

ELECTION LAWS UPDATE: Part 2

Introduction: The 2009 League of Women Voters of Virginia Convention voted for an election laws update study to be conducted during the 2009-2011 biennium. During the first year, members reviewed Virginia's laws and practices regarding voter registration and the Commonwealth's management and funding of the election process. This year, we will look at the election process itself, both prior to and at the polls on Election Day. After gathering members' conclusions about the election process in Virginia and any changes that they believe would improve and facilitate the process and increase voter turnout, the Board of Directors will approve a revised statement of positions. *[Note: This paper was written at the start of the 2011 session of the General Assembly. We will post material on the LWV-VA website, www.lwv-va.org, about any significant legislative changes that are brought to our attention.]*

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ELECTION DAY – AT THE POLLS¹

Where and When:

- **Dates and Hours of Elections**

The Code of Virginia establishes the dates and other provisions for general, special and primary elections. Section 24-2-101 sets the date for the November elections, which generally includes federal, state, and county general elections, as the Tuesday after the first Monday in November. The May general election, used by most towns and about half the cities in Virginia, is set as the first Tuesday in May. Because of a budget provision that will require localities having May elections to pick up more of the costs, some are considering moving their elections to November. Chapter 2 of Sec. 24.2 establishes the requirement that state and county elections in Virginia take place in odd-numbered years. The 2011-2014 Virginia election calendar as of January 2011 can be found at: <http://www.sbe.virginia.gov/cms/documents/5YrElectionCalendar.pdf>. Redistricting will result in changes during 2011; these can be found on the State Board of Elections (SBE) and LWV-VA websites.

Virginia polls are open for all elections in all jurisdictions from 6 a.m. to 7 p.m.; persons in line as of 7 p.m. are allowed to vote. The polls are open from 7 a.m. to 8 p.m. in both Maryland and the District of Columbia, which causes some confusion for new voters in Northern Virginia who may miss media announcements and assume that the hours in Virginia are the same. This situation exists in other parts of Virginia, because the polls in both North Carolina and West Virginia are open from 6:30 a.m. to 7:30 p.m. Even though the federal government and many companies give time off for voting, many workers in Virginia's urban areas complain that their long commutes make it very difficult to get to the polls – even when they first open or are about to close. Some have commented that the long commutes that many Virginians now endure have made them eligible to vote absentee on the basis of the length of their working/commuting day.

There have been periodic attempts in the General Assembly to change the voting hours for Northern Virginia, including HB 640 introduced in 2008 by Delegate May from Leesburg, who proposed allowing the local jurisdictions in Northern Virginia to extend the closing time to 9 p.m. The bill suffered the same fate as previous attempts and was left in the House Privileges and Elections (P&E) Committee. Delegate May believes that the issue will be re-examined, and Fairfax County has included such a proposal in its legislative program for the General Assembly. However, there appears to be continuing opposition to changing/extending the voting hours and, especially, to allowing any difference between any Virginia jurisdiction or area and the rest of the

state. One problem with any bill covering only specific jurisdictions is the difficulty of fixing the boundaries of an area that includes election districts that may have parts outside that area.

- **Provisions for Emergencies**

The problems caused by a Metro incident affecting Northern Virginia voters in November 2007 and the more widespread problems caused by the area's ice storm on the day of the 2008 presidential primary resulted in complaints that the polling hours were not extended despite the emergency that prevented many voters from getting to the polls before they closed. News reports at the time seemed to imply that there were provisions that would make this possible, and Virginia law (Sec. 24.2-653 C.) alludes to the possibility of an extension. However, there is currently no clear authority that would allow the polling hours to be extended.² To remedy this situation, Senator Barker and Delegate Cole introduced and Governor Kaine supported legislation in the 2008 General Assembly session that would allow the polling hours to be extended by court order in the case of any disaster or emergency that interferes with the right or ability of voters to travel to the polls. The Senate passed the (amended) bill, and it was sent to the House where it was assigned to and died in the P& E committee. Senator Barker introduced similar bills (SB 226) in the 2009 and 2010 sessions; although they have been passed by the Senate, they have been dismissed by House subcommittees. At this writing, Senator Barker plans to introduce a similar bill in the 2011 session and is working to obtain Republican support for the measure. However, it is doubtful that it will be approved by the House, which generally believes that any provision affecting voting must be applied uniformly throughout Virginia. Visit <http://leg1.state.va.us> to read the provisions of the bills.

Most electoral boards are not in favor of extending the voting hours for any reason because of the already long time that election officers work on Election Day. In particular, they note the important responsibilities of elections officers at the end of the long workday, when they are apt to be tired. Electoral boards are also concerned that they would be unable to reach all polling places in a timely manner if voting hours were extended on an emergency basis. Under the 2010 Senate bill, ballots cast after the normal close of the polls would be provisional paper ballots, which would require the need for a sufficient number of provisional ballots at the polls and additional time for processing on both Election Day and in the days following the election.

Senator Barker believes that some future situation will result in a successful federal court suit resulting in requirements for extending polling hours in emergency cases that will not take into account Virginia laws and circumstances, and that it will be better for Virginia to prepare now when it has the opportunity to craft a workable procedure.³

- **Size and Location of Precincts and Polling Places**

Virginia voting precincts must be composed of compact and contiguous territory and have clearly defined and observable boundaries. The polling places for each precinct must be located within the precinct or within one mile of its boundary. They must also be located in public buildings whenever practicable and must be accessible to all qualified voters. They cannot be located in a building that serves as the office for any private organization, other than one of a civic, education, religious, charitable, historic, patriotic, cultural or similar nature without the approval of the SBE.

The governing body of each county and city establishes as many precincts as it deems necessary. In 2010, there were 2,521 reporting precincts in Virginia, including central absentee precincts (CAPs). According to the Code, a new precinct cannot be established with more than 5,000 registered voters, and no fewer than 100/500 registered voters for a county/city precinct. A precinct must be wholly contained within an election district used for the election of a member of the governing body or school board of the county or city. A town must have at least one precinct and it must be wholly contained within an election district used for the election of a member of the council or school board of the town. Once the number of voters in a precinct in a presidential election reaches 4,000, the registrar is required to notify the governing body, which then must revise precinct boundaries.

HB 390, enacted in 2010, and SBE policy 2008-013 allow an electoral board to exclude absentee voters when determining the calculation of voters voting in a precinct.

