

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

Virginia's Election Process and Voting Technologies

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



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REPORT
OF THE JOINT SUBCOMMITTEE
STUDYING VIRGINIA'S ELECTION PROCESS
AND VOTING TECHNOLOGIES

**Pursuant to House Joint Resolution No. 681 of 2001
and Senate Joint Resolution No. 363 of 2001**

January 2002

To: The Governor of Virginia
and
The General Assembly of Virginia

Study Origin

The 2001 General Assembly crafted a comprehensive study of Virginia's election process and voting technologies in response to the turmoil that followed the 2000 presidential election. Duplicate resolutions combined several proposed studies of Virginia's election laws and operations and passed the General Assembly unanimously. See, Appendix A for text of House Joint Resolution No. 681.

The joint subcommittee's directive lists 15 specific topics for examination and a final comprehensive charge to make any additional recommendations that will contribute to the fairness of elections. The breadth of the study resolution is reflected in the following statement from it:

. . . . the Commonwealth and its citizens would be well served by a determination of whether additional actions, procedures, guidelines, regulations, policies or systems are necessary or advisable to ensure the orderly, objective, accurate, and fair conduct of elections and resolution of disputes over results before an election crisis occurs. . . .

Virginia's call for a study in response to the 2000 presidential election mirrored the reactions in numerous states and among many national organizations.* In addition to the many national studies, there have been many federal agency studies and state studies. Access to these studies is available through the Internet. One source for continuous updates on election reform studies and legislation is the Election Reform Information Project. Its Website is <http://www.electionline.org/index.jsp>.

Work of the Joint Subcommittee

As soon as the joint subcommittee was appointed, it began its survey of Virginia's election process. In May, Delegate James K. "Jay" O'Brien and Senator William T. Bolling were elected Chairman and Vice-Chairman. The Chairman appointed two task forces. Senator Kevin G. Miller chaired Task Force #1 on Technology and Voting Equipment, and Senator Bolling chaired Task Force #2 on Voter Registration and Election Day Processes.

The joint subcommittee held five meetings and the task forces held seven additional meetings. Many invited experts assisted the subcommittee and task forces in their efforts to conduct a comprehensive review of the present election process in Virginia and gain a full picture of reform efforts throughout the country. While it is not possible to list the more than 80 persons who met one or more times with the subcommittee, much appreciation is due to the many public-minded individuals and groups who lent their expertise to the Subcommittee. All subcommittee and task force meetings were open to the public and many useful comments were offered by those in attendance.

A summary for each meeting is carried in Appendix B. That appendix gives an idea of the number and names of the many individuals and groups that offered their views and expertise to the subcommittee and its task forces.

Summaries of the meetings were published on the Internet during the course of the study at <http://dls.state.va.us/pubs/legisrec/2001/welcome.htm>. At its October meeting, the joint subcommittee received preliminary reports from the

* The Subcommittee had the benefit of many comprehensive reports by national groups: *Counting All the Votes: The Performance of Election Technology in the United States* (University of California, Berkeley); *An Agenda for Election Reform, Policy Brief* (The Brookings Institution, Thomas E. Mann); *Voting – What Is, What Could Be* (Caltech/ MIT Voting Technology Project, July 2001); *Building Consensus on Election Reform* (The Constitution Project, August 2001); *Election 2000: Review and Recommendations by the Nation's Elections Administrators* (The Election Center, National Task Force on Election Reform, July 2001); *Report and Recommendations to Improve America's Election System* (National Association of Counties, National Commission on Election Standards and Reform, May 2001); *State-by-State Election Reform Best Practices Report* (National Association of Secretaries of States, August 1, 2001); *To Assure Pride and Confidence in the Electoral Process* (The National Commission of Federal Election Reform, August 2001); *Voting in America* (National Conference of State Legislatures Election Reform Task Force).

task forces. Those reports, recommendations, and draft legislation were published on the Internet at <http://dls.state.va.us/election.htm>, a site established for the joint subcommittee. The subcommittee solicited, received, and reviewed comments on the task forces' preliminary reports.

At its final meeting on November 29, 2001, the subcommittee reviewed the task force recommendations and endorsed 16 specific proposals. It directed staff to prepare bills to incorporate recommended legislation and requests for budget amendments.

Those specific proposals are set forth in the Recommendations section of this report following some general observations.

General Observations

The joint subcommittee heard numerous comments pointing to existing laws and practices in Virginia that are being touted on the national scene as steps to improve elections and avoid the problems that plagued Florida and other states in the aftermath of the 2000 presidential election. It is worth noting that a number of these assets are already in place in Virginia's election process.

The Virginia Voter Registration System (VVRS). Virginia established the current centralized voter registration system in the early 1970s. The Commonwealth brought local voter lists together into one database using names, addresses, and Social Security numbers as the means to eliminate duplicate registrations. The centralized system gives each local general registrar access by computer to the list and to programs in place to provide continuous updates in the system for new voters, voters changing addresses, voters who lose the right to vote through felony convictions or findings of incompetency.

One of the sure reforms to follow the 2000 presidential election is the establishment of centralized statewide voter registration systems in states that do not now have a central system. At present Virginia is one of 21 states (covering 39.2 percent of the voting age population in the United States) that have, or are creating, a computerized central database. A number of the specific proposals discussed below seek to improve Virginia's voter registration system to assure that the lists produced by the system are accurate and reliable. During the past two years, plans for VVRS II have been developed to provide a new computer platform and carry the system forward. Funding for VVRS II should be made available as soon as practicable.

Provisional or conditional ballots. Significant numbers of voters were turned away from the polls in the 2000 presidential election because their names did not appear on the registered voter lists at the polls. They thought they had registered, but their application was not processed for a number of reasons.

Since the National Voter Registration Act, registrations at motor vehicle offices and by mail have become commonplace. These registrations may be incomplete or delivered too late to be included in the precinct registered voter lists for an election. Many national studies have advocated a provisional ballot that can be voted and held until the polls close. Then election officials can check to verify whether or not the voter is registered. If registered, the ballot will be counted. This solution gives the officials time to check the records and minimizes disputes at the polling place.

Virginia enacted laws in 1975 to provide for a conditional vote by paper ballot when the voter's name did not appear on the registered voter list for the polling place. These votes are held to allow the electoral board to determine if the voter is entitled to vote and will be counted if the voter is found to be properly registered. See, Virginia Code § 24.2-653. The joint subcommittee cautions that election officials should send the voter to his proper polling place if possible and use the conditional vote only in situations where it is not possible to determine the voter's registration status. Continuing efforts to streamline and improve voter registrations through Department of Motor Vehicles facilities are addressed below and also serve to lessen the need for conditional ballots.

Recount standards. A major problem highlighted in Florida in 2000 and pinpointed in many national studies involves the lack of clear procedures and standards to govern the recount process in close elections. Virginia statutes provide for a court-supervised recount process and avoid the scenario that captured media attention in Florida. The nation watched as local election officials conducted ad hoc recounts with no apparent overall standards or procedures to provide uniformity.

The 2001 General Assembly addressed the need for uniformity in recount standards and directed the State Board of Elections to promulgate standards for recounts by September 1, 2002, that would provide for an "accurate determination of votes based upon objective evidence and taking into account the counting device and form of ballots approved for use in the Commonwealth." The State Board issued a comprehensive set of standards August 20, 2001, to guide the courts in the conduct of recounts that might follow the November 2001 elections.

In addition, the 2001 General Assembly directed the State Board to recommend standards for enactment by the 2002 General Assembly. The State Board worked with the joint subcommittee on recount issues. On December 21, the State Board endorsed the proposal (LD 0624872) recommended by the joint subcommittee, described below, and reported in Appendix C which carries the subcommittee's legislative proposals. The State Board noted that it will continue to review the standards that it promulgated in August to incorporate changes made by the General Assembly in the recount statutes.

Recommendations

The joint subcommittee presents below specific recommendations for action at the 2002 Session. The subcommittee is proposing three bills, one constitutional amendment, several budget amendments, and other steps that do not require legislation. See, Appendix C for texts of legislation.

The joint subcommittee has endorsed the following recommendations from Task Force #1:

1. Virginia should continue utilizing a variety of voting systems on a local option basis. [No legislation required.]

Rationale:

- No one voting system has proven more reliable and accurate than any other system. Virginia now uses a variety of voting systems including paper ballots, lever machines, punch card ballots and counters, marksense ballots and counters, and Direct Recording Electronic devices (DREs).
- Testimony and reports provided to the Task Force indicate that there is still much to learn about the reliability of various types of equipment. Voters tend to make more mistakes in voting when the equipment is new to the precinct.
- The State Board of Elections has resumed testing and certifying new voting technologies that will give localities more options as they retire obsolete equipment.
- More options in equipment may promote competition and lower prices for the localities.
- Tight budget constraints at the state and local levels argue forcefully against a hasty judgment to replace voting equipment that is working and serving the public well.
- Localities are in the process of retiring obsolete equipment. For example, Norfolk will be converting its punchcard voting equipment to DREs. The three jurisdictions (Norfolk, Virginia Beach, and New Kent) with the oldest form of punchcard equipment are in the process of replacing this equipment.

2. The joint subcommittee should go on record as supporting federal legislation to provide funds to states and localities to upgrade voting equipment and support election process reforms. Federal funds should be made available without mandates. [No legislation required.]

Rationale:

- The costs of administering federal elections are paid for by states and localities, and logic dictates that some federal funding is appropriate.
- Unfunded federal mandates have increased the costs of the voter registration and voting processes. For example, the State Board has estimated that the state cost of implementing the National Voter Registration Act over the past two years at \$1.6 million.

- Many national studies have supported federal grants for election reform. For example, the National Conference on State Legislatures Elections Reform Task Force Report states:

NCSL supports federal block grant funding to states for the following broad purposes:

- Improving election technology, systems and ballot design;
- Facilitating voter registration, verification and maintenance of voter rolls;
- Improving the accuracy and security of election procedures and vote counts;
- Educating citizens on representative democracy and election processes and systems;
- Providing greater access to voter registration and polling places especially for rural and disabled voters; and
- Providing training and education opportunities for elections personnel.

Comment:

At its final meeting, the joint subcommittee adopted the following resolution which the Chairman communicated to the Commonwealth's congressional delegation:

RESOLUTION NO. 1

JOINT SUBCOMMITTEE STUDYING VIRGINIA'S ELECTION PROCESS AND VOTING TECHNOLOGIES

Adopted November 29, 2001

Memorializing the United States Congress to enact election reform legislation that adequately funds any mandate imposed on states and localities and requires the Social Security Administration and the Immigration and Naturalization Service to share information on deceased persons and alien residents with states without charge to assist them in maintaining accurate voter registration lists.

WHEREAS, the costs of administering federal elections are paid for by states and localities, and fairness and logic dictates that some federal funding is appropriate; and

WHEREAS, unfunded state and local mandates have increased the costs of the voter registration and voting processes in Virginia; and

WHEREAS, the Virginia State Board of Elections has estimated that the cost of implementing the National Voter Registration Act over the past two years cost the state approximately \$1.6 million; and

WHEREAS, several bills introduced in Congress on election reform would impose requirements on states and localities without adequate funding; and

WHEREAS, the task of maintaining an accurate central list of registered voters requires constant review and is an important safeguard against voter fraud; and

WHEREAS, Virginia's central list and data bank of social security numbers gives the State an advantage over most states by providing a data bank for matching lists; and

WHEREAS, the Social Security Administration's deceased persons list and Immigration and Naturalization Service list of alien residents are potential sources of names that can be matched by social security number with the registered voter central list to delete names of nonqualified voters; and

WHEREAS, the 2001 Session of the General Assembly created the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies (HJR681/SJR363) to improve the integrity of Virginia's registration and election process; and

WHEREAS, the Joint Subcommittee supports federal legislation to provide funds to states and localities to upgrade voting equipment that will enhance voter confidence in the electoral process; now, therefore, be it

RESOLVED by the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies, That the United States Congress be urged to enact election reform legislation that adequately funds any mandate imposed on states and localities and requires the Social Security Administration and the Immigration and Naturalization Service to share information on deceased persons and alien residents with states without charge to assist them in maintaining accurate voter registration lists; and, be it

RESOLVED FURTHER, That the members of the Virginia Congressional Delegation be urged to propose amendments to any election reform legislation to incorporate the recommendations of the joint subcommittee.

3. The Commonwealth should contribute to the costs of providing election equipment that will assure accessibility to the polls for all voters. Funds should be made available, through a grant program that takes into account the fiscal capability of the locality, to assist localities in acquiring an accessible voting device for each precinct. [Budget amendment required.]

Rationale:

- Localities bear most of the costs for conducting elections and purchasing, servicing, and storing voting equipment. They conduct federal, state, and local elections under state requirements for equipment and for providing accessibility to voting.
- Accessibility to voting is a priority issue, and technology has improved to provide accessible voting equipment so that persons with disabilities may soon have the option to vote in the polling place without assistance and to vote a secret ballot if localities acquire new equipment.

- Virginia is committed to providing accessibility to voting for disabled citizens by absentee voting, curbside voting, and assistance for voting in the polling place. These options should be maintained.
- New technology is providing options for equipment that will allow, for example, the addition of auditory features to enable the visually handicapped to use a voting device. State law now allows a locality to have in a precinct a special voting device that can be used by the disabled and all voters. The Commonwealth should encourage localities to improve access to voting in the polls.

Cost estimate:

There are approximately 2,250 precincts in Virginia. There are options for accessible voting equipment that range in cost from \$1,000 for an audio component on a voting device to higher amounts for other options.

The task force suggests a state commitment of \$200,000 for a grant program that would allow the State Board of Elections to award grants to localities for efforts to increase accessibility to the polls using the composite index to rank local eligibility.

4. The Commonwealth should provide funding for a full-time employee on the staff of the State Board of Elections with responsibility for the oversight of the process for certifying voting equipment, monitoring developments in voting technologies, and administering the distribution of grants to localities under recommendation 3 above. [Budget amendment required.]

Rationale:

- At present, the State Board does not have a full-time employee to oversee the certification of equipment and new developments in technology, but the responsibility for certification is assigned to the deputy secretary. The deputy secretary serves at will, and the voting equipment position should be a career position.
- The certification process is essential so that the best technology is available in Virginia for conducting elections.
- There was a moratorium on certifying new equipment for several years. The certification process has only recently been reactivated and several new direct recording electronic devices were tested in the November 2001 election.
- A staff expert on voting technology is needed at the State Board for a number of tasks: oversight of the certification process; as a resource for the localities as they decide equipment issues; as an expert on ballot design issues; as a monitor of new developments in all aspects of voting technology such as Internet voting and the use of biometrics; to assist in developing informative materials to educate officers of elections and voters in the proper use of voting equipment; and to administer the proposed grant program under recommendation 3 above.

[Cost estimate:

This information is being prepared by the State Board and will be added as soon as it is available.]

5. The present state law that provides for training officers of election should be amended to increase the times allowed for training the officers who serve as officers in positions other than as the chief or assistant chief officer. [See, Appendix C -- LD 0628872.]

Rationale:

- Training for officers of election in the operation of voting equipment is essential and broader training in all aspects of election day operations is vital to assure an orderly and proper election.
- Code § 24.2-115 now provides that there will be a chief officer of election and an assistant for each precinct and at least one and usually more additional officers for each precinct. The Section requires the electoral board to train each chief officer and assistant within the 30 to three days before each election. The Section does not explicitly mandate training for other officers but provides that the board "may" train other officers "not less than three nor more than thirty days before each November general election." This limitation is an unnecessary restraint.

6. The merger of the polling book and precinct registered voting list should be implemented on a statewide basis beginning in 2003. [See, Appendix C -- LD 0628872.]

Rationale:

- At present two computer-generated precinct registered voter lists are sent by the State Board to each locality with one used as the registered voter list and the other used as the pollbook with a number assigned to each registered voter in the order in which he votes. The duplicate lists are expensive and cumbersome.
- The State Board has been conducting pilot projects testing the use of a single combined list at various elections and has reported that the pilot programs have proven successful in streamlining the process.
- The pilot projects are scheduled to end July 1, 2003, with further tests during 2002. In view of the success of the program to date, legislation should be passed in 2002 to signal a commitment to shift to the combined single list approach beginning July 1, 2003. There should be overall cost savings in shifting to a single printed list.
- The task force notes that the use of an electronic list offers further benefits in terms of efficiency and accuracy but the costs of an electronic list require more study and will require funding. This further step can be evaluated over the coming year.

