

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

# **Certain Revisions In Election Laws**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **Senate Document No. 20**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1987**

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\* The Honorable Owen B. Pickett served as Vice-Chairman of the Joint Subcommittee until his resignation from the House of Delegates following his election to the House of Representatives in November 1986.

Report of the Joint Subcommittee Studying  
Certain Revisions in Election Laws  
Pursuant to Senate Joint Resolution No. 26  
To  
The Governor and the General Assembly of Virginia  
Richmond, Virginia  
January, 1987

To: The Honorable Gerald L. Baliles, Governor of Virginia,  
and  
The General Assembly of Virginia

The Joint Subcommittee continued its consideration of election law revisions during 1986 in accordance with Senate Joint Resolution No. 26. See, Appendix A. That resolution directed the Subcommittee to complete the study it began in 1985 of issues concerning the primary and nomination processes in Virginia and authorized the Subcommittee to consider other election law revisions that were brought to its attention.

From the outset, the focus of the study has been the presidential nomination and primary process. Consideration has been given as well to a number of proposals concerning other aspects of the nomination process, federal legislation with an impact on Virginia election procedures and suggested changes in election procedures in the Commonwealth.

The Subcommittee met June 10, 1986, to organize and to review the scope of its study. A public hearing was held August 12, 1986, to solicit views on the proposals carried over from the prior year's study and circulated in Senate Document No. 19 (1986) and to hear suggestions for other election law revisions. The Subcommittee held a working session October 14, 1986, and reviewed all topics brought before it to that time.

A second public hearing was scheduled to allow further public response to a series of draft legislative proposals on those matters viewed as of most immediate concern. The second public hearing on November 20, 1986, was followed by a December 15, 1986, working session and the preparation of this Report.

This Report does not address every proposal or item brought to the Subcommittee's attention. For example, the Subcommittee reviewed carry-over legislation but presents no recommendations on these matters, which are under consideration by either the House or Senate Committee on Privileges and Elections. Had there been a conflict between the recommendations in this Report and any carry-over bill, this Report would have addressed the problem. Since no conflicts are anticipated, the Subcommittee defers on these matters to the standing Committees on Privileges and Elections. With regard to other specific suggestions for election law revisions, the Subcommittee acted favorably on only two matters: implementation of the new federal Uniformed and Overseas Citizens Absentee Voting Act blank ballot requirements and revision of the statutory provisions on

defaced ballots. These changes are discussed below. Matters considered, but not recommended, are not reviewed in this Report, but materials on the wide variety of issues considered by the Subcommittee are retained and available in the Subcommittee's files at the Division of Legislative Services.

The Report is divided into the following segments:

- I. Presidential Preference Primary
- II. Implementation of Federal Blank Ballot Legislation
- III. Defaced Ballots
- Appendix A. Senate Joint Resolution No. 26
- Appendix B. Table on Southern Regional Primary
- Appendix C. Proposed Bill to Establish a 1988 Presidential Preference Primary
- Appendix D. Proposed Bill to Implement Federal Blank Ballot Legislation
- Appendix E. Proposed Bill on Defaced Ballots

## I. Presidential Preference Primary

### A. Background and Rationale

In January 1986, this Subcommittee recommended that Virginia join other southern states in establishing a March southern regional presidential primary and caucus schedule. The impetus for this proposal came from the Southern Legislative Conference. Alabama, Florida and Georgia had synchronized their primaries in March 1984. The SCL, with the endorsement of the Southern Governors' Association, determined to build on this beginning. It has promoted the southern regional primary by working at the state level and with due regard for individual state nominating procedures and state laws.

In April 1986, the General Assembly endorsed the southern regional primary concept and enacted Code § 24.1-162.1. That statute set March 12, 1988, the second Saturday in March, as the caucus date for Virginia's political parties to begin their national convention delegate selection process in 1988. In its 1986 Report, the Subcommittee recommended a continuation of its study focusing on nominating processes and left open the question of Virginia's adopting a presidential primary.

Since early 1986, the southern regional primary concept has taken hold. At present, Alabama, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, and Texas have adopted the March 8, 1988, primary. In Arkansas, Senate Bill No. 3 has been prefiled this year to

establish a March 8, 1988, primary. South Carolina has not adopted a primary, but the Democratic Party has announced a March 12, 1988, caucus date while the Republican party has not announced its date. West Virginia was the only state in 1986 to reject the early primary date, and legislation for a March primary date will be reintroduced at its 1987 legislative session. See, Appendix B.