The CAPS, which are authorized by Sec 24.2-712, are established in the courthouse or other public building by the governing bodies of counties and cities for the purpose of receiving, counting and recording absentee ballots cast in that jurisdiction. Most but not all Virginia jurisdictions have established such precincts.⁴

How:

- **Officers of Election**⁵

The Code of Virginia identifies officials appointed by the local electoral board to work at the polls on Election Day as “officers of election” and requires the appointment of at least three competent citizens for each precinct. According to the SBE, while there is no legal mandate to appoint more than three, localities are free to hire more, depending on the number of people expected to vote in each precinct and the nature of the election. The number has varied from 3 to slightly over 20 officers in recent Virginia elections, with an average of 12 per precinct in 2008⁶ The local electoral board also designates one officer as the chief officer of election and another as the assistant chief for each precinct. Article II, Section 8 of the Constitution of Virginia requires the two parties to have proportional representation at each precinct. The chief and assistant chief must represent the two political parties. Legislation enacted in 2010 permits the appointment of officers who do not represent any political party, if necessary, but limits the number in any precinct to one third of the total number, if practicable.

The officers must take and sign the oath of office required by Article II, Section 7 of the Constitution of Virginia before performing the duties of office and serve a term not to exceed three years. If possible, each officer should be a qualified voter of the precinct in which he/she is appointed to serve, and all must be qualified Virginia voters. However, no elected official, deputy or employee of an elected official can serve as an officer of election. Officers generally are considered to be local government employees, and the Virginia Code mandates that they be paid at least \$75 for each full day’s service rendered on Election Day. As of 2010, compensation for regular officers ranged from that minimum to \$150, with chiefs and assistant chiefs being paid more.

Although the costs for compensation and training of officers is often an issue in determining the number of officers to be hired, electoral boards also cite the difficulty in obtaining enough persons willing to serve. Fairfax County, for example, needs approximately 3,000 dependable and committed citizens to serve as officers of election in its 231 precincts for each general election.⁷

An early 2008 survey of Virginia’s local registrars and electoral board members reported that:

“... an area of great concern among both general registrars and electoral board members is a lack or potential future shortfall of qualified elections officers to staff precincts. Several respondents listed this as their greatest worry and it was rated as an issue of concern among respondents from all jurisdiction sizes. A consensus among respondents is that elections’ increasing complexity is making recruitment of election officers more difficult. On a scale of concern about this development, ranging from 0 to 10, with 10 being extremely concerned, the overall average score was 7.6.”⁸

At first glance, this report seems inconsistent with the 2008 report of the U.S. Election Assistance Commission (EAC) in which only 28 percent of Virginia jurisdictions reported that obtaining sufficient officers was very or somewhat difficult. However, the EAC survey was done after the 2008 elections for which both the Virginia SBE and local governments had made highly visible and quite successful efforts to recruit some 10,000 additional officers of election.

Many persons attribute the difficulty of some jurisdictions to find adequate numbers of officers to the long days, generally 15-17 hours, needed to work on Election Day. They note that this problem could be resolved by using

split shifts. Another concern is the age of many officers of election. The 2008 EAC report showed that over 50 percent of Virginia officers were over 40 years of age; 10 percent were over 70.

The Virginia Code permits electoral boards to allow officers of election, except for the chief and assistant chief, to work all or a portion of the time that the precinct is open on Election Day. Few jurisdictions provide this option, generally termed “split shifts,” because they consider it difficult to administer. Fairfax County, which allows split shifts, requires those using it to find their own partner. [Note: Complete information on the use of split shifts in Virginia will probably not be available until the 2010 EAC Report is issued in early summer. A quick, limited survey found that Fairfax, Loudoun and, Prince William Counties and the Cities of Williamsburg and Charlottesville offer this opportunity to their officers of election.]

One LWV member who is an officer of elections has noted that a married couple shares one position in her precinct, and believes that it has worked well since both are experienced – one with opening the polls in the morning and the other with closing them in the evening. However, another LWV member who is a former election official noted that enabling officers to work split shifts is an administrative burden, including extra training, especially on small election offices. There is also a concern about what happens when one of the partners does not show up.

Under the Virginia Code, the SBE is required to ensure that the members of local electoral boards and general registrars are properly trained to carry out their duties by offering training annually, or more often, as it deems appropriate, and without charging any fees for the training. The Board also sets the training standards and requires certification that officers of election have been trained consistent with them. The certification must be submitted each year prior to the November general election. Training for chiefs and assistants is required every year; training of other officers of election is required every four years.

In the 2008 Virginia Election Administration (VEA) Survey,⁹ the level and quality of training reported by local electoral boards and general registrars varied according to jurisdiction size and whether they were registrars or electoral board members. Fewer than 40 percent of electoral board members reported receiving initial training, contrasted with two thirds of the registrars. Smaller jurisdictions reported providing the most frequent and lengthiest training programs, but those from very large jurisdictions reported teaching the most skills to their election officers. The report concluded that training is not consistent throughout the state – in spite of SBE requirements. To remedy this situation, one goal of the SBE is to develop a statewide, one-stop, online training portal for local county and city election officials and officers of election.¹⁰

The observations of two local Leagues in Virginia are instructive with regard to the importance of training. One noted that “It was our observation during our . . . study of electoral practices and procedures that the training of poll workers is critical to having well functioning identification process.” They believed that training in their locality was carried out as required. The other League noted that “We now have experience with three elections in which state Code was not meticulously followed by the registrar’s office; there is the appearance of serious carelessness and incompetence.” In a discussion with SBE staff, it was noted that one of the incidents resulting in the latter comment was due not to technical difficulties but a lack of training and failure to follow directions.

- **Numbers and Types of Voting Systems Used in Virginia**

Chapter 6 of Sec. 24.2 of the Virginia Code establishes the number of machines that need to be provided at each polling place and requires counties and cities to provide machines that have been approved by the SBE. Local governing bodies that use mechanical or direct electronic (DRE) voting systems must provide a minimum of one machine for precincts having not more than 750 registered voters and an additional machine for every 750 registered voters to a maximum of 5,000 registered voters. If the jurisdiction uses machines requiring voters to use a ballot that is inserted into an electronic counter, it is required to provide a voter marking device/booth for every 425 registered voters and at least one counting device per precinct.

The SBE website provides a list of 18 different types of voting systems used in Virginia. It includes eight types of DREs, nine types of optical scanners, and one accessible device that marks an optical scanner type ballot. Mail-in absentee ballots can use a traditional paper ballot or the optical scan absentee ballot. The complete list of systems used as of October 2010 can be found at:

http://www.sbe.virginia.gov/cms/Election_Information/Voting_Systems_Ballots/Index.html.

Forty-five localities in Virginia use only DREs, 84 localities use a mix of DREs and optical scan machines, and 5 localities use only optical scan machines.¹¹ The 2008 EAC survey report reported that of the 10,808 pieces of voting equipment in Virginia, 81.2 percent were DREs, 10.3 percent were optical scan, 8.5 percent were paper.