The Joint Subcommittee has endorsed the following recommendations from Task Force #2:

1. Virginia should continue to maintain and upgrade the Virginia Voter Registration System (VVRS).

Rationale:

- Virginia's initiative in developing a statewide voter registration system has prevented many of the problems experienced in Florida during the 2000 presidential election.
- National studies urge all states to develop a central voter registration system as the means to maintain clean up-to-date voter records and prevent fraud.
- Studies have been undertaken and preparations made to upgrade the computer platform for the System and provide for a VVRS II. The VVRS II platform will provide the foundation to build comprehensive screening programs of voter registration records to detect multiple fraudulent registrations and registration of nonqualified voters. Funding for this upgrade should be undertaken as soon as practicable.

2. DMV's voter registration process should be modified to allow for print-on-demand voter applications. [Budget amendment required.]

Explanation:

A print-on-demand voter application process would replace the two-page carbon-interleaf combined driver/voter application form DL 1M with a one-page driver's license application that asks whether the applicant wishes to register or change his voter registration address. If the voter checks the box at the top of the form indicating that he does want to register, DMV will print out a one-page voter application that includes the common data used by DMV, SBE, and the registrars. The voter application will be given to the customer for completion and signing.

Rationale:

- The print-on-demand process would reduce the volume of separate paper declinations because the voter's declination is retained on the DMV license application form.
- By presenting the applicant with preprinted personal information on the voter registration application, the voter registration process would be streamlined for the applicant.
- Duplicative registrations may be reduced because DMV customers will be more aware that they are registering to vote because they will be handed a separate form to complete.
- An applicant's failure to sign the voter registration application should be less of a problem because the one-page form will focus solely on voter registration.

- DMV and SBE will be able to share information more efficiently because the print on-demand process will enable DMV to print a bar code on the voter registration application that contains customer-specific data common to both DMV and SBE, such as customer name and SSN.

Cost Estimate:

DMV

Capital for Initial Implementation: \$294,819

Yearly Recurring Costs: \$10,525

State Board of Elections

Costs: \$50,000

Comment:

The task force also considered two additional proposals from DMV to: (i) simultaneously image DMV applications with the declination response and generate an electronic index for retrieving these documents by name and social security number and (ii) convert the 4.5 million paper declinations currently filed at DMV into electronic files with batch order indexing by Customer Service Center (CSC) location and date of transaction. The costs to implement these proposals are \$865,360 and \$756,000, respectively. Because these costs are substantial and the current response time by DMV in retrieving the paper declinations for the State Board of Elections appeared to be satisfactory, these proposals are forwarded by the Joint Subcommittee without a recommendation at this time.

3. Virginia should continue to improve its voter registration list maintenance procedures to ensure that the list is as current and accurate as possible.

A. The Office of Vital Records and the State Board of Elections should work collaboratively to collect information on the average time to communicate deaths to the general registrars and determine the causes of any major lag time in such reporting. [No legislation required.]

Rationale:

- Times vary from date of death to date of update in the voter registration system and involve three or more months.
- Times vary in the initial report by funeral directors to local health departments and local reports to the state.
- A recent September report received by the State Board of Elections from Vital Records contained entries on deaths dating back to April of 2001. One entry involved a death that occurred in September 1999.
- Further information and analysis of transmittal times of vital records is needed to determine the average times to communicate deaths to each link in the reporting chain.

- Identifying the extent of delays and where they occur is needed before corrective action can be proposed.

B. The joint subcommittee recommends use of social security deceased lists to match against the Commonwealth's registered voter list as a means to eliminate names of deceased persons from the list. [Budget amendment required.]

Rationale:

- As noted above, the task of maintaining an accurate central list of registered voters requires constant review and is an important safeguard against vote fraud.
- The Social Security Administration's deceased persons lists are one potential source of names that can be matched by social security number with the central list to delete names of deceased persons.
- Virginia's central list and data bank of social security numbers gives the Commonwealth an advantage over most states by providing a data bank for matching lists and eliminating names of deceased persons.
- The subcommittee has gone on record and communicated its view to Virginia's congressional delegation that these deceased persons lists should be made available at no cost to the states. See, recommendation 2 at pages 5-7.

Cost estimate: \$40,000; \$38,000 one-time cost to design, code, document, test and implement changes to the existing Prohibit Voter subsystem and \$2,000 to purchase social security list.

4. The State Board of Elections should continue its efforts to provide guidelines for third-party registration drives through the Internet and by providing the guidelines to the general registrars for distribution at the local level. [No legislation required.]

Rationale:

- The Commonwealth supports efforts to register voters and third-party registration drives. During the first half of 2001, the State Board distributed 50 or more voter registration applications to approximately 127 public bodies and to 276 other individuals and groups. Of course, many groups may request applications from the local registrar or print forms from the State Board's website. The State Board now provides Guidelines for Voter Registration Drives on the Internet [<http://www.sbe.state.va.us/VotRegServ/nvra/regdrive.htm>].
- One problem brought to the task force's attention arises when the parties conducting the drive fail to turn in completed applications in a timely manner. Individuals may believe that they have registered and then find out at the polls that they are not registered and cannot vote.
- The Task Force believes that the distribution of these guidelines by the State Board and the local general registrars provides the best means to alert these

third parties to their responsibilities in conducting the drives. Further requirements might chill these registration drives.

5. The use of the Federal Write-In Absentee Ballot (FWAB) should be expanded to enable the envelope to act as the application for the enclosed absentee ballot. [See, Appendix C -- LD 0625872.]

Rationale:

- The FVAP has asked states to expand the use of the FWAB and accept it simultaneously as the application and ballot.
- Information requested on the FWAB transmission envelope is similar to the information requested from the voter on the Federal Post Card Application.
- Information on the envelope is sufficient for the general registrar to determine if the individual is a registered voter and qualified to vote absentee.
- The reason for voting absentee is implied by other information provided (primarily the military or overseas address).

6. Absentee voter registration and ballot laws should be revised to remove obsolete, confusing, and conflicting provisions. [See, Appendix C -- LD 0625872.]

A. The voter identification requirement should be extended to voters who vote absentee in person.

Rationale:

- This change would provide greater consistency and application of the voter identification laws. Certain voters must vote in person the first time they vote (most first-time voters who registered by mail) to establish that the voter does exist (i.e., to discourage fraud). However, when they can satisfy this requirement by voting absentee in person and are not required to show ID, the anti-fraud provisions of the law are easily circumvented.
- If an absentee ballot applicant is unable to sign his application because of a physical disability or inability to read or write, an election official may be asked to acknowledge his mark. Such acknowledgement cannot be made in good faith without the voter presenting identification.

B. An overseas applicant should be required to provide information on the date of his last residence in Virginia.

Rationale:

- This information will enable the general registrar to determine if the person is no longer qualified for permanent registration because he has relinquished his place of abode.

C. The voter's statement required on the absentee ballot envelope should be clarified to state that the voter has been a legal resident of his address

since "last November's general election" instead of "the last November general election."

Rationale:

- Many voters (especially ones temporarily living away from Virginia) are unaware that Virginia has an election every November.

D. All members of the electoral board (not just the secretary) should have the authority to receive absentee ballots.

Rationale:

- This change would allow more flexibility for electoral boards to conduct routine business.

E. The staff of the general registrar or local electoral board should be given the authority to mark the voter registered list prior to election day to show those voters who applied to vote absentee.

Rationale:

- Under current law, this responsibility is borne by the officers of election who have numerous other duties to prepare the polls for the 6:00 a.m. opening.
- Registrars and members of the electoral board already have lists of persons who have applied to vote absentee by 2:00 p.m. on the day before the election.

F. References to the reason that a person resides overseas (i.e., by virtue of his employment) should be removed from the Code.

Rationale:

- Any overseas person, who is otherwise qualified to vote and who temporarily lives outside of the United States, may register to vote by mail.

7. The State Board of Elections should continue its review of how to post essential information at the polls so that all officers of election and voters will have access to the basic information needed on election day. [No legislation required.]

Rationale:

- The need to educate officers of election and voters was brought to the task force's attention again and again.
- On the national level, groups have advocated a posting of voters' rights and responsibilities at the polling place. Florida has enacted legislation to require election officials to post such information. The Florida matter is under review at the Department of Justice. The ACLU and others have sued to enjoin the posting of a list of responsibilities as a burden on the voting process and possible literacy device.

- The State Board is examining this issue and should continue its efforts.
- The task force believes that the posting of basic information will serve as a means to educate both officers of election and voters and will assure that all voters have access to the same information. The posting should be crafted to provide essential information on how to vote without carrying any suggestion that the giving of this information imposes any new qualification on the right to vote.

8. The Secretary of the State Board should be granted additional authority to designate alternative methods and procedures for handling absentee ballots in the event of public emergencies. [See, Appendix C -- LD 0625872.]

Rationale:

- The task force found that certain emergency situations exist that interfere with qualified voters exercising their right to vote. However, sometimes these emergencies do not rise to the level that would require the Governor, the President of the United States or the governor of another state to declare a state of emergency. For instance, in 2000, Virginia firefighters fighting a blaze in the Shenandoah Valley were not able to cast their votes because a state of emergency was not declared.
- The task force believes that the Secretary of the State Board is accountable for her decisions and should be given the authority to determine what constitutes a public emergency. Many states have given the equivalent authority to their Secretary of State who serves as the head of the state's election department.
- To ensure that election results are reported in the usual timely manner, specific language is added to clarify that all absentee ballots must be received prior to the closing of the polls.

9. Legislation should be enacted to allow the postponement of primaries, special elections, and local elections in the event of emergencies. [See, Appendix C -- LD 0625872.]

Rationale:

- Virginia law does not address what happens when a military conflict or natural disaster physically prevents an election from being held in one or more jurisdictions.
- Many states, including New York, provide for the postponement of elections or an additional day to conduct the election.
- The recent tragic events in lower Manhattan on September 11 that led to postponing the city's elections for two weeks clearly demonstrate the need for procedures to be in place to protect the electoral process.

10. The General Assembly should propose a constitutional amendment that would enable the General Assembly to postpone an election that the

Constitution currently requires be held on a specific date. [See, Appendix C -- LD 0623872.]

Rationale:

- As noted above, there are many legitimate reasons for postponing elections during times of military attacks or natural disasters.
- A constitutional amendment is necessary to postpone elections for Governor, Lieutenant Governor, Attorney General and members of the Virginia Senate and House of Delegates because Virginia's Constitution requires that these elections be held on the first Tuesday following the first Monday in November.

Comment:

Virginia cannot change the time for congressional and presidential elections because federal law mandates that these elections be held on a single November day. See, 2 U.S.C. § 1 and § 7 and 3 U.S.C. § 1.

11. All electoral board members, rather than the secretary only, should have authority to administer the election day oath to officers of election. [See, Appendix C -- LD 0625872.]

Rationale:

- Present law requires officers of election to subscribe to an oath on election day to perform their duties in accordance with the law. The oath can be administered by the general registrar, the secretary of the electoral board or an officer of election designated by them. Giving the authority to each member of the electoral board, rather than just the secretary, will broaden the pool of persons available to perform this task. Electoral board members are routinely available on election day and visit the various precincts.

12. Legislation should be enacted to strengthen current law provisions on the prosecution of election law offenses. [See, Appendix C -- LD 0625872.]

Rationale:

- Present law in § 24.2-104 authorizes the State Board of Elections to request the assistance of the Attorney General, or other attorney designated by the Governor, to assist an attorney for the Commonwealth in prosecuting election law offenses. The task force heard many comments pointing out the fact that the prosecution of election law offenses is usually a low priority for prosecutors.
- Enforcement of the election laws and prosecutions for vote fraud are important to maintain the integrity of the election system and voter confidence.
- The task force requested draft legislation to strengthen the role of the State Board of Elections and the Attorney General in providing assistance to any attorney for the Commonwealth when the State Board finds that an election law violation may have occurred and warrants an investigation.

- The present law allows the State Board to request action by the Attorney General and provides that the Attorney General may do "whatever is necessary or appropriate to enforce the election laws or prosecute violations thereof." This authorization is broad and allows the Attorney General to act either to assist the attorney for the Commonwealth or to prosecute a violation independently of the attorney should he be involved in the violation.
- The attached draft legislation modifies § 24.2-104 to provide that when the State Board requests assistance by a unanimous and, therefore, bipartisan vote, the Attorney General shall investigate the matter, have authority to prosecute the matter, and make a report to the Board. While it is most likely that the Attorney General would investigate and report his findings to the State Board in any case, the proposed change serves to assure such action when the State Board requests assistance by a unanimous vote.

13. The present recount laws should be revised to specify that voter eligibility issues should be raised in a contest rather than a recount, provide for a single recount or redetermination of the vote in a recount proceeding, and spell out recount steps related to differing types of ballots and voting devices. [See, Appendix C -- LD 0624872.]

Rationale:

- Issues of voter eligibility are not appropriate in the context of a recount. The recount verifies the number of votes cast. Voter eligibility issues are more appropriate to a contest. For example, if a number of voters who voted are found to be deceased and vote fraud is suggested, a contest is the proper forum.
- The recount provisions should be applied in a uniform manner to like ballots and voting devices. The State Board has promulgated standards for the conduct of a recount in response to the 2001 General Assembly's directive, and these standards can serve as a step forward in assuring uniformity of process in recounts.
- The bill provides for a single recount or redetermination of the vote in a recount proceeding and spells out recount steps related to differing types of ballots and voting devices. In the case of optical scan and punchcard tabulators, the printed return sheets shall be accepted unless they are not clear or the court orders a further count. If a further count is ordered, the tabulator shall be programmed to set aside write-in votes, overvotes, and undervotes. Only the ballots thus set aside and other ballots rejected by the tabulator (e.g. damaged ballots) will be counted by hand.

Conclusion

The joint subcommittee was able to address many but not all issues pointed out in its study directive or brought to its attention during the course of its study. The recommendations offered in this report address what the

subcommittee believes are appropriate for action at the 2002 Session. There are a number of additional issues that will be reviewed by the State Board of Elections, General Assembly members, and interested parties in the next year. It is worth noting several topics that were discussed by the joint subcommittee but not resolved to the point of offering a specific recommendation:

Timing of recounts following a presidential election. The joint subcommittee considered preliminary recommendations from the State Board to accelerate the conduct of a recount following a presidential election. The present law's schedule does not allow sufficient time to initiate and conclude a recount and will require revision. However, the specific changes deserve more review and can be examined and decided at the 2003 or 2004 Session.

Structure of the offices and staffs of the State Board, local electoral boards, and general registrars. The subcommittee received a number of suggestions for restructuring the administration of the registration and election laws. It also heard many favorable comments on the work and efforts of the Commonwealth's election officials at the state and local levels. The subcommittee believes that there may be opportunities for improvements in the structure of the State Board and local boards, clearer lines of authority between the State Board and local elections officials, and fairer methods of compensating local officials based on work performed. Time did not allow the subcommittee to evaluate all the pros and cons and costs of possible recommendations. Given the good work performed by elections officials, hastily conceived changes may cause more harm than good.

Restoration of voting rights. The subcommittee's study directive does not specifically address this topic but many speakers before the subcommittee did point to a need for a more efficient restoration of rights process for persons who have completed serving sentences for felony convictions. The subcommittee notes that the Virginia Crime Commission is examining this topic this interim and is deferring to that study.

New technologies. Experts educated the subcommittee on a number of new technologies from the use of biometrics in the registration and voting process to Internet voting options. The Commonwealth should be receptive to proven new technologies. The State Board should lead the way in maintaining a close eye on developments in voting equipment and in other new technologies. No one new development surfaced at the subcommittee's meetings that merits immediate implementation. It is the subcommittee's hope that the funding it is recommending for a full-time employee position at the State Board to oversee voting equipment developments and certification procedures will provide a way to track other developments that may benefit the election process.

Department of Motor Vehicles role in voter registration. Throughout this study, the Department offered valuable information and advice. Eighty percent of

new voter registrations result from DMV transactions. The joint subcommittee has been impressed with the improvements made in the "motor-voter" process, the cooperative arrangements made between DMV and voter registrars, and the prompt response by DMV to election day questions concerning voter registration applications. If budget constraints were not a consideration, more could be done as noted above at page 11. The subcommittee is confident that DMV and election officials will continue to fine-tune the "motor-voter" registration process.

There is no question that the recommendations offered in this report are a part of, but not the end of, what promises to be a continuing process of review and evaluation of Virginia's voter registration and election processes.

Respectfully submitted,

*Delegate James K. O'Brien, Jr., *Chairman*
Senator William T. Bolling, *Vice-Chairman*
Delegate Kathy J. Byron
Delegate Flora Davis Crittenden
Mr. Lawrence C. Haake III
Senator Benjamin J. Lambert III
Delegate Robert G. Marshall
Senator Kevin G. Miller
*Mr. Edward A. O'Neal
Senator Phillip P. Puckett
The Honorable Cameron P. Quinn
Delegate Melanie L. Rapp
Dr. Larry J. Sabato
The Honorable Anthony F. Troy
**The Honorable Donald W. Upson
**Delegate Donald L. Williams

* See below the individual statements submitted by Delegate O'Brien and Mr. O'Neal.