In sum, twelve southern states have set a March 8, 1988, primary; South Carolina and Virginia have March 12, 1988, caucuses scheduled; and Arkansas and West Virginia will consider the matter in 1987.

For several reasons, the Subcommittee proposes that Virginia adopt a March 8, 1988, non-binding presidential preference primary in place of the March 12, 1988, caucus date.

- 1) The main purpose of the regional primary concept is to give this area impact on the presidential nomination process and the early March date is an essential feature to bring candidates to the area at the outset of their campaigns. This early date allows the region to have an important initial impact on the presidential candidate selection process.

Concurrently, the early date makes a non-binding advisory primary appropriate so that the state political parties will retain flexibility to evaluate the progress of the campaign as they proceed to select their national convention delegations.

- 2) The non-binding presidential preference primary involves the least interference with the political parties' right to conduct their affairs. Virginia has not had a presidential primary, and it has given the parties the option, for the most part, to decide whether or not to select candidates for state and local offices by the primary, convention, caucus, or other method. The 1986 March caucus legislation, to a degree, limited the parties' choice of procedures in selecting their national presidential convention delegations. This limitation was designed to involve the least interference with party activities and yet assure Virginia a place in the March regional primary and caucus event. By adopting a non-binding presidential preference primary, however, there is no state control imposed on the parties' delegate selection processes, and even the limited state regulation imposed in 1986 can be avoided.
- 3) The outcome of a statewide presidential preference primary will be readily understood. A comparison of the 1986 March caucus legislation and the recommended 1987 primary legislation yields the conclusion that a statewide presidential preference primary will produce a sharper picture of which candidates Virginia voters prefer than will a first round series of caucuses where the process is, of necessity, more complex. The parties and candidates will benefit from a statewide polling of the electorate. Virginia's participation in the regional primary will coincide with and be comparable to the other southern states, excepting South Carolina. Voter participation in the political processes will be encouraged.

Objections to a non-binding presidential preference primary focus on two aspects of the proposal: its cost and the fact that the results are not binding. With regard to costs, the State Board of Elections provided the Subcommittee its estimate of \$91,533 for the cost to the state. The cost to a locality will depend on the population and the number of precincts in the locality. The State Board of Elections provided the Subcommittee two measures for estimating local costs. First, it estimated a cost of \$6,000 for a hypothetical locality of 17,000 population and nine precincts. The Board also gave the Subcommittee sample data for 16 localities of various sizes based on actual costs of the November 1986 election that showed a range of costs (e.g. \$2,350 for Amelia - five precincts; and \$93,673 for Fairfax County - 163 precincts). The Board is compiling data from all localities and will make further information available early in the 1987 Session. A preliminary staff estimate is \$1 million to \$1.5 million total cost to the state and localities. Here the decision must be whether these costs are reasonable in light of the potential influence to be gained by participating in the regional primary. It is the Subcommittee's judgment that the Commonwealth will increase its influence on the presidential nomination process and that voter participation will be stimulated by Virginia's cooperation in the regional primary effort. These substantial, if intangible, benefits justify the cited costs.

The determination that a non-binding or advisory primary will best serve Virginia's interests is based primarily on the early date of the primary. In addition, Virginia does not have a system of party registration and voters select the party primary in which they will participate at the primary election. Virginia is an "open" primary state and can bind party delegations to the results of the primary only to the extent permitted by the party rules. See, Democratic Party of the U. S. v. Wisconsin, 450 U.S. 107 (1981).

It is the Subcommittee's conclusion that a non-binding primary will have substantial impact on the parties and that the parties can themselves adopt rules to provide for delegations that will be responsive to the wishes of the electorate. The Subcommittee considered a draft statute that would bind the party delegations to the outcome of the primary on a proportional basis for the first ballot at the national convention provided national party rules did not prohibit such a requirement. The Subcommittee chose, instead, to leave to the political parties the decision how best to execute the expressed preference of the electorate.

#### B. Proposed Legislation

Draft legislation to implement the Subcommittee's recommendation for a presidential preference primary is printed in Appendix C.