A Cal Tech/MIT study following the 2009 election found that 78 percent of Virginia voters were very confident that their votes were counted as cast. The study also reported that 74 percent of Virginia residents preferred voting on DREs, with 81 percent of DRE voters and 71 percent of optical scan voters confident that their votes would be counted accurately. The preference for DREs may reflect that voters are largely supportive of the equipment that they use. Regardless of the type of equipment used, 3.6 percent of Virginia voters reported that they had at one time a problem that prevented them from voting.¹²

Based on research and reports about the unreliability of DREs, especially their malfunctions and inaccuracies, lack of a paper trail, and susceptibility to hacking and fraud, in 2007 the General Assembly enacted legislation prohibiting the purchase of additional DREs with some exceptions (Sec. 24.2-626). Each year since then, including 2011, legislation has been proposed that would override this prohibition. The 2011 session of the General Assembly is no exception.

- **The Ballot¹³**

According to Virginia law, ballots list each office, and under the title for the office a statement as to the number of candidates that may be selected for the office, using the language: "Vote for not more than" Except as discussed below, the candidates are listed alphabetically. In elections for federal, statewide and General Assembly offices, candidates who have been nominated by a political party or in a primary election are identified by political party. The order of the political parties is determined by lot by the SBE. In the 2011 General Assembly, Delegate Greason of Loudoun County has submitted HB 1525, which would extend to local elections in that County the requirement that ballots include the nominating political party for each candidate.

There are three classes of candidates: political parties, "recognized political parties" and independent candidates. Political parties are those that have received at least 10 percent of the vote in either of the last two statewide elections (the "retention amount"). Currently these are the Democratic and Republican parties. A recognized political party is an organization that meets certain requirements for the purpose of adding party labels to its nominees (state central committee, bylaws, duly elected state chairman and secretary). The names of the candidates are listed on the ballot under the title for the office in the order of their party. The three classes of candidates are listed separately, with political parties first (in the order determined by lot), followed by recognized political parties (in the order determined by lot), and lastly independent candidates in alphabetical order. If more than one candidate may be nominated by a party for a particular office, the names are listed alphabetically. The form of the ballot must be uniform throughout an election district.

Straight party voting by selecting all nominees of a party with a single lever or other device is not permitted in Virginia.

The Brennan Center for Justice published a paper in 2008 titled, "Better Ballots," outlining the most common problems with ballot design and making several recommendations.¹⁴ It concluded that poor ballot design and instructions are significant sources of disenfranchisement, affecting hundreds of thousands of voters in the last few federal elections. These problems disproportionately affect low-income voters, new voters and elderly

voters. Common design problems identified by the Brennan Center paper include: splitting candidates for the same office onto different pages or columns; placing more than one contest on the same touch screen; placing response options on both sides of candidate names; using "complete-the-arrow" instead of "fill-the-oval" response options; leaving columns or rows for disqualified candidates; inconsistent format and style; failure to use shading and bold text to differentiate voting tasks; failure to make instructions short and simple, or placing the instructions far from the related actions; not informing voters how to correct paper ballots; failure to warn of undervotes on the summary review screen in touch screen systems; sample ballots differing from actual ballots.

Recommendations made in the paper include: develop a checklist of design best practices for ballot designers; conduct usability testing prior to finalizing the ballot design and instructions; actively publicize sample ballots that look like the real ones that will be used; create design guidelines and templates for each brand and model of voting system used; review county ballot designs at the state level; publish the number of overvotes, undervotes and spoiled ballots after each election. The EAC has also provided a report on best practices and samples for the design of ballots and polling place materials.¹⁵

- **Electronic Pollbooks**

The Virginia Code states that for all elections beginning Nov. 1, 2010, the SBE will provide only electronic pollbooks. SBE's electronic pollbook (EPB) program is designed to "provide efficiencies in processing voters and long-term cost savings for both state and local governments".¹⁶ The previous process was labor-intensive and paper-intensive at the state and local level, as suitcases and boxes of the paper pollbooks were sent by courier and mail from Richmond to the localities, then back to Richmond to be scanned for voting credit, and finally back to the localities to be stored for two years.

A pilot EPB program took place in 2008 and was made available to all localities in 2009. Federal Help America Vote Act (HAVA) funds were used to create the GFE (Government Furnished Equipment) EPB Program, whereby a contractor provided software and services coupled with low-cost laptops at about one-third the typical cost. To participate, the localities paid only \$100 per laptop. The final voter registration list is loaded onto the laptops, which are synchronized within each precinct, and voter credit is created for each person as they check in on Election Day. Voters and election officials have been largely receptive to this substantial change, once they receive training and become accustomed to the equipment. EPBs create a more efficient polling place for voters; and they reduce waiting time because there is no need to divide the pollbooks alphabetically. The chief complaint of voters in a high-turnout election has often been the unevenness of the lines of those waiting to be checked in.

In November 2010, almost three fourths of Virginia localities used EPBs. Several more had purchased the equipment but did not have time to test it and train their election officials to use it. But the Code does not **require** the use of EPBs. Localities that did not purchase the GFE equipment (or another so-called "full vendor solution" EPB system) must now pay SBE to print their pollbooks or print their own and are also responsible for manually applying voting credit after each election.

Sometime in the future, as a result of EPBs, the state may be able to further shorten the period between the close of voter registration and the election, from the current 21 days to only 14.

- **Accessibility**

Accessibility for individuals with disabilities, including those who are blind or visually handicapped, must be considered at every stage of the process, from voter registration to absentee voting and from polling places to voting machines.

The office of the general registrar and each agency, business, and establishment authorized to conduct voter registration must be accessible as required by various state and federal legislation. Once registered to vote, any

person with a disability, illness or pregnancy who is unable to go in person to the polls on Election Day because of a disability is entitled to vote an absentee ballot. Beginning in 2001, voters who expected to remain ill or disabled for the following calendar year became eligible for an Annual Absentee Ballot Application, which automatically generates absentee ballots for each election during a calendar year. If the applicant wishes to vote in a primary, he/she must specify by party designation the requested primary ballots. The application must be signed by the voter's physician or religious practitioner the first year, but may be renewed in subsequent years by the voter's request. The general registrar sends each enrolled applicant an application by December 15 for the next calendar year.

HAVA requires that states and localities use the funds provided to make polling places accessible "in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters." HAVA is regarded as a civil rights law by many handicapped accessibility advocates, not just an election reform law.

As a result of this wording, Virginia localities are now required to have at least one voting system equipped for individuals with disabilities at each polling place, including non-visual accessibility for the blind and visually impaired. All of the new voting systems approved for use in Virginia, therefore, have an audio ballot feature, which allows a blind person or person who cannot read to vote privately and independently. Some voters utilize audio ballots, but many still prefer to have a family member, friend or poll worker help them, using the voter assistance forms and procedures which have been available for many years. Although Sec. 24.2-626 disallows the purchase of new DRE voting machines, it allows jurisdictions to purchase such machines from other localities for the purpose of providing accessibility for voters with disabilities.

The Virginia Code allows curbside voting (within 150 feet of the entrance to the polling place) on Election Day for voters 65 or older or physically disabled. In these cases, officers of election can take the voting machine (DRE) or paper ballot out to the car for the vote to be cast.