** These members participated in the joint subcommittee's deliberations but did not submit signatures for the report.

Individual Statement of Delegate O'Brien:

I am in agreement with the report with one exception. Found in Appendix C, LD0624872, page 6, I object to the language on lines 6-7, "overvotes, and undervotes." Also on page 6, lines 22-23, "and, if possible, overvotes and undervotes." I also recommend that this language should be removed.

Individual Statement of Mr. O'Neal:

Dissenting Opinion on the Report of The Joint Subcommittee Studying Virginia's Election Process and Voting Technologies

In its deliberations the Joint Subcommittee approved draft legislation (LD 0624872) that would weaken current law in one area. Current law (§ 24.2-802D) requires, during recounts when punch card systems are in use, that a machine count shall be attempted first and that manual reading of ballots shall be conducted only when the machine will not accept the ballot, a condition which occurs when the ballot is damaged. These requirements for punch card ballots, enacted during the 2001 session, were designed to prevent the wholesale manual reading of ballots, a procedure that introduces subjective judgements into the process.

When a jurisdiction lawfully adopts a particular voting system, be it hand-marked paper ballots, punch card or optical scan devices, or any other means for determining the voters' intent, the presumption is raised that the voter must present a ballot which is readable by the system so adopted. Thus, voters must clearly mark their ballots in the manner provided or cleanly punch out the "chad" on the punch card. Further, it is the voters' responsibility to check the ballot to ensure that it is marked in accordance with their wishes before placing it in the ballot box or ballot counter, something which voters in Virginia are reminded to do by election officials.

During the recount in the 2000 presidential election in Florida, much was made in the press about "rejected ballots," "ballots not counted," and "votes not counted." None of these things occurred. What did occur was that there were many attempts at voting which were not detectable by the systems in use. Attempts at voting that were not recognized by the counting device were appropriately not counted, but they were not votes. The spectacle of parties, on both sides of the issue, attempting to divine votes from invalid attempts at voting was a national disgrace. The General Assembly, in its 2001 session, wisely acted to preclude this in Virginia by limiting the circumstances under which punch card ballots could be read manually. Manual reading is permitted only when the ballot counter rejects the ballot as being unreadable.

The proposed legislation, approved by the subcommittee, mandates that, when possible, ballot counters for optical scan and punch card systems must be programmed to set aside ballots containing overvotes and undervotes for manual reading. An undervote occurs when a voter does not vote in a particular race. When a voter casts a vote for a greater number of candidates than the number for which he was lawfully entitled to vote, an overvote occurs. When an overvote is detected by the ballot counter, no vote is recorded for any candidate in that race.

An undervote is the prerogative of the voter. This can occur by mistake, but most often it occurs in uncontested races where the voter does not wish to vote for the lone candidate. At other times, the voter simply is unable to choose between the candidates and does not vote at all in that race. Ultimately, it is the voters' responsibility to ensure that their ballots reflect their intent, even if it is not to vote in a particular race or on a particular issue.

An overvote is the result of an error by the voter. Overvoting can be precipitated by poor ballot design; however, it can be prevented by voters checking their ballots before placing them in the ballot box or the vote tabulator. Voters always have the option to request a new ballot if they find that they have made a mistake. Ultimately, it is the voters' responsibility to correct overvotes before submitting the ballot for counting.

A ballot counter that detects overvotes and/or undervotes is doing its job by reading the marks on the ballot made by the voter. The ballot counter does so accurately and in a non-partisan manner. To set aside overvoted and undervoted ballots for manual reading, when the ballot counter is correctly functioning, introduces the potential for honest human error and for partisan manipulation.

Ballot counters are thoroughly tested and are highly reliable. As a voter in Virginia, and as an election official familiar with voting systems, I want my ballot counted by a machine unless it has become damaged and is rejected by the machine as not readable.

Before July 1, 2001, when the current law became effective, Virginia law was very similar to Florida law. To mandate the setting aside of overvoted and undervoted ballots for manual counting is to re-introduce the potential for error, either deliberate or not, and raises the specter of a recount scenario like that which played out in Florida in 2000, something which this subcommittee was intended to preclude.

APPENDIX A

STUDY DIRECTIVES

House Joint Resolution No. 681 (2001) Attached
[Senate Joint Resolution No. 363 (2001) Duplicate]

GENERAL ASSEMBLY OF VIRGINIA -- 2001 SESSION

HOUSE JOINT RESOLUTION NO. 681

Establishing a joint subcommittee to study Virginia's election process and voting technologies.

Agreed to by the House of Delegates, February 22, 2001

Agreed to by the Senate, February 21, 2001

WHEREAS, public confidence in the integrity of the ballot, accuracy of the reported vote, and certainty of the election is crucial in a democratic process; and

WHEREAS, such public confidence is essential to acceptance of the legitimacy of the election outcome, an orderly transfer of power, and the stability of the political system itself; and

WHEREAS, the framers of the Constitution of the United States placed primary authority with the sovereign states to conduct and regulate elections; and

WHEREAS, it is the policy of the Commonwealth to promote the integrity of the election process by ensuring the accurate recording and counting of all legal votes cast for candidates and on ballot questions; and

WHEREAS, the closeness of the popular vote and subsequent disputes over the counting of the vote in Florida and several other states during the November 2000 presidential election have highlighted questions related to ballot design, methods of casting and recording votes, equipment accuracy and reliability, standards for counting and recounting ballots, vote-swapping sites on the Internet, and numerous other issues in the conduct of elections; and

WHEREAS, it would appear that many of the problems stemmed from a reliance on antiquated technology and ambiguous standards; and

WHEREAS, the recent presidential election introduced voters to the problems associated with the "butterfly" ballot design and the dimpled chad, pregnant chad, tri-cornered chad and swinging chad created with the punch card voting method; and

WHEREAS, irregularities in the transit, handling and acceptance of military and overseas ballots in Florida confounded the determination of when certain ballots were voted and sent; and

WHEREAS, the appearance of vote-swapping sites on the Internet last year facilitated the pledge of interstate votes between voters, which enables major party candidates to pick up votes in swing states and third parties to retain votes needed to qualify for federal matching funds for the next election; and

WHEREAS, while Virginia did not experience election uncertainty on the scale of that revealed elsewhere in 2000, the Commonwealth has seen a recount for statewide office as recently as the 1989 gubernatorial election and in the past decade alone several state legislative contests and local elections have involved recounts or questions about the conduct of the vote; and

WHEREAS, voters have a right to expect ballot designs and methods for casting and counting ballots that are easily understood, simple to operate, and employ foolproof technologies to prevent voter error; and

WHEREAS, the Commonwealth's counties use various voting systems, including the mark sense tabulator (optical scan), direct recording electronic (touch screen), mechanical and punch-card tabulator, some of which are at least 20 years old; and

WHEREAS, individual local electoral boards determine from an approval list the voting systems that will be used in each county or city; and

WHEREAS, establishing standardized voting systems throughout the Commonwealth could lead to more efficient and nondiscriminating elections; and

WHEREAS, ballot and voting devices should minimize, and preferably eliminate, the necessity or opportunity for election officials and agents for individual interests to seek to interpret the intent of voters by examining the ballots they cast; and

WHEREAS, voting procedures should generate confidence that the voter's ballot will be recorded and counted and that the results of elections will be tabulated and reported accurately; and

WHEREAS, since 1995 the State Board of Elections has been required to provide a second or divisible precinct registered voter list to serve as the official pollbook at each precinct; and

WHEREAS, the registered voter list and pollbook are used to record who voted at the polls and serve as accurate and secured sources for citizens reviewing the events of the election; and

WHEREAS, a combined precinct registered voter list and pollbook offers a means to streamline and simplify the process of recording registered voters at the polls and may improve elections by the efficient use of officers of election, faster processing of votes and reduction in paperwork and storage space; and

WHEREAS, the integrity of the registration and election process also depends heavily on the professional performance of the general, assistant and deputy registrars; and

WHEREAS, a career development program for voter registrars may provide the means to encourage and reward performance of their duties; and

WHEREAS, every citizen who is eligible has the right to vote and to have that vote counted; and

WHEREAS, the Commonwealth's election laws should be evaluated to be certain that no qualified voter is excluded from the process; and

WHEREAS, the Commonwealth and its citizens would be well served by a determination of whether additional actions, procedures, guidelines, regulations, policies or systems are necessary or advisable to ensure the orderly, objective, accurate, and fair conduct of elections and resolution of disputes over results before an election crisis occurs; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study Virginia's election process and voting technologies. The joint subcommittee shall consist of 16 members, which shall include 10 legislative members and 4 nonlegislative members and 2 ex officio members as follows: 6 members of the House of Delegates to be appointed by the Speaker in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; 4 members of the Senate to

be appointed by the Senate Committee on Privileges and Elections; 3 nonlegislative members, 1 of whom shall be a member of a local electoral board, to be appointed by the Speaker; 1 voter registrar appointed by the Senate Committee on Privileges and Elections; and the Secretary of Technology or his designee and the Secretary of the State Board of Elections or her designee to serve ex officio with voting privileges.

In conducting the study, the joint subcommittee shall (i) examine the reliability and performance of the various types of voting systems in use throughout Virginia and in other states; (ii) examine the feasibility, advisability and costs of standardizing voting systems throughout the Commonwealth; (iii) consider ways to encourage localities to purchase or phase-in upgraded voting systems, including match grant programs; (iv) examine new and developing technologies that might advance the goals of better determining vote eligibility, ensuring voter privacy, enhancing the ability of voters to cast accurate and legal ballots and reducing the potential for election officials and individual interests to seek to interpret the intent of voters from ballots cast; (v) establish the extent to which, and the circumstances under which, spoiled ballots are cast or rescinded in elections; (vi) collect information regarding possible or actual voter misunderstanding of the ballot in elections throughout the Commonwealth; (vii) solicit the advice and experience of local electoral boards in ascertaining, establishing, and certifying the results of elections for accuracy and fairness; (viii) investigate the extent of and legality of vote-swapping strategies; (ix) examine local electoral board membership and qualification; (x) consider procedures for voter-friendly registration; (xi) examine standard procedures for assisting voters at the polls; (xii) ascertain the training needs of election officials and monitor the study by the State Board of Elections and the Weldon Cooper Center for Public Service on establishing a career development program for voter registrars; (xiii) consider procedures for standardizing absentee voting; (xiv) examine legal, technological, logistical and other related issues, including privacy involved in the handling and security of a merged pollbook; (xv) investigate the experience of, and monitor current actions in, other states; and (xvi) make any other recommendations for changes that may be desirable to advance the certainty of, and fairness in establishing, the outcome of elections in the Commonwealth. The study shall include, but not be limited to, the development of secure systems to facilitate voting and other procedures involved in the voter registration and voting process and shall examine new advances such as biometrics, passcodes and other appropriate devices.

The direct costs of this study shall not exceed \$14,500.

The Division of Legislative Services shall provide staff support for the study. Technical assistance shall be provided by the State Board of Elections. All agencies of the Commonwealth shall provide assistance, upon request.

The joint subcommittee, during the course of its study, may recommend to the State Board of Elections that the Board adopt or implement such procedures as are within its authority to ensure accurate or fair elections during the 2001 election process, and shall complete its work in time to submit its written findings and recommendations by November 30, 2001, to the Governor and the 2002

Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

APPENDIX B

SUMMARIES OF JOINT SUBCOMMITTEE
AND TASK FORCE MEETINGS

Tuesday, May 15, 2001 -- Richmond
Joint Subcommittee -- Organizational Meeting

Thursday, June 14, 2001 -- Richmond
Joint Subcommittee -- Work Session

Thursday, July 26, 2001 -- Richmond
Task Force #2 -- Voter Registration and Election Day Processes

Friday, July 27, 2001 -- Richmond
Task Force #1 -- Technology and Voting Equipment

Tuesday, July 31, 2001 -- Richmond
Joint Subcommittee and Task Forces -- Multiple Sessions

Tuesday, August 28, 2001 -- Richmond
Task Force #2 -- Voter Registration and Election Day Processes

Monday, September 10, 2001 -- Richmond
Task Force #1 -- Technology and Voting Equipment

Tuesday, September 11, 2001 -- Richmond
Task Force #2 -- Voter Registration and Election Day Processes

Tuesday, September 25, 2001 -- Richmond
Task Force #2 -- Voter Registration and Election Day Processes

Friday, October 12, 2001 -- Richmond
Joint Subcommittee -- Public Comment and Work Session

Monday, November 26, 2001 -- Richmond
Task Force #2 -- Voter Registration and Election Day Processes

Thursday, November 29, 2001 -- Richmond
Joint Subcommittee -- Public Comment and Final Work Session

SUMMARIES OF MEETINGS

JOINT SUBCOMMITTEE ON VIRGINIA'S ELECTION PROCESS AND VOTING TECHNOLOGIES (HJR 681 -- SJR 363)

Task Force #1 -- Technology and Voting Equipment Task Force #2 -- Voter Registration and Election Day Processes

May 15, 2001 -- Richmond Joint Subcommittee -- Organizational Meeting

At its first meeting, the subcommittee received an overview of the current Virginia election process from the State Board of Elections covering:

- the administrative structure,
- voter registration and election procedures,
- current voting equipment and technology,
- election fraud issues,
- voter intent standards,
- recount and contest procedures, and
- information on historical voter turnout.

Invited spokespersons for the NAACP, Electoral Board Association, League of Women Voters, Common Cause, Voter Registrars Association, and Virginia Municipal League highlighted a number of concerns and suggestions:

- the need for training and educating election officers and voters,
- the critical issue of funding for election reforms and the allocation of costs between the state and localities,
- the need to be fully staffed and equipped on election day to decide questions on voters' registration status,
- the benefits of split shifts for election officials on election day, and
- cautions against imposing uniform statewide voting equipment requirements.

Professor Stephen K. Medvic of Old Dominion University presented his study "Does Every Vote Count? An Analysis of Voting Systems and Rejected Votes in the 2000 Virginia Presidential Election." His study analyzes the number of rejected votes produced by different voting equipment. Quoting from the report:

The conclusion of the report is that optical scan systems should be avoided (with the possible exception of those

counted at the precinct as opposed to a central counting location), as should punch-card systems, particularly in jurisdictions with low incomes and few college graduates. Instead, Virginia localities should begin to adopt electronic voting systems.

An informative luncheon presentation focused on repercussions from the Florida presidential election scenario. Leonard Shambom, attorney, gave a comprehensive picture of the many studies and groups examining election process issues on the national scene and the progress to date. Professor John Harrison of the University of Virginia Law School outlined the issues raised by the Supreme Court's decision in *Bush v. Gore* and the extent to which equal protection clause requirements require uniform election procedures.

June 14, 2001 -- Richmond Joint Subcommittee -- Work Session

Doug Lewis, Executive Director of the Election Center in Houston, gave the morning keynote presentation. The Center provides support to election administration officials on a nationwide basis, training and education programs to elections officials, and staff support to the National Association of State Election Directors and to the Elections Reform Task Force which will be issuing recommendations for election reforms later in the summer. He anticipates some approximately 80 concrete recommendations.

His remarks covered the root causes of the 2000 election problems in Florida and potential cures:

- Lack of a clear definition of a valid vote and standard for determining voter intent. State law should provide the definition and statewide standard to be applied.
- Lack of clear recount standards. State law should provide the standard for counting votes in recounts.
- Lack of a realistic timeframe and deadlines for conducting recounts. State law should take into account the various recount situations from local to statewide recounts. State law should provide for recounts by equipment when equipment can be used because equipment is more accurate. Hand recounts should be used only for overvotes, undervotes, and spoiled ballots.
- Confusion generated by an automatic purge of all felons from the registered voter lists. [Not pertinent to Virginia which has a continuous update program.]
- The use of different types of voting equipment was not a root cause, but voters made more errors with some types of equipment. The equipment should use precinct counting devices (not central counting systems) and give voters the opportunity to correct overvotes.

- Communications problems between agencies accepting voter registrations under the NVRA and the state voter registration agency. Careful coordination is required to assure voters who believe they have registered at an agency are placed on the voter lists or notified otherwise.
- No process for casting a provisional ballot when the voter's name is not on the registered voter list but he claims to be registered. [Not pertinent to Virginia which provides for provisional or conditional ballots in such situations.]
- Inexperienced voters or new voting equipment. States should provide instruction and examine the use of oral taped instructions or videos in the polling place.

