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**SENATE BILL NO. 1376**

Offered January 13, 2021

Prefiled January 13, 2021

*A BILL to amend and reenact §§ 24.2-101, 24.2-603, 24.2-709.1, 24.2-710, 24.2-711, and 24.2-712 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-667.1, relating to absentee voting; processing of absentee ballots before election day; reporting of absentee ballot vote totals; establishment of central absentee voter precincts.*

Patrons—Saslaw and Surovell

Referred to Committee on Privileges and Elections

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

**1. That §§ 24.2-101, 24.2-603, 24.2-709.1, 24.2-710, 24.2-711, and 24.2-712 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-667.1 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 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.

"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

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59 this title. When performing duties related to the administration of elections, the general registrar is acting  
60 in his capacity as the director of elections for the locality in which he serves.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 "Virginia voter registration system" or "voter registration system" means the automated central

record-keeping system for all voters registered within the Commonwealth that is maintained as provided 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.

**§ 24.2-603. Hours polls to be open; closing the polls.**

At all elections, the polls shall be open at each polling place at 6:00 a.m. on the day of the election and closed at 7:00 p.m. on the same day except as provided for central absentee voter precincts pursuant to subsection F G of § 24.2-712.

At 6:45 p.m. an officer of election shall announce that the polls will close in fifteen minutes. The officers of election shall list the names of all qualified voters in line before the polling place at 7:00 p.m. and permit those voters and no others to vote after 7:00 p.m.

**§ 24.2-667.1. Reporting of results; absentee votes.**

*The general registrar shall report to the Department of Elections the number and results of absentee ballots cast early in person pursuant to § 24.2-701.1 separately from the number and results of all other absentee ballots.*

**§ 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) A. On receipt of an absentee ballot returned in person or by mail to the office of the general registrar before election day, the general registrar shall mark the date of receipt and that the voter has voted in the voter's record and shall examine the ballot envelopes envelope 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 (iii). A voter affirmation statement shall not be deemed to be incomplete on the sole basis of the voter's failure to provide (i) his full name or his middle initial, as long as the voter provided his full first and last name, or (ii) the date, or any part of the date, including the year, on which he signed the statement.

B. If the voter affirmation has been completed as required, the general registrar may open the sealed ballot envelopes envelope and insert the ballots ballot 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 If a general registrar does not choose to do so, the sealed ballot envelopes shall be deposited into a secure container provided for such purpose, in which they shall remain until the day of the election when the container is delivered to a central absentee voter precinct.

Beginning on the seventh day immediately preceding the election, each general registrar shall open the sealed ballot envelopes of absentee ballots returned and preprocessed in accordance with subsection A and insert the ballots into optical scan counting equipment or other secure ballot container without initiating any ballot count totals.

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 opens sealed ballot envelopes as authorized in or required by this section subsection. 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.

**§ 24.2-710. Absentee voter applicant lists.**

On receipt of an absentee ballot, the electoral board or general registrar shall mark the date of receipt in the appropriate column opposite the name and address of the voter on the absentee voter applicant list maintained in the general registrar's office. A board member or registrar shall deposit the return envelope and the unopened ballot envelope in an appropriate container provided for the purpose, in which they shall remain until the day of the election, unless the registrar opts to open sealed ballot envelopes in order to expedite the counting of absentee ballots in accordance with § 24.2-709.1.

A. The provisions of this subdivision shall apply only to those localities not using an electronic pollbook. On the day before the election, the general registrar shall (i) make out in triplicate on a form prescribed by the State Board the absentee voter applicant list containing the names of all persons who applied for an absentee ballot through the third day before the election and (ii) by noon on the day before the election, deliver two copies of the list to the electoral board. The general registrar shall make out a supplementary list containing the names of all persons voting absentee in person or applying to vote absentee pursuant to § 24.2-705 for delivery by 5:00 p.m. on the day before the election. The supplementary list shall be deemed part of the absentee voter applicant list and shall be prepared and delivered in accordance with the instructions of the State Board. The general registrar shall maintain one copy of the list in his office for two years as a public record open for inspection upon request during regular office hours.

B. On the day before the election, the electoral board shall deliver one copy of the list provided to it

by the general registrar to the chief officer of election for each precinct. The list shall be attested by the secretary of the electoral board who shall be responsible for the delivery of the attested lists to the chief officer of election for each precinct.

Absentee ballots shall be accepted only from voters whose names appear on the attested list.

Before the polls close on the day of the election, the electoral board shall deliver the absentee ballot containers to, and obtain a receipt from, the officers of election at each appropriate precinct. Any ballot returned to the electoral board or general registrar prior to the closing of the polls, but after the ballot container has been delivered, shall be delivered in an appropriate container to the officers of election at each appropriate precinct. The containers shall be sealed prior to delivery to the officers and shall contain the sealed absentee ballots, the accompanying return envelopes, and a copy of the absentee voter applicant list for each precinct.

If the county or city uses a central absentee voter precinct pursuant to § 24.2-712, the lists and containers shall be delivered, as provided in this section, to the officers of election for the absentee precinct.