Virginia's plan to implement HAVA required each polling place to undergo a detailed handicapped accessibility survey, with results reported to the SBE and a remediation program for any problems discovered. The SBE audited and reviewed every polling place for accessibility compliance and then implemented a project to keep tabs on polling place accessibility by partnering with local Centers for Independent Living to conduct spot checks each Election Day.

Who:

- **Identification Requirements**

Voter identification at the polls is covered in Sec 24.2-643 of the Code. The voter is asked for his full name and current residence address and is requested to present identification. The pollbooks are marked and information sheets are made available to the officers of election to show what IDs are appropriate.

The type of identification required in Virginia depends on whether the voter registered in person or by mail – basically whether the person was seen or not seen during the registration process. For the former, acceptable forms of ID include a Virginia voter ID card, a valid Virginia driver's license, military ID, any government-issued ID, an employer issued photo ID, or a Social Security card. Voters who do not have an acceptable ID may vote after signing an Affirmation of Identity form affirming that he/she is the voters he/she claims to be. Legislation proposed during both the 2010 and 2011 General Assembly sessions would eliminate the Affirmation of Identity form and require use of a provisional ballot. Project Vote, a national nonpartisan organization that works with marginalized and underrepresented voters, included these bills in its identification of "dangerous election bills introduced in Virginia."¹⁷

For persons who have registered by mail but did not include a copy of an ID, there is a slightly different list of valid IDs that apply in federal elections. Federal law requires that all states require one of the following IDs from these HAVA voters: current and valid photo ID; current utility bill, bank statement, government check or paycheck that shows name and address; or other government document that shows name and address. If HAVA voters do not have one of these valid forms of ID, they must cast a provisional ballot to vote.

Virginia is one of 27 states that require voters to show identification at the polls. Of these, nine states (including Oklahoma, whose provision does not take effect until July 1, 2011) request or require a photo ID for voter identification. In Georgia and Indiana, voters without ID vote a provisional ballot and must return to election officials within a few days and show a photo ID for their ballots to be counted.¹⁸ The National Conference of State Legislatures (NCSL) reports that voter ID has been a hot topic in state legislatures over the past decade, with more than 700 bills being introduced in 46 states. The Jan. 13, 2011, issue of the Pew Center's *electionline Weekly* reported that experts predict that many states are poised to consider legislation requiring photo IDs during their 2011 sessions. An issue that will have to be addressed: finding the resources to pay for the IDs, public education programs and so forth that would be required to meet constitutional tests.

The courts have been involved in a number of states that have been sued for requiring forms of ID that are deemed to hinder a citizen's right to vote. The U.S. Constitution protects the right to vote, and the courts have ruled, in many instances, that requiring certain forms of ID limits the right of the citizens to vote. However, the Constitution also gives states the right to enforce various forms of identification to prevent voter fraud. In Georgia, the State Supreme Court overturned a bill requiring photo ID, but the case was appealed to the U.S. Supreme Court, which in April 2008 ruled that a similar photo ID law in Indiana met constitutional standards.

Provisional Ballots

A provisional ballot is used to record a vote when there is a question about the voter's eligibility. The process and standards for provisional votes were established by HAVA, which requires that each state use a system of provisional balloting as a way to provide "fail-safe voting" for those persons who believe themselves registered to vote but are not listed in the pollbooks on Election Day. As with other HAVA provisions, the system is left to each state, and some believe that some states have systems that create administrative problems and disenfranchise eligible voters.¹⁹

Virginia law allows provisional ballots to be cast when: (1) The voter's name is not on the pollbook and the registrar's office cannot be contacted to verify that the voter is registered; (2) the voter registered by mail and did not mail in a copy of his/her identification at that time and fails to show one of the federally required forms of ID when voting for the first time in a federal election; (3) the voter was sent an absentee ballot but did not receive or has lost the ballot and appears at his/her regular polling place; or (4) when normal voting hours are extended by court order.

The provisional ballots are handled separately from normal ballots. An officer of election will hand the ballot to the voter and after he/she votes the ballot, it will be placed in a green envelope, sealed and placed in a special ballot container by the officer. The envelope must be completely filled out on both sides. The voter will be handed a notice stating when the electoral board in the locality will meet to determine the voter's qualification and if the vote will be accepted. If a voter casts a provisional vote because the voter's name was not on the pollbook, the officers of elections must provide the voter with a voter registration application.

There are two recurring reasons for voters having to cast a provisional vote. One is voters who registered at the DMV but whose names are not on the pollbook, and the second is the UOCAVA (see below) voter who never received the absentee ballot.²⁰ If a voter indicates he/she submitted an application at the DMV prior to the close of books, research is done with both SBE and DMV. If the registrar determines that the voter submitted a

completed application and was qualified, the provisional vote is counted by the electoral board at the provisional ballot meeting. The registrar works with SBE to find the documentation for any other reason. During the electoral board meeting to determine whether the ballots will be counted, they are taken up one at a time and any voters present may provide evidence or information to help the board determine their eligibility. If the vote is not to be counted, the green envelope remains sealed, the reason noted and a letter is written to the voter. If the ballot will be counted, the voter's name is entered in a separate poll book, and when all provisional votes are considered, the green envelopes are opened and the ballots placed in the appropriate ballot box without inspection. When all ballots have been opened and placed in the ballot box, they are counted and included in the results.

In the 2008 general election, over 9,000 provisional ballots were cast in Virginia, of which only 27.6 were fully counted. Its rejection of 72 percent of all provisional ballots cast placed it in a tie for the eighth highest rejection rate in the country. Over half of the ballot rejections were because the voter was not registered and another quarter were rejected because they were cast in the wrong precinct.²¹ In 2008, Virginia was one of the 30 states that required provisional ballots to be rejected if the ballot was not cast in the correct precinct. Changing this law to allow ballots to be counted for races in which the voter is eligible to vote is the prime recommendation for those who seek improvement of Virginia's record with regard to provisional balloting.

VOTING PRIOR TO ELECTION DAY

Absentee Voting²²

There are various terms, with sometimes inconsistent definitions, used to describe voting that occurs other than at the polling place on Election Day. One of the most popular of these is Early Voting. However, because "absentee voting" is the term used most consistently in Virginia, we are using it in this paper.

- **Who is Eligible²³**

Qualified voters applying one election at a time are eligible to vote absentee in Virginia only if they meet one of the certain conditions described below. Special conditions apply to active-duty military and overseas voters.