Following Mr. Lewis' remarks, the subcommittee and additional invited participants broke into five discussion groups of approximately 12 persons each on the following topics:

- the administrative structure for elections,
- voter registration issues,
- election procedures and absentee voting,
- voting equipment, and
- voter intent, recounts and contests, and election fraud.

A spokesperson for each group reported back to the full group at noon on those issues discerned to be the most important for study by the subcommittee during the summer. Those high priority items included:

- resources and funding for the State Board,
- maintenance of a statewide voter registration database,
- voter education,
- review of restoration of voting rights for felons,
- training for election officers and education for voters,
- examination of how to treat overvotes,
- evaluation of the error rates of various types of voting equipment, and
- careful statutory treatment of recount procedures and the proper statewide standard to determine voter intent.

The subcommittee set up two task forces: #1 -- Technology and Voting Equipment, chaired by Senator Kevin G. Miller (meeting July 27), and #2 -- Voter Registration and Election Day Processes, chaired by Senator William T. Bolling (meetings July 26 and August 28).

July 26, 2001 -- Richmond

Task Force #2 -- Voter Registration and Election Day Processes

This task force reviewed the present voter registration process. It heard presentations by the Department of Motor Vehicles and State Board of Elections

including information on improvements in the combined DMV/voter registration application form and steps now taken by DMV customer service representatives to ensure that applicants who want to register complete and sign the application. It reviewed issues concerning voter eligibility with a panel of voter registrars and election officials.

The task force identified the following items and issues for further review:

- DMV/SBE will prepare a "concept paper" to discuss ways to scan and retain declinations to register, the destruction of the forms, and the best way to provide access to application forms to answer election day questions on voter registrations. The task force also suggested possible revisions to the pending new form to flag the need to complete portions following the applicant's signature.
- DMV will provide a terminal to demonstrate the process for registering voters at a future task force meeting and will develop an action plan on the training of customer service representatives to make certain that voter registration applications are fully completed prior to transmittal to the SBE.
- SBE will provide a list of organizations requesting materials for voter registration drives and report on ways to standardize procedures (information, training, etc.) for individuals and organizations initiating voter registration drives.
- SBE will look into developing a more aggressive educational program for college students on voter registration issues in Virginia.
- The task force will obtain an Attorney General's opinion on possible conflicts between recent statutory changes to state law regarding incompetence and existing constitutional provisions regarding incompetence with respect to the eligibility to vote and, if necessary, will evaluate possible statutory changes.
- The task force will evaluate possible statutory changes that would create greater consistency in current state laws regarding the deadlines to apply for absentee ballots and vote absentee.
- Staff will provide information on how to provide more timely information on deaths to the Division of Vital Statistics.
- Staff will prepare draft legislation to implement the recommendations of the Federal Voting Assistance Program for task force review.
- Staff will provide a paper to show the various lists that court's can currently use for juror selection in addition to voter registration lists.

- Staff will provide possible statutory changes to clarify voter eligibility issues for the homeless and so called "snow birds" for task force review.
- Staff will prepare possible statutory changes to clarify the ability of the SBE to modify absentee ballot deadlines in the case of local, state or national emergencies.

The task force will meet twice in September on dates to be determined: first, to follow up on the voter registration issues identified above; and second, to evaluate additional election process issues that will be identified at its meeting on Tuesday, August 28, 2001, at 10:00 a.m. in the 4th Floor W. Conference Room, GAB. The task force is also meeting July 31 on issues concerning officers of election.

July 27, 2001 -- Richmond
Task Force #1 -- Technology and Voting Equipment

This task force heard a panel presentation covering three reports on the reliability of various types of voting equipment. The panel participants were Fred G. Berghoefer, Secretary, Arlington Board of Elections; Stephen K. Medvic, Old Dominion University; and Matthew M. Mehalik, Systems Engineering, University of Virginia. They outlined the findings of the July 2001 Report of the CALTECH/MIT Voting Technology Project, Professor Medvic's study "Does Every Vote Count: An Analysis of Voting Systems and Rejected Votes in the 2000 Virginia Presidential Election," and Mr. Mehalik's "Analysis of Charlottesville's Voting System."

The panel and task force discussion pointed to the need to be cautious in drawing conclusions from initial investigations into the reliability of individual types of voting equipment because of numerous factors to be weighed. Such factors include questions about the measures of reliability including overvotes and undervotes (both intentional and unintentional votes), residual votes, demographic characteristics of precincts, and the familiarity of election officials and voters with the voting equipment.

The State Board reported that it is in the process of evaluating applications from five vendors for certification and anticipates more applications as vendors bring more new equipment to the market.

The Board is in the process of reversing its past policy that prohibited the programming of optical scan and punch card equipment to reject overvotes. That policy was adopted to avoid embarrassing voters by having the ballot counter return an overvoted ballot (with an audible signal) and to protect ballot secrecy. However, almost all states do require programming to return an overvoted ballot so that the voter has the option to correct his ballot if it was marked in error. This

issue generated discussion. Of the four types of equipment now in use that allow overvotes, three types can be programmed to give the voter a second chance. There were concerns that the process be designed to minimize embarrassment for the voter and the State Board will report further on this process, which is to be implemented for the August 21 primary.

The task force is meeting July 31 to receive a report on the State Board's pilot programs testing the use of a merged registered voter list and pollbook on election day and will be scheduling additional meetings.

The joint subcommittee is also meeting July 31 at the Sheraton Richmond West to discuss voter accessibility issues, hear vendor presentations, and receive comments from elections officials.

**July 31, 2001 -- Richmond
Joint Subcommittee -- Multiple Sessions**

The joint subcommittee conducted several meetings at an all-day session held at the Sheraton Richmond West the day before the State Board of Elections's training session for registrars and electoral board members.

Task Force #1 -- Technology and Voting Equipment

The task force received an update from the State Board's Deputy Director on recent pilot projects to test and evaluate a merged pollbook for checking in voters on election day. The State Board is authorized to conduct such tests through July 1, 2003, in participating localities. The current process for recording who voted on election day requires two separate voter registration lists to be used at each precinct. After the election, officers of election forward one list to the locality's circuit court under seal for retention until the deadlines for recounts and contests have passed. The other list is returned to the State Board for voting credit purposes and remains open for public inspection. The merged pollbook offers several advantages over the current system, including speeding up the check-in process and reducing the cost incurred by the State Board in reimbursing the Department of Information Technology (DIT) for printing the multiple voter lists. DIT must run their high-speed printers continuously for four straight days to produce the registered voter lists.

The State Board described its experience in testing several alternative forms of the merged pollbook. An electronic version of the merged pollbook was tested during a Vienna town election and during the June 19 special election for the vacant 4th congressional seat. The Board received positive feedback from pollworkers, who said that the electronic pollbook decreased the check-in time considerably. However, the total cost to equip each precinct with new hardware could carry a price tag of \$1 million. The State Board stated that it would continue

to look for ways to reduce the costs of the electronic pollbook, including leasing options, purchasing smaller hand-held devices and entering into revenue sharing agreements with vendors to divide savings resulting from lower printing costs. The State Board also tested a printed version of the merged pollbook during several recent elections. The printed merged pollbook received similar praises from election officials, who reported increased efficiency in the check-in process. The printed merged pollbook will be tested on a larger scale during the August 21 primary and November 6 statewide election to evaluate the vendor's capabilities and determine cost-savings potentials.

Task Force #2 -- Voter Registration and Election Day Processes

A panel of general registrars and electoral board members led a discussion on issues pertaining to officers of election. The panel represented large and small counties and cities and brought out a number of issues and ideas for consideration by the task force.

Recruitment. Recruiting presents problems for many localities. Recruitment in smaller localities may depend on personal recruitment by election officials and in larger localities on public service announcements. The use of split shifts is favored in some localities but not others. Ideas for recruitment included contacts with civic associations for an "adopt a precinct" program, use of high school students to assist officers of election, and an election day holiday generally or as a program for a business to encourage employees to serve as officers of election. Panelists discussed how to encourage officers to retire when appropriate and the possibility of a recognition ceremony as a way to make retirement acceptable. Panelists favored increased pay for officers of election and noted that the state law \$30-minimum pay for election day service is unrealistic.

Training. Officer training is vital but can present problems, including difficulty in assuring attendance, finding ways to train new officers and old officers without confusing the former or boring the latter, using appropriate materials for training. Ideas discussed included a special manual keyed to the locality's equipment and process, video training sessions, split sessions for experienced and new officers, and interactive training sessions. One panelist suggested a Virginia certification program for chief election officers who carry the main responsibility for operations at the polling place on election day.

Joint Subcommittee -- Sessions

During the remainder of the day, the joint subcommittee met as a whole in four sessions.

Voter accessibility issues. A panel representing multiple viewpoints and interests stressed the need for accessibility to the polling place and to voting equipment so that all voters can participate at the polls and cast a secret ballot. Advances in technology were discussed ranging from special audio ballot devices for visually impaired voters to access to translators via telephone. Panelists placed much emphasis on proper training of officers of election to understand accessibility issues from the viewpoint of the voter. Practical suggestions were given for equipping polling places with inexpensive but useful devices such as magnifying glasses. The discussion covered issues such as an election day holiday, voter education needs, easier access for felons who have completed their sentences, and the need to assure voters a second chance when they erroneously mark a ballot.

Virginia overseas voting test project. The State Board is exploring with VoteHere a pilot project to test an electronic and online voting system for Virginia National Guard members who will be deployed to Bosnia during the November 2001 election.

Public comments. The subcommittee held an open comment session and heard a variety of suggestions:

- the need to provide adequate state funding for mandated improvements and state funding for an assistant registrar,
- the dilemma presented by FOIA for the three-member local electoral boards,
- the importance of voter education and new ideas such as use of voting equipment for high school elections and for other civic events,
- the need for a complete and up-to-date state manual for voter registrars, and
- the need for a liaison between the State Board and local registrars and for continuity and experience in top-level State Board staff positions.

Voting equipment demonstrations. After the hearing concluded, the subcommittee and election officials had the opportunity to view and test a broad range of voting and election equipment devices provided by vendors at the meeting, including both approved types of equipment already in use in Virginia and new technologies that may be approved in the future.

Task Force #1 will meet September 10; Task Force #2 will meet August 28 and September 11 and 25; and the joint subcommittee will meeting October 12 and November 29. Times and places for meetings are provided on the Legislative Information System website.

August 28, 2001 -- Richmond
Task Force #2 -- Voter Registration and Election Day Processes

DMV on-line voter registration process. The Division of Motor Vehicles demonstrated the on-line driver's license renewal process and its links to the voter registration system. An applicant can request a voter registration application, initiate a change of address on his voter registration, check his voter status, districts, and polling place, and access information on his representatives. Access to the system requires a pin number for security. Approximately 15 percent of license renewals are now done on-line.

Specific proposals from Ed O'Neal. Joint subcommittee member O'Neal presented a list of seven items for consideration: (1) an expanded prohibited area at the polls; (2) administration of oaths; (3) enforcement of the prohibited area by electoral board members; (4) prohibition against split precincts in redistricting; (5) mandated minimum pay for first assistant registrar; (6) definition of electoral board responsibilities and pay; and (7) development of a list of voter responsibilities. **The task force directed staff to prepare legislative drafts on items 2, 3, and 7 and on a clarification of the meaning of "entrance to the polling place" in connection with item 1. It also asked for options to the judicial appointment of electoral board members.**

VVRS list maintenance issues. The State Board reported that they are now switching to the new VVRS II system and that there is a total match monthly of the list against deceased and felony conviction reports. The Board is working with the National Postal Change of Address program and examining the costs and values of matching the social security deceased lists and adjacent states registration lists. **The task force asked for information for a budget amendment to fund the list matching options.**

Election day processes. A panel of electoral board members and registrars provided a detailed description and materials outlining the multiple steps followed by election officials and officers to carry out election day responsibilities. **The task force asked for draft legislation to provide for a record of election day phone calls to registrars showing the nature of the inquiries and problems.**

Conditional ballots. Many current election reform reports call for a conditional ballot so that voters not listed on pollbooks can cast a ballot that will be counted if it is found that they are registered. The task force and persons present emphasized that a voter in the wrong precinct should be sent to the correct precinct to have his vote counted and not be offered a conditional ballot that will not be counted if he is in the wrong precinct. **Officers of election should be educated to handle conditional ballots properly.**

Recount procedures. The State Board reviewed the standards adopted by the Board on August 20 in response to Chapters 639 and 641 of the 2001 Acts of Assembly amending § 24.2-802, including detailed standards for

interpreting the voter's intent. **The task force will consider further the issue of how much flexibility the recount court should have to order hand recounts.**

The task force will follow up on these matters at its September 25 meeting.

**September 10, 2001 -- Richmond
Task Force #1 -- Technology and Voting Equipment**

A panel of experts from Virginia Tech described the potential use of a variety of biometric technologies for voter identification and the costs and reliability of the various methods. Biometrics measure unique individual characteristics -- both physical and behavioral. Fingerprints, retina or iris scans, facial recognition, speech recognition, and signatures can be measured and compared with a database by biometrics. While many states have voters sign a roster or statement or show an identification card, none now employ biometrics to identify voters. The costs of a biometric program increase as the degree of desired convenience and security increases.

Staff presented a summary report on Internet voting developments including the June 2001 report on the Federal Voter Assistance Program's pilot project, March 2001 National Science Foundation Report, and the January 2000 report of the California Internet Voting Task Force. These studies emphasize the need for further study, innovation, and testing of Internet voting with limited use at the polling places as a first step before relying on off-site Internet voting.

State Board of Elections staff reported on the process to certify new voting equipment. First, the equipment is tested by an Independent Testing Authority to meet the Federal Election Commission standards; second, equipment is tested in Virginia by an independent electronics or engineering consultant to meet additional Virginia standards; third, the equipment is tested in an election; and finally the State Board approves the equipment. After a moratorium on certification, the certification process is now in progress. Five types of equipment were tested in August; four were cleared for testing in an election; and three of the four will be tested in the November election in precincts in Arlington, Prince William, Norfolk, and Henrico. These are touch-screen systems with a prompt to the voter to verify how he voted. The Board has a partnership with the Biomedical Engineering Department at VCU to send students to test areas to interview voters on their use of the new equipment.

The task force reviewed a proposed outline of issues for its report to the joint subcommittee and agreed on the following recommendations:

- Continue the present local option system for selecting voting equipment and do not mandate the use of one system statewide.
- Support federal grants for up-grading voting equipment.

- Support state funding for upgrading voting equipment to provide more accessible equipment at the polling places with funding on a composite index basis that takes local funding ability into account.
- Support additional personnel and funding for expanded State Board oversight of the certification process and ongoing monitoring of voting equipment.
- Monitor developments in Internet voting and the use of biometrics without any commitment at this time.
- Support local efforts to educate officers of election; retain current requirement that chief officers and assistant be trained within 30 days of the election and allow training of other officers at any time.
- As a follow-up to the State Board pilot project on the merged registered voter list and pollbook, authorize the use of a merged list and allow the use of an electronic list.

The task force directed staff to prepare a draft report for task force comment.