The proposed bill contains the following key features:

- o The bill establishes a March 8, 1988, presidential preference primary. Based on 1988 experience, the General Assembly will be able to determine whether similar legislation should be adopted for future presidential elections.

o The bill requires a primary for each major political party. All registered voters will be able to participate in the primary and to vote in only one party's primary election. No evidence of party affiliation is required by the bill beyond the act of choosing to participate in a particular party's primary.

o The bill provides three routes for candidates' names being placed on the primary ballot: (i) candidates who have become eligible by January 5, 1988, for matching payments from the federal Presidential Primary Matching Payment Account; (ii) candidates who are certified for the primary by the state political party chairman prior to January 5, 1988, and who are determined to be nationally recognized candidates by the party; and (iii) candidates who petition for a place on the ballot and file petitions by December 14, 1987, with approximately 13,000 signatures of registered voters (one-half of one percent of the state's registered voters), the same petition requirement as for governor or other statewide office.

o There are no filing fees required and the costs of the primary are to be paid by the localities as is the case for other statewide elections and primaries.

o The date for any other March primary is changed to March 8 (municipal primaries would otherwise be held March 1, 1988) and the date for the May general election is postponed one week to May 10, 1988, to preserve the usual time interval between the March primary and May general councilmanic elections.

o The legislation adopted in 1986 to set a March 12, 1988, caucus date is repealed.

## II. Implementation of Federal Blank Ballot Legislation

### A. Background and Rationale

In 1986, Congress enacted the Uniformed and Overseas Citizens Absentee Voting Act to recodify the Federal Voting Assistance Act of 1955 and Overseas Citizens Voting Rights Act of 1975. The new legislation contains one major new procedure to provide blank ballots to voters overseas who, because of remote location and slow mail, are unlikely to be able to obtain, vote, and return printed state absentee ballots within the time available prior to an election.

The Act takes effect for elections held in 1988 and thereafter, and the blank ballot provisions in the Act apply to general elections (not primaries or special elections) for President, Vice President, and members of Congress.

The Subcommittee's concern, from its first discussions of the blank ballot concept, has been the opportunities created for multiple voting and fraud. Under the Act, federal blank ballots will be available in various overseas locations, and an overseas voter may vote a blank ballot and then a regular state absentee ballot, and the burden is ultimately on the states to assure that only one ballot is counted for that voter.

Under the Act, states are given the option of designing and providing a state blank absentee ballot in place of the federal write-in absentee ballot. If the federal administrator of the Act approves the state ballot and the state ballot is made available at least 60 days before the deadline in the state for the receipt of an absentee state ballot, the federal ballots will not be valid for elections in the state.

Subcommittee members and the State Board of Elections received a letter from Henry Valentino, Director of the Federal Voting Assistance Program, suggesting that Virginia provide a special write-in ballot for overseas voters 90 or more days before an election. He also sent a copy of a Georgia statute as a model for state write-in absentee ballot legislation.

The Subcommittee endorses legislation patterned after the Georgia law and submission of this legislation, after enactment, to the federal administrator for approval.

The advantages of the proposal are that (i) an application must be made for a state blank ballot and ballots will become available only if the application is valid and (ii) only one ballot will be sent to an applicant, thereby, reducing opportunities for multiple voting.

### B. Proposed Legislation

The Subcommittee's draft statute is printed in Appendix D.

Briefly summarized, the Subcommittee's bill provides:

- o Qualified overseas voters may apply 90 days prior to a federal election for a special blank absentee ballot.
- o A special blank absentee ballot shall be sent or, if it is already printed and available, a regular state absentee ballot shall be sent to a qualified applicant.
- o The special ballot will allow the overseas voter to vote by writing in his party or candidate preference for the office.
- o The federal write-in absentee ballot will not be valid in Virginia.

### III. Defaced Ballots

#### A. Background and Rationale

During its hearings, the Subcommittee heard testimony concerning a contested election in 1985 in Stafford County. One aspect of the case involved the issue of when a voter's ballot should not be counted. The ballot in question had been marked for one candidate, that mark had been marked through and the word "mistake" written by the box, and the voter had marked the box by the other candidate's name. The court held the voter intended to vote for the latter candidate, but disallowed the ballot because it had been defaced, presumably by the handwriting on it.