According to Sec. 24.2-700 of the Virginia Code, the following registered voters may vote by absentee ballot in any election in which they are qualified to vote:

- Any person who, in the regular and orderly course of his business, profession, or occupation or while on personal business or vacation, will be absent from the county or city in which he is entitled to vote;
- Any person who is (i) a member of a uniformed service of the United States . . . on active duty, or (ii) a member of the merchant marine of the United States, or (iii) who temporarily resides outside of the United States, or (iv) the spouse or dependent residing with any person listed in (i), (ii), or (iii), and who will be absent on the day of the election from the county or city in which he is entitled to vote;
- Any student attending a school or institution of learning, or his spouse, who will be absent on the day of election from the county or city in which he is entitled to vote;
- Any person who is unable to go in person to the polls on the day of election because of a disability, illness or pregnancy;
- Any person who is confined while awaiting trial or for having been convicted of a misdemeanor, provided that the trial or release date is scheduled on or after the third day preceding the election
- Any person who is a member of an electoral board, registrar, officer of election, or custodian of voting equipment;
- Any person serving as a designated representative of a political party, independent candidate or candidate in a political party;

- Any duly registered person who is unable to go in person to the polls on the day of the election because he is primarily and personally responsible for the care of an ill or disabled family member who is confined at home;
- Any duly registered person who is unable to go in person to the polls on the day of the election because of an obligation occasioned by his religion;
- Any person who, in the regular and orderly course of his business, profession, or occupation, will be at his place of work and commuting to and from his home to his place of work for eleven or more hours of the thirteen that the polls are open.

- **Some ABCs of Absentee Voting in Virginia**

As soon as an electoral board or registrar receives the “Certification of Candidates” and ballot format from the SBE, the information is sent to the printer for paper ballots and programmed for electronic voting machines. The ballots must be ready for absentee voting and mailed to those who have previously applied at least 45 days prior to a general or primary election, or in case of a special election, 30 days or as soon as possible if the time is insufficient to meet the deadline. The electoral board must certify in writing to SBE that the ballots were ready on the required date and any voters who had applications on file were sent ballots by that date. (24.2-612) Applications are entered in the Virginia Election and Registration Information System (VERIS) when received and mailed (e-mailed or faxed). Absentee ballots are mailed as soon as they are available to applicants already on file, and within three business days following receipt of other applications.

Each absentee application is checked for completeness and all appropriate data must be completed, including the last four digits of the applicant’s Social Security number. If all parts are not completed, a ballot will not be sent by mail. An absentee ballot application can serve to transfer the voter as it is a signed statement indicating a change of address. If the applicant did not specifically request the change of address by checking the appropriate box, an attempt to contact the applicant to verify registration is made. This is also true for all applications missing information except for the signature of the voter. If they cannot be reached by phone, email or fax, the application is returned to the voter for missing information.

Instructions are sent with the ballot to the absentee voter in an “A” envelope marked “Ballot Within” to be returned in a “B” envelope, referred to as “Marked Ballot”, the Statement of Voter. There are currently two versions of the “B” envelope. One titled UOCAVA Statement of Voter is used by UOCAVA citizens only. This envelope simply requires the voter’s signature and the signature of a witness. All other “B” envelopes require, in addition to the signature of the voter and witness, the full name and full legal address of residence in Virginia. Although all absentee ballot return envelopes have a return address label that includes the voter’s name, full address, precinct and district code numbers, in the past many domestic absentee ballots were not counted if the B envelope was not filled in completely. This situation, which some viewed as a literacy test, was recently changed by a regulation that “details standards to assist local election officials in determining whether absentee ballots may be counted by distinguishing what omissions are always material and require that the ballot be treated as void or invalid from those that are not material.” (Virginia Register of Regulations, December 20, 2010)

The law requires that the electoral board send a written notice to all voters whose absentee ballots cannot be counted within 90 days after its rejection. Virginia provides special ballots in certain situations. They are, briefly: (1) statewide early absentee ballots for elections for governor, lieutenant governor and attorney general to overseas voters unable to vote in any other manner due to living in isolated or remote areas - which must be requested 90 days before the statewide election; (2) federal only absentee ballots for federal elections for military, their families, or overseas citizens; (3) presidential-only absentee ballots for electors for president and vice president; and (4) federal write-in absentee ballots.

- **Absentee Voting by Mail**

An application for an absentee ballot is given to anyone upon request and is valid for only the election requested on the application, with the exception of persons using the FCPA (see below) or those with illnesses or disabilities, who may apply to vote absentee by mail for all elections that occur within one calendar year. It is interesting to note that eight states plus the District of Columbia allow permanent no-excuse absentee voting. This allows a voter to request an absentee ballot automatically for all future elections. It can be a step in the process of switching to all-mail voting.²⁴

Applications are available online at the Virginia SBE and local electoral board websites and at local government offices throughout Virginia. They are sent only to those who meet at least one of the criteria noted above. The earliest an application may be filed is 12 months prior to an election. Completed and signed absentee ballot applications may be returned to local election offices in person, by mail, or by fax. An e-mailed application can be submitted only if it has been printed, signed and scanned into an attachment in lieu of mail. All applications for ballots to be mailed (e-mailed or faxed) must be received by 5 p.m. on the Tuesday prior to the election.

All voted ballots must be received by the local electoral board by 7 p.m. on Election Day, with the following exception. According to legislation enacted at the 2010 General Assembly session, absentee ballots received after the close of the polls but two business days before the SBE ascertains the election results, will be counted if an eligible absentee voter requests an absentee ballot on or before the deadline for making absentee ballots available but is not sent the ballot by that deadline. (Sec. 24.2-709)

New registrants who submitted their voter registration applications by mail must vote in person (either in-person absentee or at the polls on Election Day) unless the voter is a full-time college student, absent active duty military, residing overseas, physically handicapped, age 65 or over with a qualifying reason for voting absentee, or voting a "presidential only" ballot.

- **Absentee Voting in Person²⁵**

Eligible voters may also vote absentee in-person at all central election offices beginning 45 days before and until 5 p.m. on the Saturday before Election Day. Like those voting absentee by mail, voters must meet one of the criteria listed on the application form. All in-person absentee voters must produce one of the specified forms of identification or sign an Affirmation of Identity before being allowed to vote. If the registration books are still open before the election, a person may register and vote during the same visit.

All localities are authorized (24.2-707) to provide for in-person absentee voting at satellite locations in their jurisdictions. Few localities in Virginia have exercised this option. A 1994 report of the National Clearinghouse on Election Administration noted that Fairfax County was the only Virginia locality to exercise this option. Things have not changed significantly since then. In 2010, eligible voters in Fairfax County could vote absentee at one of seven satellite offices for two and one-half weeks before Election Day, Monday through Saturday, 3:30 to 7 p.m., concluding at 5 p.m. on the Saturday before the election. Both Loudoun and Prince William counties in Northern Virginia provide a more limited opportunity for in-person absentee voting before general elections. The Tidewater cities of Newport News, Virginia Beach and Chesapeake also have limited satellite voting during the last two weeks before the election.²⁶

One former registrar noted that finding an appropriate location in a government building, providing the secure computer connection to the statewide database that would be necessary, and training and staffing such a location would be a major new financial commitment. But in better times that would be a wonderful goal!