September 11, 2001 -- Richmond

Task Force #2 -- Voter Registration and Election Day Processes

The task force received reports from the State Registrar and Division of Vital Statistics, the State Board of Elections, and staff. It reviewed several matters carried forward from earlier meetings. It reached the following decisions:

Lag time on reports of deaths. Times vary from date of death to date of update in the voter registration system and may involve three or more months. Times vary in the initial report by funeral directors to local health departments and local reports to the state. While the change to an electronic transfer of data at the state level has sped the process, lag times still exist. **The Division of Vital Statistics and State Board will develop additional information on the average time to communicate deaths to voter registrars. More information will better enable the task force to decide if legislation is appropriate.**

Voter registration drives. State Board staff distributed lists of public bodies (127) and other individuals and groups (276) requesting 50 or more voter registration applications during the past six months. Of course, many groups may request applications from the local registrar or print forms from the State Board's website. The State Board now provides Guidelines for Voter Registration Drives on the Internet [<http://www.sbe.state.va.us/VotRegServ/nvra/regdrive.htm>]. **The Board will provide guidelines to groups requesting forms from the Board and communicate with local registrars to encourage them to use the standardized materials provided by the Board. No legislation is warranted at this time.**

More education for college students on voter registration issues. The concerns are to assure that college students understand their opportunity to register and eligibility requirements. **Staff will prepare draft legislation requiring all colleges and universities in Virginia to include information regarding voter registration procedures and eligibility requirements in their orientation packets for new students. The task force will review this legislation with representatives of Virginia's colleges and universities to obtain their input.**

Incompetence and incapacity. The term "incompetent" is used in the Constitution and "incapacitated" is used in statutes. **The task force reviewed a draft request for advice from the Attorney General whether the statutes are consistent with the Constitution and authorized the Chairman to send the request.**

Absentee voting deadlines. After a review of the various deadlines contained in the absentee voting laws, the task force concluded that no changes in the deadlines were desirable. **It directed staff to review the laws for any obsolete provisions.**

Federal Voting Assistance Program recommendations. State Board staff reviewed three proposals involving (i) voting in federal elections by citizens who have never lived in the U.S. (i.e. children of overseas workers); (ii) voting absentee by fax; and (iii) expanded use of federal write-in absentee ballot. **The task force approved items (i) and (iii) and asked for draft legislation.**

Jury lists and registered voter lists. Staff reported on how the Secretary of the Supreme Court now provides lists to the courts with the option to use registered voter lists only or voter registration lists merged with DMV licensed drivers lists. Of courts using the Supreme Court service, 45 courts use the voter lists only and 64 use the merged lists. Some courts prefer the voter lists alone because they find a higher proportion of eligible jurors on such lists. **The task force agreed that the present system and its flexibility for circuit courts should be retained without legislative change.**

Voter eligibility in special cases such as snowbirds and homeless. Staff presented information. The task force took **no action.**

Emergency situations and absentee voting. Staff presented several options dealing with absentee voting by emergency personnel and powers to deal with emergency situation including the postponement of an election. **SBE staff will present a legislative proposal dealing with disaster situations. Staff will prepare legislation modeled after the Maryland law authorizing the State Board of Elections to act in emergency situations not constituting a declared state of emergency.**

Officers of elections issues. Staff presented information. The task force took **no action**.

State and local roles in voter education. The task force discussed the importance of the issue and the possibility of a voter education grant program to provide some state support. **The task force will consider the matter further.**

Language accessibility issues. The State Board alerted the task force to the possibility that second language ballot and elections materials requirements may become applicable in some Virginia localities as a result of the 2000 Census and Voting Rights Act. The task force took **no action**.

Staff distributed a proposed agenda for the task force's September 25 meeting and materials on voting fraud issues. The task force added a number of items to the proposed agenda including a "concept paper" being prepared by DMV and the State Board on the handling of declinations to register to vote.

September 25, 2001, Richmond Task Force #2 -- Voter Registration and Election Day Processes

Vote fraud issues. Deborah Phillips of the Voting Integrity Project and Richard Trodden, Arlington Attorney for the Commonwealth, brought information and suggestions to the task force. Ms. Phillips emphasized the need to eliminate fraudulent voter registrations, potential nationwide measures to reduce multiple registrations, and the possibility of making voter registration lists available to watchdog groups for review. Mr. Trodden noted that the prosecution of election law violations is a lower priority item for the Commonwealth's attorneys, and State Board representatives cited issues such as non-citizen registrations, nursing home abuses, and the need for a state-level resource for prosecutions. **The task force requested staff to draft amendments to strengthen Code § 24.2-104, which provides for assistance by the Attorney General in investigating and prosecuting election law violations.**

DMV proposals -- "on demand" voter registration form and indexing systems. DMV representatives outlined a three-part proposal.

- A print "on demand" voter application process would replace the two-page carbon-interleaf combined driver/voter application form DL 1M with a one page driver's license application that asks whether the applicant wishes to register or change his voter registration address. If the voter checks the box at the top of the form indicating that he does want to register, DMV will print out a one-page voter application that includes the common data used by DMV, SBE, and the registrars. The voter application will be given to the customer for completion and signing. DMV costs for the project include a one-time capital cost of \$294,819 and a yearly recurring cost of \$10,525;

SBE costs will be supplied later. **The task force agreed to recommend a budget amendment to fund this proposal.**

- A process to simultaneously image DMV applications with the declination response and generate an electronic index for retrieving these documents by name and social security number.
- A process to convert the 4.5 million paper declinations currently filed at DMV into electronic files with batch order indexing by Customer Service Center (CSC) location and date of transaction. The costs to implement these last two proposals are \$865,360 and \$756,000, respectively. **Because the costs of these two proposals are substantial and the current response time by DMV in retrieving the paper declinations for the State Board of Elections appeared to be satisfactory, the task force agreed to forward these proposals to the joint subcommittee without a recommendation at this time.**

Task force draft recommendations and legislation. Members reviewed a series of draft recommendations and legislation based on past meetings. **It agreed to recommend the following:**

- Draft legislation to give members of local electoral boards the ability to administer oaths and accept absentee ballots.
- A budget amendment to enable the State Board to implement the Social Security Administration's Deceased Address Match Program.
- Draft legislation to clean up various absentee ballot provisions and delete obsolete absentee ballot and registration provisions.
- Draft legislation to grant additional authority to the Secretary of the State Board of Elections to designate alternative methods and procedures for the handling of absentee ballots in the event of a public emergency.

It agreed to give further consideration to the following:

- The SBE request for additional authority to postpone elections in the event of a natural disaster.
- Draft legislation to enhance current state statutes giving the Attorney General's office a greater ability to prosecute voter fraud cases and to solicit input from the Attorney General on proposed changes.
- SBE proposals to clarify the application of the FOIA to electoral boards.
- Draft legislation to implement the recommendations of the State Board of Elections regarding recount and contest laws.

Staff will circulate a draft of recommendations for task force review and comment and for presentation to the joint subcommittee at its October 12 meeting.

**October 12, 2001 -- Richmond
Joint Subcommittee -- Public Comment and Work Session**

Public comments. Rob Ritchie of the **Center for Voting and Democracy** participated by speaker phone. Federal standards now require that direct recording electronic equipment (DREs) record and store an electronic image of the ballot. The Center advocates that certification standards for new types of optical scan and punchcard equipment also require the recording and storage of an image of each ballot. The redundant image provides a backup when ballots are lost or damaged.

Scott McGeary, Chairman of the **Virginia Electoral Board Association's Legislative Committee**, reported the Committee's position on various issues being brought to the joint subcommittee by its task forces, including the following:

- Support of the proposal to give all electoral board members authority to administer certain oaths and accept absentee ballots.
- Support for the local option to choose among various certified types of voting equipment.
- Support for federal grants so long as no mandates are involved that conflict with state and local control of the election process.
- Support for additional funding and staff for the State Board to oversee certification and monitoring of voting equipment.
- Recommendation for close monitoring of Internet voting and biometrics developments.
- Support for a merged registered voter list and pollbook and an electronic pollbook.
- Support for a variety of additional matters.

Task Force Reports. The joint subcommittee received reports from Task Force # 1, Technology and Voting Equipment, and Task Force # 2, Voter Registration and Election Day Processes. Each Task Force presented a series of recommendations that the joint subcommittee reviewed, discussed, and took under advisement. Task Force # 1 completed its review of technology and voting equipment issues. Task Force # 2 submitted both finished recommendations and a number of items that it plans to review further before reporting final recommendations to the joint subcommittee.

Website and Future Meetings. The joint subcommittee has scheduled its next meeting for Thursday, November 29, at 10:00 a.m. in Richmond. Task Force # 2 will meet one time before that meeting on November 26.

The subcommittee instructed staff to send a news release to the media and to all persons who had participated in the joint subcommittee's and task forces' deliberations. The release should announce the availability of an Internet website for the Joint Subcommittee on Virginia's Election Process and Voting Technologies. The website should give access to the draft reports from the two

task forces and inform the public that the joint subcommittee is considering the task force reports and welcomes comments on the proposed recommendations in advance of the November 29 meeting.

[The website is at <http://dls.state.va.us/election.htm> for the joint subcommittee. The site carries copies of the task force reports and an e-mail address for sending comments to the joint subcommittee.]

**November 26, 2001 -- Richmond
Task Force #2 -- Voter Registration and Election Day Processes**

The task force took up the items held over from the October 12 joint subcommittee meeting and its list of recommendations requiring further consideration. It took the following actions:

- Declined to recommend legislation to require colleges and universities to publish information on voter registration in handbooks for new students because the potential benefit does not justify the added burden. Colleges and universities already promote voter registration opportunities for students under federal law requirements.
- Agreed to recommend legislation to allow the postponement of primaries and local elections in emergency situations.
- Agreed to recommend a constitutional amendment to allow the postponement of General Assembly and statewide office elections in emergency situations.
- Agreed to recommend modified FOIA requirements for the State Board of Elections and local boards in limited circumstances. Staff is to circulate the draft legislation to interested parties.
- Agreed to recommend revisions in the recount process to limit the scope of the recount proceeding, to provide for a single redetermination of the vote, and to rely on the printouts from optical scan and punchcard tabulators. If the tabulator printouts are not clear, or the court requests, the ballots will be rerun through a tabulator programmed to set aside write-in votes and, if possible, overvotes and undervotes. These ballots and any rejected ballots will be subject to a hand count conducted in accordance with State Board and statutory standards.

**November 29, 2001 -- Richmond
Joint Subcommittee -- Public Comment and Work Session**

Public comments. During a public comment period, the subcommittee received a packet of materials e-mailed to the subcommittee's website in response to the posting of the recommendations of Task Forces #1 and 2. It also heard from a number of speakers who advised that funding for the election process, equipment, and state and local election administration is a priority, that FOIA should not restrict electoral board activities on election day, that the proposed FOIA exemptions are too broad, and that there is a need to review the larger picture of the structure, duties, and funding for state and local electoral boards and registrars.

Task Force #2 report. Senator Bolling reviewed the recommendations and legislation offered by his task force. The joint subcommittee agreed to the following recommendations:

- Virginia should continue to maintain and upgrade the Virginia Voter Registration System (VVRS). [No legislation.]
- DMV's voter registration process should be modified to allow for print-on-demand voter applications. [Budget amendment required.]
- Virginia should continue to improve its voter registration list maintenance procedures to ensure that the list is as current and accurate as possible by using Social Security deceased lists to match against the Commonwealth's registered voter list as a means to eliminate names of deceased persons from the list. [Budget amendment required.]
- Virginia should adopt a recommendation from the Federal Voting Assistance Program and expand the use of the Federal Write-In Absentee Ballot by allowing the envelope to act as the application for the enclosed absentee ballot. [Legislation.]
- Absentee voter registration and ballot laws should be revised to remove obsolete, confusing, and conflicting provisions. [Legislation.]
- The Secretary of the State Board should be granted additional authority to designate alternative methods and procedures for handling absentee ballots in the event of public emergencies. [Legislation.]
- The Governor should have authority to postpone any primary, any special election, or any general election [except for federal office, Governor, Lieutenant Governor, Attorney General or the General Assembly] in the event of an emergency. [Legislation.]
- A constitutional amendment should be proposed that would enable the General Assembly to provide by law for the postponement of an election that the Constitution currently requires be held on a specific date. [Legislation.]

- All electoral board members, rather than the secretary only, should have authority to administer the election day oath to officers of election. [Legislation.]
- Legislation should be adopted to strengthen current law provisions on the prosecution of election law offenses. [Legislation.]
- The present recount laws should be revised to specify that voter eligibility issues should be raised in a contest rather than a recount, provide for a single recount or redetermination of the vote in a recount proceeding, and spell out recount steps related to differing types of ballots and voting devices. [Legislation.]

Proposals were rejected that would have amended (i) the FOIA provisions to exempt certain electoral board activities and (ii) the Constitution to allow voter registration for United States citizens living abroad who have never lived in the United States and who have a parent or guardian who is a qualified voter of Virginia.

Luncheon speakers. Doug Chapin, Director of the Election Reform Information Project, gave an update on the work of the Project in tracking election reform developments and as a source of information on developments across the country. Dr. Larry Sabato spoke on lessons learned from the 2001 election in Virginia.

Task Force #1 report. Senator Miller reviewed the recommendations and legislation offered by his task force. The joint subcommittee agreed to the following recommendations:

- Virginia should continue utilizing a variety of voting systems on a local option basis. [No legislation required.]
- The state should contribute to the costs of providing election equipment that will assure accessibility to the polls for all voters. Funds should be made available, through a grant program that takes into account the fiscal capability of the locality, to assist localities in acquiring an accessible voting device for each precinct. [Budget amendment required.]
- The Commonwealth should fund a full-time employee on the staff of the State Board of Elections with responsibility for the oversight of the process for certifying voting equipment, monitoring developments in voting technologies, and administering the distribution of grants to localities under recommendation 3 above. [Budget amendment required.]

- The present state law that provides for training officers of election should be amended to increase the times allowed for training the officers who serve as officers in positions other than as the chief or assistant chief officer. [Legislation.]
- The merger of the polling book and precinct registered voting list should be implemented on a statewide basis beginning in 2003. [Legislation.]

Pending federal legislation. The subcommittee adopted a resolution that the Chairman will forward to Virginia's congressional delegation and appropriate authorities. The resolution memorializes the United States Congress to enact election reform legislation that adequately funds any mandate imposed on states and localities and requires the Social Security Administration and the Immigration and Naturalization Service to share information on deceased persons and alien residents within states without charge to assist them in maintaining accurate voter registration lists.

Staff was directed to prepare legislation incorporating the approved recommendations and a report for circulation to the subcommittee.

APPENDIX C

LEGISLATION

LD 0628872: Task Force #1 Recommendations 5 and 6 regarding training schedule for officers of election and merger of pollbook and precinct registered voter list.

LD 0625872: Task Force #2 Recommendations 5, 6, 8, 9, 11, and 12 regarding absentee voting, officers of election, emergency situations, and various election law provisions.

LD 0623872: Task Force #2 Recommendation 10 concerning a constitutional amendment for postponement of certain elections in emergencies.

LD 0624872: Task Force #2 Recommendation 13 concerning recount procedures and standards.

See, Appendix D for references to House and Senate Bills and actions taken at the 2002 Session of the General Assembly.

SUMMARY

Elections; officers of election; use of pollbooks and precinct registered voter lists. Provides that the electoral board may set the time or times for annual training of officers of election and deletes the provision specifying that training take place within the three to 30 days before each November general election. The bill also provides for statewide implementation for elections conducted after July 1, 2003, of a program to use a single list at precincts on election day that will show both the registered voters and persons voting. The State Board of Elections has been conducting pilot programs testing the use of a combined list. This bill incorporates recommendations of the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies (HJR 681/SJR 363 -- 2001).

1 A BILL to amend and reenact §§ 24.2-115 and 24.2-611 of the Code of Virginia,
2 relating to conduct of elections, training of officers of election, and use of
3 pollbooks and precinct registered voter lists.

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

5 **1. That §§ 24.2-115 and 24.2-611 of the Code of Virginia are amended and**
6 **reenacted as follows:**

7 § 24.2-115. Appointment, qualifications, and term of officers of election.

8 Each electoral board at its regular meeting in the first week of February
9 shall appoint officers of election. Their terms of office shall begin on March 1
10 following their appointment and continue for one year or until their successors
11 are appointed.

12 Not less than three competent citizens shall be appointed for each
13 precinct and, insofar as practicable, each officer shall be a qualified voter of the
14 precinct he is appointed to serve, but in any case a qualified voter of the city or
15 county. In appointing the officers of election, representation shall be given to
16 each of the two political parties having the highest and next highest number of
17 votes in the Commonwealth for Governor at the last preceding gubernatorial
18 election. The representation of the two parties shall be equal at each precinct
19 having an equal number of officers and shall vary by no more than one at each
20 precinct having an odd number of officers. If possible, officers shall be appointed
21 from lists of nominations filed by the political parties entitled to appointments. The
22 party shall file its nominations with the secretary of the electoral board at least
23 ten days before February 1 each year.

24 Officers of election shall serve for all elections held in their respective
25 precincts during their terms of office. However, for a primary election involving
26 only one political party, persons representing the political party holding the

1 primary shall serve as the officers of election in any county or city in which the
2 political party has submitted a list of nominations as provided above.

3 The electoral board shall designate one officer as the chief officer of
4 election and one officer as the assistant for each precinct. The officer designated
5 as the assistant for a precinct, whenever practicable, shall not represent the
6 same political party as the chief officer for the precinct.

7 The electoral board shall instruct each chief officer and assistant in his
8 duties not less than three nor more than thirty days before each election. Each
9 electoral board may instruct each officer of election in his duties ~~not less than~~
10 ~~three nor more than thirty days~~ at an appropriate time or times before each
11 November general election.

12 If an officer of election is unable to serve at any election during his term of
13 office, the electoral board may at any time appoint a substitute who shall hold
14 office and serve for the unexpired term.

15 The secretary of the electoral board shall prepare a list of the officers of
16 election which shall be available for inspection and posted in the general
17 registrar's office prior to March 1 each year.

18 § 24.2-611. Form and signing of pollbooks; use of precinct registered voter
19 lists.