The present law on defaced ballots is found in several Code sections, §§ 24.1-129, 24.1-130, 24.1-143, and 24.1-273. The first section now provides that a ballot shall be counted if the voter's intent is clear "provided that it is not defaced." The word "defaced" is not defined in Title 24.1. Extraneous markings on the ballot of any type could be argued to deface the ballot. Section 24.1-130 now requires a voter to turn in a defaced ballot to an officer for another ballot and requires the voter to take an oath he did not intentionally deface the first ballot. A false oath is deemed perjury. Section 24.1-143 requires defaced ballots to be sealed with other ballots and election materials after the election. Section 24.1-273 relates to the willful and fraudulent defacing of election materials and sets a criminal penalty for such actions.

The Subcommittee concluded that the primary standard to determine whether a ballot should be counted ought to be the voter's intent. If his intent is clear, his ballot should be counted; if it is not, the ballot should be set aside and not counted. Willful and fraudulent actions to deface or misuse a ballot are prohibited and subject to punishment under § 24.1-273. Inadvertent mistakes on a ballot or extraneous writings can be cured by the voter asking for a second ballot. If he fails to obtain a second ballot, his ballot should be counted even if he has extra markings on it, so long as his intent is clear.

#### B. Proposed Legislation

A draft bill is set out in Appendix E to amend §§ 24.1-129 and 24.1-130.

The bill deletes the requirements that defaced ballots are not to be counted and that voters must turn in defaced ballots and swear that the defacing was not intentional.

The bill leaves intact current law that ballots are to be counted if the intent of the voter is clear and that willful and fraudulent defacing of ballots is a crime.

Respectfully submitted,

Hunter B. Andrews, Chairman  
V. Earl Dickinson, Vice-Chairman  
John C. Buchanan  
Mary A. Marshall  
Clinton Miller  
Wiley F. Mitchell, Jr.  
William T. Parker  
\* C. Jefferson Stafford  
John Watkins  
William T. Wilson

\* **DISSENTING STATEMENT OF C. JEFFERSON STAFFORD**

I dissent from the report insofar as the recommendation concerning a non-binding primary is concerned. I do not believe that a primary is justified in light of the costs involved, and I do not believe that there is enough sentiment for a primary in the Commonwealth to warrant the holding of a non-binding primary.

**SENATE JOINT RESOLUTION NO. 26**

*Requesting the joint subcommittee of the Senate and House Committees on Privileges and Elections to continue to study certain revisions in the election laws.*

Agreed to by the Senate, March 3, 1986

Agreed to by the House of Delegates, February 27, 1986

WHEREAS, the joint subcommittee of the Senate and House Committees on Privileges and Elections established pursuant to 1985 Senate Joint Resolution No. 92 has concluded its study and reported on a number of revisions in the election laws; and

WHEREAS, several matters relating to the nomination and primary processes are still under consideration by the joint subcommittee; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the joint subcommittee be continued to complete its studies of matters relating to the nomination and primary processes and such other revisions in the election laws as may come to its attention.

The joint subcommittee shall complete its work prior to November 15, 1986.

The direct and indirect costs of this study are estimated to be \$13,200.

SOUTHERN REGIONAL PRIMARY  
STATUS

<u>State</u>	<u>1984 Method*</u>	<u>Timing Prior to 1986 Legislation</u>	<u>1988 Method*</u>	<u>1988 Current Timing</u>
Alabama	Primary	2nd Tuesday, March	Primary	March 8
Arkansas**	Caucus(R) Caucus(D) Primary(D)	Date undetermined March 17th Last Tuesday in May	Caucus(R) Caucus(D) Primary(D)	** May 31
Florida	Primary	2nd Tuesday, March	Primary	March 8
Georgia	Primary	2nd Tuesday, March	Primary	March 8
Kentucky	Caucus	2nd Tuesday, March	Primary	March 8
Louisiana	Primary	1st Saturday, April	Primary	March 8
Maryland	Primary	2nd Tuesday, May	Primary	March 8
Mississippi	Caucus	1st Tuesday after 1st Monday, June	Primary	March 8
Missouri	Caucus	2nd Tuesday in March	Primary	March 8
North Carolina	Primary	1st Tuesday after 1st Monday, May	Primary	March 8
Oklahoma	Caucus(D) Caucus(R)	2nd Tuesday, March Undertermined	Primary	March 8
South Carolina	Caucus(D) Caucus(R)	2nd Tuesday, June Date undetermined	Caucus	March 12
Tennessee	Primary	2nd Tuesday, March	Primary	March 8
Texas	Primary(R) Caucus(D)	1st Saturday, May 1st Saturday, May	Primary	March 8
Virginia	Caucus(D) Caucus(R)	4th Saturday, March Date undetermined	Caucus	March 12
West Virginia***	Primary	2nd Tuesday, May	Primary	May 10