Before noon on the day following the election, the general registrar shall deliver all applications for absentee ballots for the election, under seal, to the clerk of the circuit court for the county or city, except that the general registrar may retain all applications for absentee ballots until the electoral board has ascertained the results of the election pursuant to § 24.2-671, and has determined the validity of and counted all provisional ballots pursuant to § 24.2-653.01, at which point all applications shall then be delivered, under seal, to the clerk of the circuit court for the county or city. The clerk shall retain the sealed applications with the counted ballots.

The secretary of the electoral board shall deliver all absentee ballots received after the election to the clerk of the circuit court.

C. Upon request, the State Board shall provide an electronic copy of the absentee voter applicant list to any political party or candidate. Such lists shall be used only for campaign and political purposes. In no event shall any list furnished under this section contain (a) (i) any voter's social security number or any part thereof, (b) (ii) any voter's day and month of birth, or (c) (iii) the residence address of any voter who has provided a post office box address to be used on public lists pursuant to § 24.2-418.

**§ 24.2-711. Duties of electoral board, general registrar, and officers of election.**

A. Before the polls open, the officers of election at each precinct shall mark, for each person on the absentee voter applicant list, the letters "AB" (meaning absentee ballot) in the voting record column on the pollbook. The pollbook may be so marked prior to election day by the general registrar, the secretary of the electoral board, or staff under the direction of the general registrar or the secretary, or when the pollbook is produced by the State Board pursuant to § 24.2-404. If the pollbook has been marked prior to election day, before the polls open the officers of election at each precinct shall check the marks for accuracy and make any additions or corrections required.

The chief officer of election shall keep the copy of the absentee voter applicant list in the polling place as a public record open for inspection upon request at all times while the polls are open.

If a voter, whose name appears on the absentee voter applicant list, has not returned an unused ballot and offers to vote in his precinct, the officers of election in the precinct shall determine the matter pursuant to §§ 24.2-653.1 and 24.2-708.

Immediately after the close of the polls, the container of absentee ballots shall be opened by the officers of election. As each ballot envelope is removed from the container, the name of the voter shall be called and checked as if the voter were voting in person. If the voter is found entitled to vote, an officer shall mark the voter's name on the pollbook with the first or next consecutive number from the voter count form, or shall enter that the voter has voted if the pollbook is in electronic form. The ballot envelope shall then be opened, and the ballot deposited in the ballot container without being unfolded or examined. If the voter is found not entitled to vote, the unopened envelope shall be rejected. An unopened envelope shall not be rejected on the sole basis of a voter's failure to provide in the statement on the back of the unopened envelope his full middle name or his middle initial, unless the voter also failed to provide his full first and last name. An unopened envelope shall not be rejected on the sole basis of a voter's failure to provide the date, or any part of the date, including the year, on which he signed the statement printed on the back of the envelope. At least two officers of election, one representing each political party, shall write and sign a statement of the cause for rejection on the envelope or on an attachment to the envelope.

When all ballots have been accounted for and either voted or rejected, the officers shall place the empty ballot envelopes, the return envelopes, and any rejected ballot envelopes, in one envelope provided for the purpose and seal and deliver it with the ballots cast at the election as provided in this title.

B. Before noon on the day following the election, the general registrar shall deliver all applications for absentee ballots for the election, under seal, to the clerk of the circuit court for the county or city, except that the general registrar may retain all applications for absentee ballots until the electoral

board has ascertained the results of the election pursuant to § 24.2-671, and has determined the validity of and counted all provisional ballots pursuant to § 24.2-653.01, at which point all applications shall then be delivered, under seal, to the clerk of the circuit court for the county or city. The clerk shall retain the sealed applications with the counted ballots.

C. The secretary of the electoral board shall deliver all absentee ballots received after the election to the clerk of the circuit court.

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

A. Notwithstanding any other provision of law, the governing body of each county or city ~~may~~ shall establish one or more 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 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 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~~ shall be processed as required by § ~~24.2-711~~ 24.2-709.1 by the officers of election at the central absentee voter precinct prior to the closing of the polls. In the case of machine-readable ballots, the ballot container ~~may~~ shall be opened and the absentee ballots ~~may~~ shall 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~~ transmitted outside of the central absentee voter precinct until after the closing of the polls.

In the case of absentee ballots that are counted by hand, the officers of election ~~may~~ shall 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 *processing and* 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.

E. 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 ascertain and record the total vote given by all absentee ballots 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.

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

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

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

~~F.~~ G. The general registrar may provide that the central absentee voter precinct will open after 6:00 a.m. on the day of the election provided that the office of the general registrar will be open for the receipt of absentee ballots until the central absentee voter precinct is open and that the officers of

305 election for the central absentee voter precinct obtain the absentee ballots returned to the general  
306 registrar's office for the purpose of counting the absentee ballots at the central absentee voter precinct  
307 and provided further that the central absentee voter precinct is the same location as the office of the  
308 general registrar.