- **Emergency Absentee Voting**

Special emergency applications for certain specific reasons are available for people who become incapacitated on or after the 7th day before an election or who become obligated to be absent after 12 noon on the Saturday

before Election Day. An emergency absentee ballot application can be provided to a hospitalized or otherwise incapacitated voter prior to 2 p.m. on the day before the election if requested by phone or in writing with name of a qualified representative designated to pick up and return the ballot. Persons with last-minute business emergencies may also vote in person until 2 p.m. on the day before the election. Special certifications such as a primary medical and identifications are required according to specific situations.

- **Provisions for Voting by Military and Overseas Citizens**

Part 1 of this study described the special provisions for voter registration for military and overseas citizens. To summarize: the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) was enacted by Congress in 1986 and amended by HAVA in 2002. It requires states and territories to allow certain groups of U.S. citizens to register and vote in elections for federal offices, including: members of the uniformed services (on active duty), members of the Merchant Marine, their eligible family members and citizens residing outside the United States.

The Federal Voting Assistance Program (FVAP), part of the Department of Defense, administers UOCAVA and the National Voter Registration Act of 1993. FVAP states its goals as to “inform and educate U.S. citizens worldwide of their right to vote; foster voting participation; and protect the integrity of, and simultaneously enhance, the electoral process at Federal, State and local levels.” The procedures and deadlines, however, vary from state to state. Information to apply to register or vote is available at <http://www.fvap.gov/>.

To apply for an absentee ballot, a person covered by UOCAVA may fill out a federal post card application (FPCA). This application is accepted by all states and territories and is postage paid in the U.S. mail, including the Military Postal System and the State Department mail pouch. An online version is available at the FVAP website; it must be completed, printed, signed, dated and mailed to the local election official, using an envelope with proper postage or the prepaid FVAP return envelope. A UOCAVA voter may also send a written request to his or her local office of elections.

The Military and Overseas Voter Empowerment Act (MOVE) was enacted in October 2009 to protect the voting rights of deployed troops and other Americans overseas by requiring states to expedite the transmission of absentee ballots to provide more time for them to vote in federal elections. Its main provisions require states to: transmit absentee ballots at least 45 days prior to the election; allow for electronic request and transmittal of voter registration applications and absentee ballot applications; allow for electronic transmittal of blank (unvoted) absentee ballots; accept the Federal Write-in Absentee Ballot (FWAB) for all federal elections; and develop an online system that allows UOCAVA voters to confirm that their voted ballot has been received. Because of its (normal) June primary date and candidate filing deadline for federal general elections, Virginia was listed as one of the states best able to comply with MOVE timing requirements. Legislation enacted at the 2010 General Assembly session was designed to complete the changes needed for compliance.²⁷

UOCAVA citizens who apply are eligible to receive their ballots electronically if they are located outside Virginia; however they must return their ballots by mail. In 2010, Virginia was one of 17 states that did not allow the return of some category of UOCAVA voted ballots by electronic means.²⁸

There has been criticism that UOCAVA Virginia ballots were not received/returned promptly, and procedures have been questioned, especially in close elections. In Virginia, UOCAVA citizens who apply using the FPCA are automatically mailed ballots to the location from which they applied for one federal election cycle (formerly two federal elections, often meaning four years) or 365 days. These are mailed out on the first day that ballots are available. However, many of the addresses are no longer valid and the ballots are not returned. If these voters return to Virginia and arrive at their precinct on Election Day, they find that an AB is attached to their names, and they receive provisional ballots. A 2010 change in the law to require the automatic sending of absentee ballots for just one federal election cycle will help reduce the number of unreturned absentee ballots.

No-Excuse Absentee Voting: a Proposal

In contrast to Virginia, where registered voters need to have one of the “excuses” listed earlier in this paper in order to cast an absentee ballot, either in person or by mail, 34 states plus the District of Columbia allow either no-excuse absentee voting in person or by mail. This includes Oregon and Washington which use all-mail voting throughout all or most of the state. Eight states – Arizona, California, Colorado, Hawaii, Montana, New Jersey, Utah and Washington – and the District of Columbia allow permanent no-excuse absentee voting. This enables a voter to request an absentee ballot automatically for all future elections. A few additional states allow voters who meet certain criteria to automatically receive an absentee ballot for all elections.²⁹

In Maryland, the mail-in option is now available to any voter. Excuses are no longer necessary to request an absentee ballot. Voters can download absentee ballots on their home computers.³⁰

Research about the effects of no-excuse absentee voting and other early voting options is ongoing. There is general agreement that it offers convenience and additional opportunities to cast a ballot, and saves money. Most voters like it, as do election officials. However, some research has indicated that it may be more useful as a means of facilitating voting for those who would vote anyway rather than to increase voter turnout. Legislation to allow either in-person or mail no-excuse absentee voting has been proposed for a number of years in the Virginia General Assembly, with the same result: the legislation passes the Senate but is left in the House P&E Committee. Legislation has already been proposed for the 2011 session in both houses. Is it true that the House will once again kill the legislation because, as stated in a November issue of PilotOnLine (<http://hamptonroads.com>), “The General Assembly routinely kills measures designed to make voting more convenient,” or will the potential for eventual budget savings and the knowledge that no-excuse absentee voting would be helpful to their constituents make a difference?

Vote-by-Mail : a Proposal

Vote-by-mail covers a wide range of options that allow voters to vote paper ballots and mail them to the election office. It can range from systems such as no-excuse absentee voting, permanent absentee voting and all-mail elections, to be used in special, primary, ballot question or general elections, at the special district, local or state levels. Of the two states that currently allow statewide vote-by-mail, Oregon moved to all-mail elections in 1998, and in 2005 Washington gave counties the option to adopt the system. In Washington, 38 of its 39 counties now conduct all-mail elections and a majority of voters in the remaining county now vote by mail. According to the National Conference of State Legislatures (NCSL), limited all-mail voting is authorized in another 14 states.

States and localities consider vote-by-mail for a variety of reasons, including:

- **Cost**

Many states and localities are finding it difficult to finance elections in the current economic climate, making vote-by-mail “fiscally fashionable” according to the NCSL. There were reports this year of the closing of polling places in both California and Hawaii due to a lack of funds. Both Oregon and Washington have claimed savings, with Oregon testifying in Congress that it saved 75 cents per voter between the 1998 and 2010 elections, not accounting for inflation. A letter from the Oregon Secretary of State in the Jan. 1, 2005 edition of the *Washington Post* stated that the cost savings was about 30 percent. However, mail-in voting can increase some costs, such as printing and postage, while decreasing others. Los Angeles reported that it would have to hire nearly 500 additional employees to process ballots if it went to all-mail elections, which could offset savings in other areas. It appears that the determination of savings, as well as the ease and effect of introducing such a system, depends on a variety of factors such as: (1) the need to provide ballots in more than one

language; (2) the number of inactive voters to whom ballots are sent; (3) the number of drop off sites needed to be obtained and secured; and (4) the number of races and questions on the ballot.