\* For "Caucus," this chart shows the date of the start of the caucus process.

\*\* Senate Bill No. 3 prefiled to establish March 8 primary.

\*\*\* In 1984, was 1st Tuesday in June in West Virginia; for 1988, it is to be the second Tuesday in May. Legislation is being reintroduced in 1987 for a March 8 primary.

2 SENATE BILL NO. .... HOUSE BILL NO. ....

3 A BILL to amend the Code of Virginia by adding in Chapter 7  
4 of Title 24.1 an article numbered 5.1, consisting of  
5 sections numbered 24.1-202.1 through 24.1-202.10, and  
6 to repeal § 24.1-162.1 of the Code of Virginia,  
7 relating to the 1988 Presidential Preference Primary  
8 and to the date for selecting delegations to national  
9 political party presidential nominating conventions.

10

11 Be it enacted by the General Assembly of Virginia:

12 1. That the Code of Virginia is amended by adding in  
13 Chapter 7 of Title 24.1 an article numbered 5.1, consisting  
14 of sections numbered 24.1-202.1 through 24.1-202.10, as  
15 follows:

16 Article 5.1.

17 1988 Presidential Preference Primary Election.

18 § 24.1-202.1. Short title.--This article may be cited  
19 as the 1988 Presidential Preference Primary Act.

20 § 24.1-202.2. Presidential preference primary; date of  
21 primary.--On Tuesday, March 8, 1988, each registered voter  
22 of the Commonwealth shall be given an opportunity to  
23 participate in the presidential primary of the political  
24 party, as defined in § 24.1-1(7), of his choice and to  
25 express his preference for the presidential candidate of  
26 that political party.

27 § 24.1-202.3. Nomination by State Board of  
28 Elections.--A. The State Board of Elections shall meet at

1 the offices of the Board in Richmond on Tuesday, January 5,  
2 1988, and shall nominate as presidential primary candidates  
3 all candidates affiliated with a political party who have  
4 become eligible to receive payments from the Presidential  
5 Primary Matching Payment Account as provided in § 9033 of  
6 the U. S. Internal Revenue Code of 1954, as amended.

7 B. The Board shall nominate, in addition, as  
8 presidential primary candidates for each political party  
9 those candidates certified to it on or before 5:00 p.m.,  
10 Monday, January 4, 1988, by the state chairman of the  
11 political party in accordance with this subsection. Each  
12 political party shall provide by rule for a committee to  
13 determine the names of all candidates of the party for the  
14 office of president of the United States whose candidacy is  
15 generally advocated or recognized in the national news media  
16 throughout the United States to be placed on the ballot.  
17 The committee shall have sole discretion to determine that a  
18 candidacy is generally advocated or recognized in the  
19 national news media throughout the United States. The  
20 committee shall make its determination prior to January 4,  
21 1988, and the state party chairman shall certify only those  
22 names determined by the committee.

23 § 24.1-202.4. Nomination by petition.--Any person  
24 seeking the nomination of the national political party for  
25 the office of President of the United States, or any group  
26 organized in this Commonwealth on behalf of, and with the  
27 consent of such person, may file with the State Board of  
28 Elections petitions signed by qualified voters equal in

1 number to one-half of one percent of the number of voters  
2 registered in the Commonwealth as of January 1, 1987,  
3 including at least 200 qualified voters from each  
4 congressional district in the Commonwealth who attest that  
5 they intend to participate in the primary of the same  
6 political party as the candidate for whom the petitions are  
7 filed. Such petitions shall be filed by the petitioners  
8 with the Board no later than 5:00 p.m. on Monday, December  
9 14, 1987, with a letter of consent signed by such candidate.  
10 Such petitions may be circulated beginning only on and after  
11 July 1, 1987.