20 A. The following oath shall be on a form prescribed by the State Board,
21 administered to all officers of election, and kept by the officers of election with the
22 pollbook:

23 "I do solemnly swear (or affirm) that I will perform the duties for this
24 election according to law and the best of my ability, and that I will studiously
25 endeavor to prevent fraud, deceit, and abuse in conducting this election."

26 The oath shall be administered to each officer of election by the general
27 registrar, the secretary of the electoral board, or an officer of election designated

1 by them, who shall be so identified on the form. The oath shall be signed by each
2 officer of election and the person administering the oath. The pollbook shall be
3 marked to identify the election for which it is used.

4 B. The State Board shall provide a second or a divisible precinct
5 registered voter list to serve as the pollbook for elections conducted on and after
6 July 1, 1995. The second or divisible list shall (i) provide a space for the officer of
7 election to record the name and consecutive number of the voter at the time he
8 offers to vote and (ii) be retained in accordance with the provisions governing
9 pollbooks in this title. The State Board shall provide a numerical check sheet to
10 be used to determine the consecutive number to be recorded with the name of
11 the voter by the officer of election. When the name and number of the last
12 qualified voter have been entered on the registered voter list, the officer of
13 election responsible for that list shall sign a statement on the check sheet
14 certifying the number of qualified registrants who have voted. The State Board
15 shall provide instructions to the local electoral boards, general registrars, and
16 officers of election for the conduct of the election and for procedures for entering
17 a voting record for each voter and recording each voter's name, including voters
18 unable to enter the polling place, and for verifying the accurate entry of the voting
19 record for each registrant on the Virginia Voter Registration System.

20 C. The State Board shall be authorized to conduct pilot programs in one or
21 more localities, with the consent of the electoral board of the locality, to test the
22 use of a combined precinct registered voter list and pollbook, notwithstanding
23 any other provision of law to the contrary. The pilot programs authorized by this
24 subsection may be conducted at any election held prior to July 1, 2003. Any pilot
25 program conducted by the State Board shall incorporate safeguards to assure
26 that the records of the election, including a combined precinct registered voter list
27 and pollbook, voter count sheets, or other alternative records, will provide

1 promptly an accurate and secure record of those who have voted. The State
2 Board shall report its evaluation of any pilot programs conducted by it and any
3 recommendations for legislation as a result of the programs to any committee
4 established by the General Assembly for the purpose of studying the use of a
5 combined precinct registered voter list and pollbook and to the General Assembly
6 prior to the 2003 Regular Session.

7 D. On and after July 1, 2003, the State Board shall provide for the use of
8 a combined precinct registered voter list and pollbook on a uniform basis at all
9 precincts throughout the Commonwealth, notwithstanding any other provision of
10 law to the contrary. In providing for the use of a combined precinct registered
11 voter list and pollbook, the State Board shall incorporate safeguards to assure
12 that the records of the election, including the combined precinct registered voter
13 list and pollbook, voter count sheets, or other alternative records, will provide
14 promptly an accurate and secure record of those who have voted. The State
15 Board may provide for the combined precinct registered voter list and pollbook to
16 be in a paper format or in an electronic format if funds are appropriated to cover
17 the costs associated with the provision of a combined list in an electronic format.

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SUMMARY

Revisions in the election and voter registration laws. Modifies and clarifies various provisions relating to investigations of election law violations, officers of election and pollbooks, postponements of elections in emergencies, and voter registration and absentee voting procedures. This bill incorporates a number of recommendations of the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies (HJR 681/SJR 363 -- 2001).

1 A BILL to amend and reenact §§ 24.2-104, 24.2-419, 24.2-420.1, 24.2-427, 24.2-
2 611, 24.2-700, 24.2-701, 24.2-702.1, 24.2-706, 24.2-707, 24.2-709, 24.2-
3 711, and 24.2-713 of the Code of Virginia and to amend the Code of
4 Virginia by adding a section numbered 24.2-603.1, relating to revisions in
5 the election and voter registration laws pertaining to investigations of
6 election law violations, officers of election and pollbooks, postponements
7 of elections in emergencies, and voter registration and absentee voting
8 procedures.

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

10 **1. That §§ 24.2-104, 24.2-419, 24.2-420.1, 24.2-427, 24.2-611, 24.2-700, 24.2-**
11 **701, 24.2-702.1, 24.2-706, 24.2-707, 24.2-709, 24.2-711, and 24.2-713 of the**
12 **Code of Virginia are amended and reenacted, and that the Code of Virginia**
13 **is amended by adding a section numbered 24.2-603.1, as follows:**

14 § 24.2-104. Requesting assistance for attorney for the Commonwealth;
15 investigative committees.

16 When the State Board is of the opinion that the public interest will be
17 served, it may request the Attorney General, or other attorney designated by the
18 Governor for the purpose, to assist the attorney for the Commonwealth of any
19 jurisdiction in which election laws have been violated. The Attorney General, or
20 the other attorney designated by the Governor, shall have full authority to do
21 whatever is necessary or appropriate to enforce the election laws or prosecute
22 violations thereof. When the State Board makes its request pursuant to a
23 unanimous vote of all members, the Attorney General or other attorney
24 designated by the Governor shall exercise the authority granted by this section to
25 conduct an investigation, prosecute a violation, assure the enforcement of the
26 elections laws, and report the results of the investigation to the State Board.

1 The attorney for the Commonwealth or a member of the electoral board of
2 any county or city may make a request, in writing, that the Attorney General
3 appoint a committee to make an immediate investigation of the election practices
4 in that city or county, accompanied by a statement under oath that substantial
5 violations of this title have allegedly occurred which may alter or have altered the
6 outcome of an election. On receipt of the request and statement, the Attorney
7 General shall forthwith appoint a committee of two or more persons qualified to
8 make the investigation. Members, officers, and employees of the Board, local
9 electoral boards, and registrars' offices shall not serve on the committee but may
10 provide assistance to the committee.

11 The Attorney General shall direct the committee to observe, investigate or
12 supervise the election if supervision appears necessary. The committee shall
13 make a preliminary report to the Attorney General within five days of its
14 appointment. If its report shows that violations of this title have occurred, the
15 Attorney General may, notwithstanding any other provision of law, authorize the
16 prosecution of those responsible for the violations.

17 § 24.2-419. Extended time for certain persons to register by mail.

18 Notwithstanding the provisions of § 24.2-416, the registration application
19 of the following persons are entitled to register by absentee application if they are
20 eligible to be registered and if, by reason of active duty or employment, they are
21 normally absent from the city or county in which they reside may accompany an
22 application for an absentee ballot and shall be on a form prescribed by the State
23 Board:

24 1. Any member of a uniformed service of the United States, as defined in
25 42 U.S.C. § 1973ff-6 (7), who is on active duty;

26 2. Any member of the merchant marine of the United States; and

1 3. ~~Any person who resides temporarily outside of the United States by~~
2 ~~virtue of his employment.~~

3 4. ~~Any spouse or dependent residing with a person listed in subdivisions~~
4 ~~1, or 2, and 3 of this section.~~

5 ~~Notwithstanding the provisions of § 24.2-416, the registration application~~
6 ~~from a person listed in subdivision 1 or 2 of the preceding paragraph, or his~~
7 ~~spouse or dependent, may accompany an application for an absentee ballot and~~
8 ~~shall be on a form prescribed by the State Board.~~

9 § 24.2-420.1. Extended time for certain persons to register in person.

10 A. Notwithstanding the provisions of § 24.2-416, the following persons
11 shall be entitled to register in person up to and including the day of the election:

12 1. Any member of a uniformed service of the United States, as defined in
13 42 U.S.C. § 1973ff-6 (7), who is on active duty;

14 2. Any member of the merchant marine of the United States;

15 3. Any person who resides temporarily outside of the United States ~~by~~
16 ~~virtue of his employment; and~~

17 4. Any spouse or dependent residing with a person listed in subdivision 1.,
18 2., or 3. of this subsection.

19 The provisions of this subsection shall apply only to those persons who
20 are otherwise qualified to register and who, by reason of such active duty or
21 employment temporary overseas residency, either (i) are normally absent from
22 the city or county in which they reside or (ii) have been absent from such city or
23 county and returned to reside there during the twenty-eight days immediately
24 preceding the election.

25 B. Notwithstanding the provisions of § 24.2-416, any person who was on
26 active duty as a member of a uniformed service of the United States and
27 discharged from the uniformed service during the sixty days immediately

1 preceding the election, and his spouse or dependent, shall be entitled to register,
2 if otherwise qualified, in person up to and including the day of the election.

3 C. The State Board shall prescribe procedures for the addition of persons
4 registered under this section to the lists of registered voters.

5 § 24.2-427. Cancellation of registration by voter or for persons known to
6 be deceased or disqualified to vote.

7 A. Any registered voter may cancel his registration and have his name
8 removed from the central registration records by signing an authorization for
9 cancellation and mailing or otherwise submitting the signed authorization to the
10 general registrar. When submitted by any means other than when notarized or in
11 person, such cancellation must be made at least twenty-nine days prior to an
12 election in order to be valid in that election. The general registrar shall
13 acknowledge receipt of the authorization and advise the voter in person or by
14 first-class mail that his registration has been canceled within ten days of receipt
15 of such authorization.

16 B. The general registrar shall cancel the registration of (i) all persons
17 known by him to be deceased or disqualified to vote by reason of a felony
18 conviction or adjudication of incapacity and (ii) all persons for whom a notice has
19 been received, signed by the voter or the registration official of another
20 jurisdiction, that the voter has moved from the Commonwealth. The notice
21 received in clause (ii) shall be considered as a written request from the voter to
22 have his registration cancelled. A voter's registration may be cancelled at any
23 time during the year in which the general registrar discovers that the person is no
24 longer entitled to be registered.

25 C. The general registrar may cancel the registration of any person for
26 whom a notice has been submitted to the Department of Motor Vehicles in
27 accordance with the Driver License Compact set out in Article 18 (§ 46.2-483 et

1 seq.) of Chapter 3 of Title 46.2 and forwarded to the general registrar, that the
2 voter has moved from the Commonwealth; provided that the registrar shall mail
3 notice of such cancellation to the person at both his new address, as reported to
4 the Department of Motor Vehicles, and the address at which he had most
5 recently been registered in Virginia. No general registrar may cancel registrations
6 under this authority while the registration records are closed pursuant to § 24.2-
7 416. No registrar may cancel the registration under this authority of any person
8 entitled to register ~~absentee~~ under the provisions of subsection A of § 24.2-419
9 24.2-420.1, and shall reinstate the registration of any otherwise qualified voter
10 covered by subsection A of § 24.2-419 24.2-420.1 who applies to vote within four
11 years of the date of cancellation.

12 § 24.2-603.1. Postponement of certain elections; state of emergency.

13 For purposes of this section, "election" means any local or state
14 referendum, any primary, special, or general election for local or state office
15 except for Governor, Lieutenant Governor, Attorney General and the General
16 Assembly, or any federal special election to fill a vacancy in the United States
17 Senate or the United States House of Representatives. In the event of a state of
18 emergency declared by the Governor pursuant to Chapter 3.2 (§ 44-146.13 et
19 seq.) of Title 44 or declared by the President of the United States or the governor
20 of another state pursuant to law and confirmed by the Governor by an executive
21 order, the Governor may postpone an election by executive order in areas
22 affected by the emergency to a date not to exceed fourteen days from the
23 original date of the election.

24 If a local governing body determines that a longer postponement is
25 required, it may petition a three-judge panel of the Virginia Supreme Court, to
26 include the Chief Justice as the presiding Justice, for an extension. The Chief
27 Justice shall choose the other two Justices by lot. The Court may postpone the

1 election to a date it deems appropriate, not to exceed thirty days from the original
2 date of the election.

3 Only those persons duly registered to vote as of the original date of the
4 election shall be entitled to vote in the rescheduled election. The Governor shall
5 specify whether votes previously cast by machinery or paper need to be recast
6 on the rescheduled election date. If the Governor determines that absentee
7 ballots do not need to be recast, any absentee ballots duly cast and received by
8 the original election date shall be valid and counted when determining the results
9 of the rescheduled election. Any person who was duly registered to vote as of the
10 original date of the election, and who has not voted absentee, may vote by
11 absentee ballot in accordance with the provisions of Chapter 7 (§ 24.2-700 et
12 seq.) of this title in the rescheduled election.

13 No results shall be tallied or votes counted in any postponed election
14 before the closing of the polls on the rescheduled election date. Officers of
15 election in unaffected areas shall count and report the results for the postponed
16 election after the close of the polls on the rescheduled election date. The
17 counting may take place at the precinct or another location determined by the
18 local electoral board.

19 § 24.2-611. Form and signing of pollbooks; use of precinct registered voter
20 lists.

21 A. The following oath shall be on a form prescribed by the State Board,
22 administered to all officers of election, and kept by the officers of election with the
23 pollbook:

24 "I do solemnly swear (or affirm) that I will perform the duties for this
25 election according to law and the best of my ability, and that I will studiously
26 endeavor to prevent fraud, deceit, and abuse in conducting this election."

1 The oath shall be administered to each officer of election by the general
2 registrar, ~~the secretary~~ a member of the electoral board, or an officer of election
3 designated by ~~them~~ the general registrar and secretary of the electoral board,
4 who shall be so identified on the form. The oath shall be signed by each officer of
5 election and the person administering the oath. The pollbook shall be marked to
6 identify the election for which it is used.

7 B. The State Board shall provide a second or a divisible precinct
8 registered voter list to serve as the pollbook for elections conducted on and after
9 July 1, 1995. The second or divisible list shall (i) provide a space for the officer of
10 election to record the name and consecutive number of the voter at the time he
11 offers to vote and (ii) be retained in accordance with the provisions governing
12 pollbooks in this title. The State Board shall provide a numerical check sheet to
13 be used to determine the consecutive number to be recorded with the name of
14 the voter by the officer of election. When the name and number of the last
15 qualified voter have been entered on the registered voter list, the officer of
16 election responsible for that list shall sign a statement on the check sheet
17 certifying the number of qualified registrants who have voted. The State Board
18 shall provide instructions to the local electoral boards, general registrars, and
19 officers of election for the conduct of the election and for procedures for entering
20 a voting record for each voter and recording each voter's name, including voters
21 unable to enter the polling place, and for verifying the accurate entry of the voting
22 record for each registrant on the Virginia Voter Registration System.

23 C. The State Board shall be authorized to conduct pilot programs in one or
24 more localities, with the consent of the electoral board of the locality, to test the
25 use of a combined precinct registered voter list and pollbook, notwithstanding
26 any other provision of law to the contrary. The pilot programs authorized by this
27 subsection may be conducted at any election held prior to July 1, 2003. Any pilot

1 program conducted by the State Board shall incorporate safeguards to assure
2 that the records of the election, including a combined precinct registered voter list
3 and pollbook, voter count sheets, or other alternative records, will provide
4 promptly an accurate and secure record of those who have voted. The State
5 Board shall report its evaluation of any pilot programs conducted by it and any
6 recommendations for legislation as a result of the programs to any committee
7 established by the General Assembly for the purpose of studying the use of a
8 combined precinct registered voter list and pollbook and to the General Assembly
9 prior to the 2003 Regular Session.

10 § 24.2-700. Persons entitled to vote by absentee ballot.

11 The following registered voters may vote by absentee ballot in accordance
12 with the provisions of this chapter in any election in which they are qualified to
13 vote:

14 1. Any person who, in the regular and orderly course of his business,
15 profession, or occupation or while on personal business or vacation, will be
16 absent from the county or city in which he is entitled to vote;

17 2. Any person who is (i) a member of a uniformed service of the United
18 States, as defined in 42 U.S.C. § 1973ff-6(7), on active duty, or (ii) a member of
19 the merchant marine of the United States, or (iii) ~~regularly employed in a~~
20 ~~business, profession or occupation outside the continental limits of the United~~
21 States who temporarily resides outside of the United States, or (iv) the spouse or
22 dependent residing with any person listed in (i), (ii), or (iii), and who will be
23 absent on the day of the election from the county or city in which he is entitled to
24 vote;

25 3. Any student attending a school or institution of learning, or his spouse,
26 who will be absent on the day of election from the county or city in which he is
27 entitled to vote;

1 4. Any person who is unable to go in person to the polls on the day of
2 election because of a physical disability or physical illness;

3 5. Any person who is confined while awaiting trial or for having been
4 convicted of a misdemeanor, provided that the trial or release date is scheduled
5 on or after the third day preceding the election. Any person who is awaiting trial
6 and is a resident of the county or city where he is confined shall, on his request,
7 be taken to the polls to vote on election day if his trial date is postponed and he
8 did not have an opportunity to vote absentee;

9 6. Any person who is a member of an electoral board, registrar, officer of
10 election, or custodian of voting equipment;

11 7. Any duly registered person who is unable to go in person to the polls on
12 the day of the election because he is primarily and personally responsible for the
13 care of an ill or disabled family member who is confined at home;

14 8. Any duly registered person who is unable to go in person to the polls on
15 the day of the election because of an obligation occasioned by his religion; or

16 9. Any person who, in the regular and orderly course of his business,
17 profession, or occupation, will be at his place of work and commuting to and from
18 his home to his place of work for eleven or more hours of the thirteen hours that
19 the polls are open pursuant to § 24.2-603.