- **Turnout**

There is disagreement on whether all-mail voting increases or decreases voter turnout. Although the Oregon Secretary of State testified that voter turnout in the state increased by 6 percent since all-mail elections began in 2000, Oregon had one of the largest declines in voter turnout between the 2004 and 2008 presidential elections. However the Washington Secretary of State notes (on the state's website) that turnout statistics for Washington and Oregon are consistently higher than states that require voters to give a reason to vote absentee, such as Kentucky, Minnesota, Montana and Virginia. The Montana Secretary of State is facilitating meetings with a citizen group working to develop a plan for and enact all-mail balloting in that state. (*Billings Gazette*, Sept. 20, 2010) In 2009, Colorado authorized counties to conduct all-mail primary elections, and 46 of the state's 64 counties took advantage of the option in 2010, resulting in an increased turnout and fewer election issues. Fifteen years ago, a study and report for the Federal Election Commission reported that "The one survey question on which all election officials who responded, at both the State and local levels, agreed is that all-mail-ballot elections increase voter turnout significantly; it is only a question of how much turnout increases."³¹

- **Convenience and ease of administration**

Many election officials prefer mail elections because they do not require the polling place arrangements and materials distribution and collection, election officer recruitment and training, equipment problems, running both precinct and absentee elections – and the costs associated with these. One of the downsides is that reporting of election results can take longer. Oregon requires receipt of mail ballots – either by mail or at collection boxes – by the close of the election, whereas Washington requires the ballots to be postmarked or dropped off by Election Day. The effect of this difference was seen in the reporting of results in the November 2010 election, where close races were determined a day or so later in Washington than in Oregon. Election officials also note that carrying out all-mail elections can improve election administration, especially by enabling improved accuracy and up-to-date registration data.

- **Fraud and privacy**

The possibility of fraud in all-mail voting is also a matter in dispute. A 2005 Commission on Federal Election Reform raised concerns that voters at home might be pressured to vote for certain candidates. [It is interesting that others contend that voting in family situations makes a good teaching tool for parents.] However states and other jurisdictions using all-mail voting claim that they have seen few cases of fraud. A clerk and recorder in a Colorado county that used mail-in voting in 2010 was quoted: "I just want to put in a plug for 95 percent of the county clerks that believe it's the most safe, accurate and secure election you can conduct."³² As in any voting system, the means of voting or returning ballots, signature identification and counting of ballots are important considerations when designing systems that will prevent fraud.

In summing up the experience of Washington State with vote-by-mail, Secretary of State Sam Reed says: "Voting by mail increases turnout, simplifies the elections process, and promotes an informed citizenry. But above all else, the people of Washington strongly support it."³³ Additional states continue to consider bills to adopt all-mail voting for some elections and cost considerations may be the deciding factor. Legislation was proposed in the U.S. Senate in 2010 by Senator Wyden (S. 3299) to allow all eligible voters to vote by mail in federal elections. No bill has yet been introduced in Virginia has to allow this type of voting,

Online Voting: a Proposal

"Internet Voting, Still in Beta" – an editorial headline in the Jan. 28, 2010, *New York Times*, pretty well sums up the status of using the Internet for voting. This is in spite of the fact that more than 13 years ago (1997) legislation was enacted in Texas to allow the astronauts to vote from space orbit by electronic means. The

editorial noted that, although Internet voting is still in its infancy and unreliable, states are beginning to use it to help military and overseas voters cast their ballots. As of June 2010, 17 states allowed some form of Internet voting, mainly use of e-mail, for military voters. There have been Internet pilots for this purpose in Colorado and Georgia, and, in November 2010, eight West Virginia counties participated in a pilot program to allow military and overseas voters both receive and return their ballots online.³⁴

In the past several years, there have been some well-publicized failures of attempts to use the Internet for voting, including the Department of Defense cancellation in 2004 of its SERVE program (Secure Electronic Registration and Voting Experiment) for overseas voters, and the more recent hacking of the District of Columbia Internet-based voting system test in October 2010, when those casting a ballot were greeted with the website playing the University of Michigan fight song.

There are some who believe that Internet voting is an insecure and unreliable system that will never be appropriate, while others believe that there are ways to insure a secure ballot and have a secure system. Nobody doubts that attempts will continue to be made to find the way to make technology work to continue the improvement that has been made in election administration and management in just a few short years.

AFTER THE ELECTIONS

- **The Canvass** (to examine in detail; specifically: to examine votes officially for authenticity)³⁵

Section 24.2, Chapter 6 of the Virginia Code establishes what is known as the “canvass.” The steps in the canvass procedure are spelled out on the SBE website and are summarized below. One could make many important points made about the process, but maybe the most important is that the public can attend.

Until the official counting and certification of the ballots is complete, all election results are considered “unofficial.” A process known as the “canvass” must be completed before the results become official. During the canvass, the local electoral board meets to ascertain the results of all elections held in its county or city and certify the results. The meeting must take place at or before 5 p.m. on the day after the election at the office of the general registrar or clerk of court. It may adjourn to the principal office of the general registrar. The clerk advises interested citizens who inquire where the meeting is being conducted. All board members should be present, but two members constitute a quorum in the event one member is unable to attend due to an emergency. Only those members of the board present during the entire canvass may legally sign any document concerning it. In addition to the electoral board, the general registrar and other staff needed to assist the board may attend, as may representatives of the clerk of court’s office, if needed. Any qualified voter and any media representative is also permitted to attend. These persons may observe but may not interrupt the meeting.

. . . what a popular activity the canvass is in Fairfax!! Over the last few years a full cadre of Democratic and Republican observers has attended the canvass. They have training sessions in preparation. It's a serious business for the campaigns and parties, especially when an election is close. . . . and it's open to the public.

During the canvass, all data entered by officers of election are checked for accuracy, including the number voting on machines, which should be verified against data entered for each machine’s public and protective counter entries. An ascertainment of results is made from the Statement of Results from each precinct. (If errors are found, a majority of the officers of election for the precinct will be summoned, including officers representing both parties. Only the officers may make changes to the Statement of Results. If it appears that officers must look at counted ballots or examine voting machines, the SBE must be contacted to obtain permission for the clerk of court to release documents or voting equipment keys to the officers. Documents and/or voting machines must be examined in the presence of either the clerk or deputy clerk of court.)

Once the results are ascertained: an attested copy for each office is provided to the clerk of the local governing body; abstracts of the votes are prepared, certified and signed by the electoral board and delivered to the SBE; and certificates of election are prepared for each person elected to a local office, executed by the secretary of the electoral board, and given to the winners.