12 The petitions shall state the name of the candidate for  
13 nomination and the name and address of the chairman of any  
14 such group organized to circulate petitions authorized under  
15 this section.

16 The petitions shall be on a form prescribed by the  
17 Board. The petition shall list the social security number  
18 and resident address of each such qualified voter, and each  
19 voter signature shall be witnessed by a person who is  
20 himself a qualified voter and is a resident of the same  
21 congressional district as the voter whose signature is  
22 witnessed, and whose affidavit to that effect appears on  
23 each page of the petition.

24 The Board shall forthwith determine the sufficiency of  
25 petitions filed with it and shall immediately communicate  
26 its determination to the chairman of such group organized to  
27 circulate petitions.

28 § 24.1-202.5. Notification to candidates.--The State

1 Board of Elections shall forthwith contact each person who  
2 has been nominated by the Board or by petition and notify  
3 him in writing that, upon receipt of his declaration of  
4 candidacy filed with and received by the Board on or before  
5 Wednesday, January 20, 1988, his name will be printed as a  
6 candidate of a specified political party on the Virginia  
7 presidential preference primary ballot. The Board shall  
8 prescribe the form for the declaration of candidacy. A  
9 candidate who participates in the Virginia presidential  
10 preference primary of a particular party shall have his name  
11 placed on the presidential general election ballot only if  
12 nominated by that political party. The Board shall send a  
13 copy of this article to each candidate with the notice  
14 specified above.

15 § 24.1-202.6. Filing requirements; fees; costs of  
16 election; notice; final registration date.--The requirements  
17 for filings and fees for primary candidates in Article 5 of  
18 this chapter shall not be applicable to candidates for  
19 nomination to the office of president at the 1988  
20 presidential primary.

21 The costs of the primary shall be paid as provided in §  
22 24.1-96.

23 On Wednesday, January 20, 1988, the State Board of  
24 Elections shall order the holding of the 1988 presidential  
25 primary, and it shall give notice of the primary as provided  
26 in § 24.1-177 and such other notice as the Board deems  
27 appropriate.

28 Notwithstanding any other provision of law, the final



1 day for registration shall be thirty-one days before the  
2 March 8, 1988, primary and the registration books shall be  
3 closed until March 9, 1988.

4 § 24.1-202.7. Ballots; voting.--The names of all  
5 candidates in the presidential preference primary of each  
6 political party shall appear at an appropriate place on the  
7 ballot or voting machine in alphabetical order. In addition  
8 the State Board of Elections shall provide a category on the  
9 ballot or voting machine allowing voters in each political  
10 party to vote an "uncommitted" status. The voter shall be  
11 able to cast his ballot for one of the presidential  
12 candidates of one political party or for an "uncommitted"  
13 status. In the event of the death or withdrawal of a  
14 candidate prior to the primary, votes cast for such  
15 candidate shall be counted as votes for the "uncommitted"  
16 status.

17 § 24.1-202.8. Certification of primary results.--Upon  
18 completion and certification of the primary results on or  
19 before March 28, 1988, by the State Board of Elections, the  
20 Board shall certify the results to the state chairman of  
21 each political party. Such certification shall be final,  
22 and there shall be no recount or contest of the results of  
23 the primary.

24 § 24.1-202.9. March primary date  
25 1988.--Notwithstanding the provisions of § 24.1-174 or any  
26 other provision of law, primaries for the nomination of  
27 candidates for offices to be voted on at the May 1988  
28 general election shall be held on Tuesday, March 8, 1988.

1       § 24.1-202.10. May general election date 1988, final  
2 registration date.--Notwithstanding the provisions of §  
3 24.1-1(5)(a) or of any other provision of law, May 10, 1988,  
4 shall be the date for the May 1988 general election.  
5 Notwithstanding any other provision of law, the final day  
6 for registration shall be thirty-one days before the May 10,  
7 1988, general election, and the registration books shall be  
8 closed until May 11, 1988, in any county or city in which an  
9 election is held.  
10 2. That § 24.1-162.1 of the Code of Virginia is repealed.  
11

2 SENATE BILL NO. .... HOUSE BILL NO. ....

3 A BILL to amend the Code of Virginia by adding a section  
4 numbered 24.1-228.3, relating to procedures for voting  
5 with special write-in absentee ballots by certain  
6 absentee voters.

