to the following conditions:

186 1. The chief officer and the assistant chief officer, appointed pursuant to § 24.2-115 to represent the  
187 two political parties, are on duty at all times; and

188 2. No officer, political party representative, or other candidate representative shall leave the precinct  
189 after any ballots have been counted until the polls are closed and the count for the precinct is completed  
190 and reported.

191 F. The general registrar may provide that the central absentee voter precinct *in the office of the*  
192 *general registrar* will open after 6:00 a.m. on the day of the election, provided that the office of the  
193 general registrar will be open for the receipt of absentee ballots until the central absentee voter precinct  
194 is open and that the officers of election for the central absentee voter precinct obtain the absentee ballots  
195 returned to the general registrar's office for the purpose of counting the absentee ballots at the central  
196 absentee voter precinct ~~and provided further that the central absentee voter precinct is the same location~~  
197 ~~as the office of the general registrar.~~