20 § 24.2-701. Application for absentee ballot.

21 A. The State Board shall furnish each general registrar with a sufficient
22 number of applications for official absentee ballots. The registrars shall furnish
23 applications to persons requesting them.

24 Beginning with the general election in November 1999, the State Board
25 shall implement a system ~~which~~ that enables eligible persons to request and
26 receive an absentee ballot application electronically through the global

1 information system known as the Internet. Electronic absentee ballot applications
2 shall be in a form approved by the State Board.

3 Except as provided in § 24.2-703, a separate application shall be
4 completed for each election in which the applicant offers to vote. An application
5 for an absentee ballot may be accepted the later of (i) twelve months before an
6 election, or (ii) the day following any election held in the twelfth month prior to the
7 election in which the applicant is applying to vote.

8 Any application received before the ballots are printed shall be held and
9 processed as soon as the printed ballots for the election are available.

10 For the purposes of this chapter, the general registrar's office shall be
11 open a minimum of eight hours between the hours of 8:00 a.m. and 5:00 p.m. on
12 the first and second Saturday immediately preceding all general elections, except
13 May general elections held in towns, and on the Saturday immediately preceding
14 any primary election, May general election held in a town, or special election.

15 Unless physically disabled, all applications for absentee ballots shall be
16 signed by the applicant who shall state, subject to felony penalties for making
17 false statements pursuant to § 24.2-1016, that to the best of his knowledge and
18 belief the facts contained in the application are true and correct and that he has
19 not and will not vote in the election at any other place in Virginia or in any other
20 state. If the applicant is unable to sign the application, a person assisting the
21 applicant will note this fact on the applicant signature line and provide his
22 signature, name, and address.

23 B. Applications for absentee ballots shall be completed in the following
24 manner:

25 1. An application completed in person shall be made not less than three
26 days prior to the election in which the applicant offers to vote and completed only
27 in the office of the general registrar. The applicant shall sign the application in the

1 presence of a registrar or ~~the secretary~~ a member of the electoral board. The
2 applicant shall provide one of the forms of identification specified in subsection B
3 of § 24.2-643, or if he is unable to present one of the forms of identification listed
4 in that section, he shall sign a statement, subject to felony penalties for making
5 false statements pursuant to § 24.2-1016, that he is the named registered voter
6 who he claims to be. An applicant who requires assistance in voting by reason of
7 physical disability or inability to read or write may request assistance pursuant to
8 § 24.2-649 and be assisted in preparation of this statement in accordance with
9 that section. The provisions of § 24.2-649 regarding persons who are unable to
10 sign shall be followed when assisting an applicant in completing this statement.

11 2. Any other application may be made by mail, electronic or telephonic
12 transmission to a facsimile device if one is available to the office of the general
13 registrar or the office of the State Board if a device is not available locally, or
14 other means. The application shall be on a form furnished by the registrar or, if
15 made under subdivision 2 of § 24.2-700, may be on a Federal Post Card
16 Application prescribed pursuant to 42 U.S.C. § 1973ff (b) (2). The Federal Post
17 Card Application may be accepted the later of (i) twelve months before an
18 election, or (ii) the day following any election held in the twelfth month prior to the
19 election in which the applicant is applying to vote. The application shall be made
20 to the appropriate registrar not less than five days prior to the election in which
21 the applicant offers to vote.

22 C. Applications for absentee ballots shall contain the following information:

23 1. The applicant's printed name and the reason the applicant will be
24 absent or cannot vote at his polling place on the day of the election;

25 2. A statement that he is registered in the county or city in which he offers
26 to vote and his residence address in such county or city. Any person temporarily
27 residing outside the United States shall provide the last date of residency at his

1 Virginia residence address, if that residence is no longer available to him. Any
2 person who makes application under subdivision 2 of § 24.2-700 who is not a
3 registered voter ~~and who is entitled to register by absentee application pursuant~~
4 ~~to § 24.2-419~~, may file the applications to register and for a ballot simultaneously;

5 3. The complete address to which the ballot is to be sent directly to the
6 applicant, provided that the application is not made in person at a time when the
7 printed ballots for the election are available. The address given shall be either the
8 address of the applicant on file in the registration records or the address at which
9 he will be located while absent from his county or city. No ballot shall be sent to,
10 or in care of, any other person; and

11 4. In the case of a person, or the spouse or dependent of a person, who is
12 on active service as a member of the armed forces of the United States or a
13 member of the merchant marine of the United States, the branch of service to
14 which he or the spouse belongs, and his or the spouse's rank, grade, or rate, and
15 service identification number; or

16 5. In the case of a person, or the spouse or dependent accompanying
17 such person, who is regularly employed outside the continental limits of the
18 United States, the name and address of his employer; or

19 6. In the case of a student, or the spouse of a student, who is attending a
20 school or institution of learning, the name and address of the school or institution
21 of learning; or

22 7. In the case of a person who is unable to go in person to the polls on the
23 day of the election because of a physical disability or physical illness, the nature
24 of the illness or disability; or

25 8. In the case of a person who is confined awaiting trial or for having been
26 convicted of a misdemeanor, the name and address of the institution of
27 confinement; or

1 9. In the case of a person who will be absent on election day for business
2 reasons, the name of his employer or business; or

3 10. In the case of a person who will be absent on election day for personal
4 business or vacation reasons, the name of the county or city in Virginia or the
5 state or country to which he is traveling; or

6 11. In the case of a person who is unable to go to the polls on the day of
7 election because he is primarily and personally responsible for the care of an ill
8 or disabled family member who is confined at home, the name of the family
9 member and the nature of his illness or disability; or

10 12. In the case of a person who is unable to go to the polls on the day of
11 election because of an obligation occasioned by his religion, his religion and the
12 nature of the obligation; or

13 13. In the case of a person who, in the regular and orderly course of his
14 business, profession, or occupation, will be at his place of work and commuting
15 to and from his home to his place of work for eleven or more hours of the thirteen
16 hours that the polls are open pursuant to § 24.2-603, the name of his business or
17 employer, address of his place of work, and hours he will be at the workplace
18 and commuting on election day.

19 § 24.2-702.1. Federal write-in absentee ballots.

20 A. Notwithstanding any other provision of this title, a qualified absentee
21 voter who is eligible for an absentee ballot under subdivision 2 of § 24.2-700 may
22 use a federal write-in absentee ballot in general, special, and primary elections
23 for federal office. Such ballot shall be submitted and processed in the manner
24 provided by the Uniformed and Overseas Citizens Absentee Voting Act (42
25 U.S.C. § 1973ff et seq.) and this article.

26 B. Notwithstanding any other provision of this title, a federal write-in
27 absentee ballot submitted pursuant to subsection A shall be considered valid for

1 purposes of simultaneously satisfying both an absentee ballot application and a
2 completed absentee ballot for federal offices only, provided that the ballot is
3 received not less than five days prior to the election in which voter offers to vote,
4 and the application on the envelope contains the following information: (i) the
5 voter's signature, however, if unable to sign the person assisting the voter will
6 note this fact in the voter signature box; (ii) the voter's printed name; (iii) the
7 county or city in which he is registered and offers to vote; (iv) the residence
8 address at which he is registered to vote; and (v) his current military or overseas
9 address. The envelope must be witnessed, and the witness shall provide his
10 signature, printed name and address in the witness signature box.

11 § 24.2-706. Duty of general registrar and electoral board on receipt of
12 application; statement of voter.

13 On receipt of an application for an absentee ballot, the general registrar
14 shall enroll the name and address of each registered applicant on an absentee
15 voter applicant list that shall be maintained in the office of the general registrar
16 with a file of the applications of the listed applicants. The list and the applications
17 shall be available for inspection and copying by any registered voter during
18 regular office hours.

19 No list or application containing an individual's social security number shall
20 be made available for inspection or copying by anyone. The State Board of
21 Elections shall prescribe procedures for local electoral boards and general
22 registrars to make the information in the lists and applications available in a
23 manner that does not reveal social security numbers.

24 The completion and timely delivery of an application for an absentee ballot
25 shall be construed to be an offer by the applicant to vote in the election.

26 The general registrar shall note on each application received whether the
27 applicant is or is not a registered voter and notify the secretary of the electoral

1 board. In reviewing the application for an absentee ballot, the general registrar
2 and electoral board shall not reject the application of any individual because of
3 an error or omission on any record or paper relating to the application, if such
4 error or omission is not material in determining whether such individual is
5 qualified to vote absentee.

6 If the application has been properly completed and signed and the
7 applicant is a registered voter of the precinct in which he offers to vote, the
8 electoral board shall immediately send to the applicant by mail, obtaining a
9 certificate of mailing, or deliver to him in person in the office of the secretary or
10 registrar, the following items and nothing else:

11 1. An envelope containing the folded ballot, sealed and marked "Ballot
12 within. Do not open except in presence of a witness."

13 2. An envelope, with printing only on the flap side, for resealing the
14 marked ballot, on which envelope is printed the following:

15
16 "Statement of Voter."
17 "Statement of Voter."
18 "I do hereby state, subject to felony penalties for making false
19 statements
20 pursuant to § 24.2-1016, that my full name is
21 (last, first,
22 middle); that I am now or have been at some time since ~~the~~ last
23 ~~November~~ November's general election a legal resident of
24 (house number, street name or rural route
25 address, city, zip code); that I received the enclosed ballot(s)
26 upon application to the registrar of such county or city; that I
27 opened the envelope marked 'ballot within' and marked the
28 ballot(s) in the presence of the witness, without assistance or
29 knowledge on the part of anyone as to the manner in which I
30 marked it (or I am returning the form required to report how I
31 was assisted); that I then sealed the ballot(s) in this envelope;
32 and that I have not voted and will not vote in this election at
33 any other time or place.
34 Signature of Voter
35 Date
36 Signature of witness"

1 3. A properly addressed envelope for the return of the ballot to the
2 electoral board by mail or by the applicant in person.

3 4. Printed instructions for completing the ballot and statement on the
4 envelope and returning the ballot.

5 The envelopes and instructions shall be in the form prescribed by the
6 State Board.

7 If the applicant makes his application to vote in person under § 24.2-701
8 at a time when the printed ballots for the election are available, the general
9 registrar or the secretary of the electoral board, on the determination of the
10 qualifications of the applicant to vote, shall provide to the applicant the items set
11 forth in subdivisions 1 through 4 ~~above~~ and no item shall be removed by the
12 applicant from the office of the general registrar or the secretary of the electoral
13 board.

14 If the applicant states as the reason for his absence on election day any of
15 the reasons set forth in subdivision 2 of § 24.2-700, the electoral board shall mail
16 or deliver in person to the applicant in the office of the secretary or general
17 registrar, the items as set forth in subdivisions 1 through 4 ~~above~~ and, if
18 necessary, an application for registration pursuant to ~~§ 24.2-419~~. A certificate of
19 mailing shall not be required.

20 When the statement prescribed in subdivision 2 ~~above~~ has been properly
21 completed and signed by the registered voter and witnessed, his ballot shall not
22 be subject to challenge pursuant to § 24.2-651.

23 § 24.2-707. How ballots marked and returned by mail; cast in person; cast
24 on voting equipment.

25 On receipt of a mailed absentee ballot, the voter shall, in the presence of a
26 witness, (i) open the sealed envelope marked "ballot within" and (ii) mark and
27 refold the ballot, as provided in §§ 24.2-644 and 24.2-646 without assistance and

1 without making known how he marked the ballot, except as provided by § 24.2-
2 704.

3 After the voter has marked his absentee ballot, he shall ~~(i)~~(a) enclose the
4 ballot in the envelope provided for that purpose, ~~(ii)~~(b) seal the envelope, ~~(iii)~~(c)
5 fill in and sign the statement printed on the back of the envelope in the presence
6 of a witness, who shall sign the same envelope, ~~(iv)~~(d) enclose the ballot
7 envelope and any required assistance form within the envelope directed to the
8 electoral board, and ~~(v)~~(e) seal that envelope and mail it to the office of the
9 electoral board or deliver it personally to the electoral board or the general
10 registrar.

11 An applicant who makes his application to vote in person at a time when
12 the printed ballots for the election are available shall follow the same procedure
13 set forth above except that he shall complete the procedure in person in the
14 office of the general registrar or secretary of the electoral board, or at another
15 location or locations in the county or city approved by the electoral board, before
16 a registrar, ~~the secretary~~ or a member of the electoral board, or, if a ballot is cast
17 at that time, before the officers of election appointed by the electoral board. Any
18 such location shall be in a public building owned or leased by the city, the county,
19 or a town within the county, with adequate facilities for the protection of all
20 records concerning the absentee voters, the absentee ballots, both voted and
21 unvoted, and any voting equipment in use at the location. Such location may be
22 in a facility owned or leased by the Commonwealth and used as a location for
23 Department of Motor Vehicles facilities and for an office of the general registrar.
24 Such location shall be deemed the equivalent of the office of the general registrar
25 or secretary of the electoral board for the purpose of completing the application
26 for an absentee ballot in person pursuant to §§ 24.2-701 and 24.2-706.

1 Failure to follow the procedures set forth above shall render the applicant's
2 ballot void.

3 The electoral board of any county or city using a central absentee voting
4 precinct may provide for the casting of absentee ballots on voting equipment
5 prior to election day by applicants who are voting in person. The State Board
6 shall prescribe procedures for the use of voting equipment. The procedures shall
7 provide for the casting of absentee ballots prior to election day by in-person
8 applicants on voting equipment which has been certified, and is currently
9 approved, by the State Board. The procedures shall be applicable and uniformly
10 applied by the State Board to all jurisdictions using comparable voting
11 equipment. At least two officers of election, one representing each political party,
12 shall be present during all hours that absentee voting is available at any location
13 at which absentee ballots are cast prior to election day.

14 The requirement that officers of election shall be present if ballots are cast
15 on voting equipment prior to election day shall not be applicable when the voting
16 equipment is located in the office of the general registrar or secretary of the
17 electoral board and the general registrar, an assistant registrar, or the secretary
18 of the electoral board is present.

19 § 24.2-709. Ballot to be returned in manner prescribed by law.

20 Any ballot returned to the office of the electoral board or general registrar
21 in any manner except as prescribed by law, shall be void. Absentee ballots shall
22 be returned to the electoral board or general registrar in time to be delivered to
23 the officers of election before the closing of the polls. The board member or
24 registrar receiving the ballot shall mark on each envelope the date, time, and
25 manner of delivery. For all ballots returned by the general registrar to the
26 electoral board, the board shall give to the general registrar a receipt showing the
27 time and date of the return.

1 § 24.2-711. Duties of officers of election.

2 Before the polls open, the officers of election at each precinct shall mark,
3 for each person on the absentee voter applicant list, the letters "AB" (meaning
4 absentee ballot) in the voting record column on the precinct registered voter list.
5 The list may be so marked prior to election day by the general registrar, the
6 secretary of the electoral board, or staff under the direction of the general
7 registrar or the secretary. If the list has been marked prior to election day, before
8 the polls open the officers of election at each precinct shall check the marks for
9 accuracy and make any additions or corrections required.

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

13 If a voter, whose name appears on the absentee voter applicant list, has
14 not returned an unused ballot and offers to vote in his precinct, the officers of
15 election in the precinct shall determine the matter pursuant to § 24.2-708 or, if
16 the locality has a central absentee voter precinct, shall refuse to give him a ballot
17 and shall refer him to the officers of the absentee precinct for an appeal pursuant
18 to § 24.2-712.

19 After the close of the polls, the container of absentee ballots shall be
20 opened by the officers of election. As each ballot envelope is removed from the
21 container, the name of the voter shall be called and checked as if the voter were
22 voting in person. If the voter is found entitled to vote, his name shall be entered in
23 the pollbook. The ballot envelope shall then be opened, and the ballot deposited
24 in the ballot box without being unfolded or examined. If the voter is found not
25 entitled to vote, the unopened envelope shall be rejected. A majority of the
26 officers shall write and sign a statement of the cause for rejection on the
27 envelope or on an attachment to the envelope.