7

8 Be it enacted by the General Assembly of Virginia:

9 1. That the Code of Virginia is amended by adding a section  
10 numbered 24.1-228.3, as follows:

11 § 24.1-228.3. Procedures for voting with special  
12 write-in absentee ballot by qualified absentee voters.--A.  
13 Notwithstanding any other provisions of this article, a  
14 qualified absentee voter, who is eligible for an absentee  
15 ballot under § 24.1-227 (2) and qualified under subsection C  
16 of this section, may apply not earlier than ninety days  
17 before an election for a special write-in absentee ballot.  
18 This ballot shall be only for presidential electors and  
19 United States senator or representative in Congress.

20 B. The application for a special write-in absentee  
21 ballot may be made on the Federal Post Card Application form  
22 or on a form prescribed by the State Board of Elections.

23 C. In order to qualify for a special write-in absentee  
24 ballot, the voter must state that he or she is unable to  
25 vote by regular absentee ballot or in person due to overseas  
26 military service or due to living in isolated or extremely  
27 remote overseas areas. This statement may be made on the

1 Federal Post Card Application or on a form prepared by the  
2 State Board of Elections.

3

4 D. Upon receipt of said application and pursuant to §  
5 24.1-229, the electoral board shall issue one ballot, either  
6 (i) the special write-in absentee ballot which shall be  
7 prescribed and provided by the State Board of Elections, or  
8 (ii) if available, the printed ballot. The special write-in  
9 absentee ballot shall permit the voter to vote by writing in  
10 (i) a party preference for each office, (ii) the name of a  
11 specific candidate for each office, or (iii) except for  
12 president or vice-president of the United States, the name  
13 of the person whom the voter prefers for each office.

14

2 SENATE BILL NO. .... HOUSE BILL NO. ....

3 A BILL to amend and reenact §§ 24.1-129 and 24.1-130 of the  
4 Code of Virginia, relating to marking ballots and  
5 defaced ballots.

6

7 Be it enacted by the General Assembly of Virginia:

8 1. That §§ 24.1-129 and 24.1-130 of the Code of Virginia  
9 are amended and reenacted as follows:

10 § 24.1-129. Place and manner of marking ballot;  
11 handicapped and elderly voters.--The qualified voter shall  
12 take the official ballot and retire to the voting booth. A  
13 voter may be accompanied into the voting booth by his child  
14 age twelve or younger. A handicapped or elderly voter, as  
15 defined in § 24.1-97, may be handed a ballot outside the  
16 polling place but within 150 feet thereof by one of  
17 the officers and in his presence but in a secret manner,  
18 mark and return the same to such officer who shall proceed  
19 as provided in § 24.1-131.

20 After entering the voting booth, the qualified voter  
21 shall mark immediately preceding the name of each candidate  
22 he wishes to vote for a check (✓) or a cross (X or +) mark  
23 or a line ( - ) in the square provided for such purpose,  
24 leaving the square preceding the name of each candidate he  
25 does not wish to vote for unmarked. Any ballot marked so  
26 that the intent of the voter is clear shall be counted

1 provided that it is not defaced .

2 At all elections except primary elections it shall be  
3 lawful for any voter to place upon the official ballot in  
4 his own handwriting the name of any person other than the  
5 listed candidates for that office and to vote for such  
6 person by marking the same by a check (✓) or cross (X or +)  
7 mark or a line ( - ) immediately preceding the name  
8 inserted. No ballot with a name or names placed thereon not  
9 in conformance herewith shall be counted for such person.

10 No write-in vote will be counted when it is apparent to  
11 the officers of election that a voter has voted for the same  
12 person for the same office more than one time.

13 § 24.1-130. Defacing ballots accidentally.--Should any  
14 ballot be unintentionally or accidentally defaced , or in  
15 any such a way that it is rendered unfit for voting by such  
16 voter, he shall may deliver such defaced ballot to the  
17 officer of election and receive another upon taking an oath  
18 that the defacement of the ballot first delivered to him was  
19 not done for the purpose of defacing such official ballot.  
20 Any person swearing falsely to such fact shall be deemed  
21 guilty of perjury .

22