The SBE is required to meet to certify the results of all elections for members of the General Assembly, governor, lieutenant governor, attorney general, members of the U.S. Congress, presidential electors, and any other office shared by more than one county or city or combination of the two. For a general election, the SBE meets on the fourth Monday in November. At least two weeks before the date of the meeting, it will forward a notice of the date and location of the meeting to the registrar of regulations for posting on the Commonwealth's calendar. A copy of the notice will also be posted at the entrance to its offices. The meeting will be attended by the deputy secretary and other staff needed to assist the board and any person or media representative. Immediately following its canvass, the SBE prepares the certificates of election for the offices noted above, changes the classification of the election results on its website from unofficial to official, and makes available to the public election results, summaries and locality/precinct details.

Although there appear to have been no publicized issues related to the canvass in Virginia, an article in the NCSL newsletter notes that "election administration traditionally has been a crisis-driven field. If the crisis this year has been slow counts, we can expect proposed legislative remedies. In 2011, states may start turning attention to the laws that govern the canvass."

- **Recounts**

In Virginia, a recount is a simple redetermination of all of the votes cast on Election Day. There are no automatic recounts. Only an apparent losing candidate can ask for a recount, and only if the difference between the apparent winning and apparent losing candidate is not more than 1 percent of the total votes cast for those two candidates. A recent law change allows for a recount if the apparent winner is a write-in candidate and the difference is not more than 5 percent of the total votes cast for the two candidates. Procedures for requesting and funding recounts vary according to the office being elected and are supervised by judges at the state or circuit court level, depending upon which level of government certified the election. The petition for a recount must be filed within 10 days of the certification. The SBE promulgates standards for recounts, including the handling of voting machines and materials involved. The Code states that the recount for various types of voting machines will be conducted as follows:

- For paper ballots, a hand count
- For DREs, reading the results from the Election Day printout, or rerunning the printout if the tape is not clear
- For optical scan tabulators, rerunning the ballots through a tabulator programmed to count only the votes for the office or issue in question (or hand counting when the tabulator cannot be so programmed or the ballots are not accepted by the tabulator)

The costs of the recount are paid by the government when the petitioning candidate is declared the winner or when the difference between the petitioning candidate and the candidate who was apparently elected is not more than one-half of 1 percent of the total number of votes cast for the two candidates. (24.2-802)

There have been many very close elections in Virginia in recent years, including the McDonnell/Deeds for Attorney General race in 2005. This was the closest statewide election in Virginia history, decided by a 0.1 percent difference. The 5th District congressional race in 2008 (Perriello/Goode) showed only a 0.2 percent difference, about 700 votes. This was the first recount under the new code section requiring that optical scan ballots be rerun, rather than just rereading the tapes. Vote totals changed by only 18 during this recount. In the

recent 2010 election for the 11th District congressional race (Connolly/Fimian), the 981 vote difference between the vote totals represented a 0.4 percent difference; the losing candidate did not request a recount.

IN CONCLUSION

As this study points out, our elections are run through a complex and intricate system at various levels, depending on the election. Each level has separate rules and timelines. The election system needs constant attention to keep up with changing laws and technology, all which are expensive. Voters don't really think about the system until they are at the polls; by that time it's late. Election officials in all capacities and levels need constant training, which costs money. In Virginia, the state election operation has endured many budget cuts even as the population and frequency of elections have grown. The League is often the only group that ever advocates to legislators for better processes and the need for realistic funding. Elections are how we run our democracy, and the system must be strong to make it beyond reproach. Citizens also need transparency and some uniformity to ensure that elections are administered evenly across the state. Citizens who understand how the system works can have confidence that their vote counts and are more likely to participate. *Statement of Olga Hernandez, President of the League of Women Voters of Virginia, 2007-2011,*

ENDNOTES AND SOURCES

1. Major sources for information in this study were the Virginia State Board of Elections; the Virginia Code, especially Section 24.2; the Pew Center on the States, including its *electionlineWeekly* report; the National Conference of State Legislatures (NCSL); the United States Election Assistance Commission (EAC), especially its 2008 survey; the Brennan Center for Justice; and the Virginia General Assembly Legislative Information System. The EAC survey for 2010 will not be available until spring 2011.
2. Virginia Code, Section 24.2-603.1. The Code contains a limited provision for postponement of certain elections in the event of an emergency declared by the President or Governor. General elections for state or federal offices are not covered by the section.
3. E-mail correspondence between Senator George Barker and Therese Martin.
4. Based on lists on the SBE website.
5. Legal requirements are contained in the Virginia Code, Sec. 24.2-115 et seq.
6. The EAC survey for 2008.
7. <http://www.fairfaxcounty.gov/eb/>
8. The 2008 Virginia Election Administration (VEA) Survey, conducted by the Voter Registrars Association of Virginia, in consultation with Dr. Michael McDonald and Matthew Thomburg of George Mason University.
9. Ibid, VAE survey.
10. Discussions with SBE staff.
11. Virginia Legislative Audit and Review Commission (JLARC), "Review of Post-election Audits of Voting Equipment," Commission Briefing, June 2010.
12. Cal Tech/MIT Voting Technology Project, Voting Technology and the Election Experience: The 2009 Gubernatorial Races in New Jersey and Virginia, Working Paper #99, July 2010.
13. Virginia Code, Title 24.2, Chapter 6.
14. http://brennan.3cdn.net/d6bd3c56be0d0cc861_hlm6i92vl.pdf.
15. Ibid, EAC survey.
16. SBE strategic plan for 2010-12, <http://vaperforms.virginia.gov/agencylevel/stratplan/spreport.cfm?AgencyCode=132>.

17. Project Vote Voting Matters, Jan 2010. <http://www.projectvote.org/blog?p=128>.
18. NCSL, November 2010.
19. http://www.brennancenter.org/content/section/category/election_day_issues/
20. In Fairfax County, the 2010 election produced 450 provisional ballots, of which more than half were cast for one of those two reasons.
21. Project Vote and the EAC survey.
22. Virginia Code, Title 24.2, Chapter 7 and SBE web site.
23. [http://www.sbe.virginia.gov/cms/Absentee Documents/VA Absentee ballot application.pdf](http://www.sbe.virginia.gov/cms/Absentee_Documents/VA_Absentee_ballot_application.pdf).
24. NCSL report on Absentee and Early Voting, Oct 2010.
25. Many consider/define this as “early voting.”
26. Informal survey of LWV members and websites. There may be additional localities that provide this service.
27. The FVAP is advocating the universal adoption of the FWAB and its expanded use by states for all elections for UOCAVA voters. See <http://www.fvap.gov/resources/media/fwab.pdf> for further information.
28. www.VerifiedVotingFoundation.org
29. NCSL, October 2010.
30. weblogs.baltimoresun.com/news/opinion of August 28, 2010.
31. Federal Election Commission, 1995 Innovations Report.
32. Pew Center on the States, Aug 12, 2010, *Electionline*.
33. Washington State website.
34. Verified Voting, and email correspondence with the West Virginia Secretary of State’s office. If we receive information about the pilot’s results, it will be posted on the LWV-VA website.
35. Online Merriam-Webster dictionary