Constitutional Amendment (first resolution); postponement of elections.
Allows the General Assembly to provide by law for the postponement of elections due to an emergency. Because the Constitution requires that elections for Governor, Lieutenant Governor, Attorney General and General Assembly members be held on the first Tuesday following the first Monday in November, these elections cannot be postponed by law. Times for primaries, special elections, general elections for local or constitutional office and referenda and elections for federal office to fill vacancies in the United States Senate or the United States House of Representatives are currently set by law and can be postponed without a constitutional amendment. This bill is a recommendation of the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies (HJR681/SJR 363 -- 2001).

1 Proposing an amendment to the Constitution of Virginia by adding in Article II a
2 section numbered 10, relating to the postponement of elections.

3 RESOLVED by the House of Delegates, the Senate concurring, a majority
4 of the members elected to each house agreeing, That the following amendment
5 to the Constitution of Virginia be, and the same hereby is, proposed and referred
6 to the General Assembly at its first regular session held after the next general
7 election of members of the House of Delegates for its concurrence in conformity
8 with the provisions of Section 1 of Article XII of the Constitution of Virginia,
9 namely:

10 Amend Article II of the Constitution of Virginia by adding a section
11 numbered 10 as follows:

12 ARTICLE II

13 FRANCHISE AND OFFICERS

14 Section 10. Postponement of elections.

15 The General Assembly may provide by law for the postponement of any
16 election due to an emergency subject to conditions and time limits as defined by
17 law.

18 #

SUMMARY

Recount proceedings. Provides that issues of voter eligibility will not be considered in a recount and that rejected conditional and absentee ballots will not be reexamined. The bill provides for a single recount or redetermination of the vote in a recount proceeding and spells out recount steps related to differing types of ballots and voting devices. In the case of optical scan and punchcard tabulators, the printed return sheets shall be accepted unless they are not clear or the court orders a further count. If a further count is ordered, the tabulator shall be programmed to set aside write-in votes, overvotes, and undervotes. The ballots thus set aside and other ballots rejected by the tabulator (e.g. damaged ballots) will be counted by hand. This bill incorporates recommendations of the Joint Subcommittee Studying Virginia's Election Process and Voting Technologies (HJR 681/SJR 363 -- 2001).

1 A BILL to amend and reenact § 24.2-802 of the Code of Virginia, relating to
2 election recount procedures.

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

4 **1. That § 24.2-802 of the Code of Virginia is amended and reenacted as**
5 **follows:**

6 § 24.2-802. Procedure for recount.

7 A. ~~On or before September 1, 2001, the~~ The State Board of Elections shall
8 promulgate standards for (i) the proper handling and security of voting and
9 counting devices, ballots, and other materials required for a recount, (ii) accurate
10 determination of votes based upon objective evidence and taking into account
11 the counting device and form of ballots approved for use in the Commonwealth,
12 and (iii) any other matters that will promote a timely and accurate resolution of
13 the recount. The chief judge of the circuit court or the full recount court may,
14 consistent with State Board of Elections standards, resolve disputes over the
15 application of the standards and direct all other appropriate measures to ensure
16 the proper conduct of the recount.

17 The recount procedures to be followed throughout the election district
18 shall be as uniform as practicable, taking into account the types of ballots and
19 voting devices in use in the election district.

20 B. Within seven days of the filing of the petition, the chief judge of the
21 circuit court shall call a preliminary hearing at which (i) motions may be disposed
22 of and (ii) the rules of procedure may be fixed, both subject to review by the full
23 court. As part of the preliminary hearing, the chief judge may permit the petitioner
24 and his counsel, together with each other party and his counsel and at least two
25 members of the electoral board and the custodians, to examine any mechanical
26 or direct electronic voting device of the type that prints returns when the print-out

1 sheets are not clearly legible. The petitioner and his counsel and each other
2 party and their counsel under supervision of the electoral board and its agents
3 shall also have access to pollbooks and other materials used in the election for
4 examination purposes, provided that individual ballots cast in the election shall
5 not be examined at the preliminary hearing. The chief judge during the
6 preliminary hearing shall review all security measures taken for all ballots and
7 voting devices and direct, as he deems necessary, all appropriate measures to
8 ensure proper security to conduct the recount.

9 The chief judge, subject to review by the full court, may set the place or
10 places for the recount and may order the delivery of election materials to a
11 central location and the transportation of voting devices to a central location in
12 each county or city under appropriate safeguards.

13 After the full court is appointed under § 24.2-801, it shall call a hearing at
14 which all motions shall be disposed of and the rules of procedure shall be fixed
15 finally. The court shall call for the advice and cooperation of the State Board or
16 any local electoral board, as appropriate, and such boards shall have the duty
17 and authority to assist the court. The court shall fix procedures that shall provide
18 for the accurate determination of votes in the election.

19 The determination of the votes in a recount shall be based on votes cast in
20 the election and shall not take into account (a) any absentee ballots or
21 conditional ballots sought to be cast but ruled invalid and not cast in the election,
22 (b) ballots cast only for administrative or test purposes and voided by the officers
23 of election, or (c) ballots spoiled by a voter and replaced with a new ballot.

24 The eligibility of any voter to have voted shall not be an issue in a recount.
25 Commencing upon the filing of the recount, nothing shall prevent the discovery or

1 disclosure of any evidence that could be used pursuant to § 24.2-803 in
2 contesting the results of an election.

3 C. The court shall permit each candidate, or petitioner and governing body
4 or chief executive officer, to select an equal number of the officers of election to
5 be recount officials and to count ballots, or in the case of mechanical or direct
6 electronic voting devices to redetermine the vote. The number shall be fixed by
7 the court and be sufficient to conduct the recount within a reasonable period. The
8 court may permit each party to the recount to submit a list of alternate officials in
9 the number the court directs. There shall be at least one team of recount officials
10 to recount paper ballots and to redetermine the vote cast on mechanical or direct
11 electronic devices of the type that prints returns for the election district at large in
12 which the recount is being held. There shall be at least one team from each
13 locality in the election district to redetermine the vote on other types of
14 mechanical voting devices. There shall be at least one team from each locality
15 using electronic counting devices to insert the ballots into one or more counting
16 devices. The counting devices shall be programmed to count only votes cast for
17 parties to the recount or for or against the question in a referendum recount.
18 Each team shall be composed of one representative of each party.

19 The court may provide that if, at the time of the recount, any recount
20 official fails to appear, the remaining recount officials present shall appoint
21 substitute recount officials who shall possess the same qualifications as the
22 recount officials for whom they substitute. The court may select pairs of recount
23 coordinators to serve for each county or city in the election district who shall be
24 members of the county or city electoral board and represent different political
25 parties. The court shall have authority to summon such officials and coordinators.
26 On request of a party to the recount, the court shall allow each party to appoint

1 one representative observer for each team of recount officials. The expenses of
2 its representatives shall be borne by each party.

3 D. The court (i) shall supervise the recount and (ii) may require delivery of
4 any or all pollbooks used, and any or all ballots cast at the election, and absentee
5 ballots ~~sought to be cast but ruled invalid~~ or may assume supervision thereof
6 through the recount coordinators and officials.

7 ~~In the case of ballots voted by insertion into electronic counting devices,
8 the court shall order that the devices be programmed, if possible, to identify
9 ballots on which the device detected that a voter voted for a lesser number of
10 candidates for an office than the number he was lawfully entitled to vote and
11 ballots on which a voter voted for a greater number of candidates than the
12 number he was lawfully entitled to vote, and that all ballots be reinserted in the
13 counting device to separate such undervoted and overvoted ballots. The court
14 shall permit the parties, recount officials, and counsel to examine all paper ballots
15 cast in the election, ballots cast on mechanical voting devices, undervoted and
16 overvoted ballots counted on electronic counting devices, and all absentee
17 ballots sought to be cast but ruled invalid, for the purpose of ascertaining the
18 number of ballots cast for each of the party candidates or for or against the
19 question. At the conclusion of the recount of each precinct, the recount officials
20 shall write down (a) in the case of mechanical or direct electronic voting devices
21 the redetermination of the vote and (b) the number of valid ballots cast, this
22 number being obtained from the ballots cast in the precinct, or from the ballots
23 cast as shown on the statement of results if the ballots cannot be found, for each
24 of the two candidates or for and against the question. They shall submit the
25 ballots or the statement of results used, as to the validity of which questions
26 exist, to the court. The written statement of any one recount official challenging a~~

1 ~~ballot shall be sufficient to require its submission to the court. If, on all~~
2 ~~mechanical or direct electronic voting devices, the number of persons voting in~~
3 ~~the election, or the number of votes cast for the office or on the question, totals~~
4 ~~more than the number of names on the pollbooks of persons voting on the~~
5 ~~devices, the figures recorded by the devices shall be accepted as correct.~~

6 ~~Where punch card voting devices are used, the machine count shall be~~
7 ~~the official count and shall be attempted first. Where the prescribed counting~~
8 ~~machine will not accept an individual ballot, the following standards shall apply in~~
9 ~~determining whether a ballot has been properly voted and should be counted for~~
10 ~~the office for which the recount is conducted. A chad is the small piece of a~~
11 ~~punch card ballot that, when removed by the voter in the voting process, leaves a~~
12 ~~hole that is recognizable by a ballot tabulating machine. A ballot on which the~~
13 ~~chad indicating the selection of a candidate is broken or separated from the card~~
14 ~~at two or more corners shall be deemed a vote and counted; a chad on which~~
15 ~~only one corner is broken or separated from the card shall not be considered a~~
16 ~~vote. No other depression, dimple, or other mark on the ballot shall be counted~~
17 ~~as a vote. When a voter casts a vote for a greater number of candidates than the~~
18 ~~number for which he was lawfully entitled to vote, it shall be deemed an overvote~~
19 ~~and no vote shall be counted for any candidate for that office. On any ballot on~~
20 ~~which two or more corners of the chad indicating the selection of a candidate~~
21 ~~have been broken or separated from the card and the voter has also cast a vote~~
22 ~~for another candidate for the same office, the partially punched chad also shall~~
23 ~~be deemed a vote and, if the voter has cast more votes than the number for~~
24 ~~which he was lawfully entitled to vote, the ballot shall be deemed an overvote for~~
25 ~~that office.~~

26 The redetermination of the vote in a recount shall be conducted as follows:

1 1. For paper ballots, the recount officials shall hand count the ballots
2 using the standards promulgated by the State Board pursuant to subsection A.

3 2. For mechanical lever machines without printouts, the recount officials
4 shall open the machines and read the counters.

5 3. For mechanical lever machines with printouts and direct recording
6 electronic machines (DREs), the recount officials shall open the envelopes with
7 the printouts and read the results from the printouts. If the printout is not clear, or
8 on the request of the court, the recount officials shall rerun the printout from the
9 machine or examine the counters as appropriate.

10 4. For optical scan tabulators, the recount officials shall first examine the
11 printout to redetermine the vote. Only if the printout is not clear, or on the request
12 of the court, the recount officials shall rerun all the ballots through a tabulator
13 programmed to count only the votes for the office or issue in question in the
14 recount and to set aside all ballots containing write-in votes, overvotes, and
15 undervotes. The ballots that are set aside and any ballots not accepted by the
16 tabulator shall be hand counted using the standards promulgated by the State
17 Board pursuant to subsection A.

18 5. For punchcard tabulators, the recount officials shall first examine the
19 printout to redetermine the vote. Only if the printout is not clear, or on the request
20 of the court, the recount officials shall rerun all the ballots through a tabulator
21 programmed to count only the votes for the office or issue in question in the
22 recount and to set aside all ballots containing write-in votes and, if possible,
23 overvotes and undervotes. The ballots that are set aside and any ballots not
24 accepted by the tabulator shall be hand counted using the standards
25 promulgated by the State Board pursuant to subsection A and the standards set
26 forth in this subdivision. The following standards shall apply in determining

1 whether a ballot has been properly voted and should be counted. A chad is the
2 small piece of a punch card ballot that, when removed by the voter in the voting
3 process, leaves a hole that is recognizable by a ballot tabulator. A ballot on which
4 the chad indicating the selection of a candidate or position on an issue is broken
5 or separated from the card at two or more corners shall be deemed a vote and
6 counted; a chad on which only one corner is broken or separated from the card
7 shall not be considered a vote. No other depression, dimple, or other mark on the
8 ballot shall be counted as a vote. On any ballot on which two or more corners of
9 the chad indicating the selection of a candidate or position have been broken or
10 separated from the card and the voter has also cast a vote for another candidate
11 for the same office or position on the same issue, the partially punched chad also
12 shall be deemed a vote and, if the voter has cast more votes than the number for
13 which he was lawfully entitled to vote, the ballot shall be deemed an overvote
14 and shall not be counted with respect to that office or issue.

15 There shall be only one redetermination of the vote in each precinct.

16 At the conclusion of the recount of each precinct, the recount officials shall
17 write down the number of valid ballots cast, this number being obtained from the
18 ballots cast in the precinct, or from the ballots cast as shown on the statement of
19 results if the ballots cannot be found, for each of the two candidates or for and
20 against the question. They shall submit the ballots or the statement of results
21 used, as to the validity of which questions exist, to the court. The written
22 statement of any one recount official challenging a ballot shall be sufficient to
23 require its submission to the court. If, on all mechanical or direct electronic voting
24 devices, the number of persons voting in the election, or the number of votes
25 cast for the office or on the question, totals more than the number of names on

1 the pollbooks of persons voting on the devices, the figures recorded by the
2 devices shall be accepted as correct.

3 At the conclusion of the recount of all precincts, after allowing the parties
4 to inspect the questioned ballots, and after hearing arguments, the court shall
5 rule on the validity of all questioned ballots and votes. After determining all
6 matters pertaining to the recount and redetermination of the vote as raised by the
7 parties, the court shall certify to the State Board and the electoral board or
8 boards (4a) the vote for each party to the recount and declare the person who
9 received the higher number of votes to be nominated or elected, as appropriate,
10 or (2b) the votes for and against the question and declare the outcome of the
11 referendum.

12 E. Costs of the recount shall be assessed against the counties and cities
13 comprising the election district when (i) the candidate petitioning for the recount
14 is declared the winner; (ii) the petitioners in a recount of a referendum win the
15 recount; or (iii) there was between the candidate apparently nominated or elected
16 and the candidate petitioning for the recount a difference of not more than one-
17 half of one percent of the total vote cast for the two such candidates as
18 determined by the State Board or electoral board prior to the recount. Otherwise
19 the costs of the recount shall be assessed against the candidate petitioning for
20 the recount or the petitioners in a recount of a referendum. If more than one
21 candidate petitions for a recount, the court may assess costs in an equitable
22 manner between the counties and cities and any such candidate if both are liable
23 for costs under this subsection. Costs incurred to date shall be assessed against
24 any candidate or petitioner who defaults or withdraws his petition.

25 F. The court shall determine the costs of the recount subject to the
26 following limitations: (i) no per diem payment shall be assessed for salaried

1 election officials; (ii) no per diem payment to officers of election serving as
2 recount officials shall exceed two-thirds of the per diem paid such officers by the
3 county or city for service on election day; and (iii) per diem payments to
4 alternates shall be allowed only if they serve.

5 G. Any petitioner who may be assessed with costs under subsection E of
6 ~~this section~~ shall post a bond with surety with the court in the amount of ten
7 dollars per precinct in the area subject to recount. If the petitioner wins the
8 recount, the bond shall not be forfeit. If the petitioner loses the recount, the bond
9 shall be forfeit only to the extent of the assessed costs. If the assessed costs
10 exceed the bond, he shall be liable for such excess.

11 H. The recount proceeding shall be final and not subject to appeal.

12 I. For the purposes of this section:

13 "Overvote" means a ballot on which a voter casts a vote for a greater
14 number of candidates or positions than the number for which he was lawfully
15 entitled to vote and no vote shall be counted with respect to that office or issue.

16 "Undervote" means a ballot on which a voter casts a vote for a lesser
17 number of candidates or positions than the number for which he was lawfully
18 entitled to vote.

19 #

20

APPENDIX D**EPILOGUE****Final Action on Draft Legislation**

LD 0628872: HB 641 (O'Brien) (Officers of Election Training; Merged Pollbook and Registered Voter List). -- *Passed by the House (100-0) and Senate (40-0). Chapter 216, 2002 Acts of Assembly. See, also, identical SB 19 (Miller, K.G.), Chapter 601, 2002 Acts.*

The General Assembly added a final enactment clause to the bill that requires the State Board of Elections to recommend any additional statutory changes needed to implement the change to a single combined pollbook and precinct registered voter list. The bill provides for use of the combined list beginning July 1, 2003. The State Board is required to report its recommendations by November 1, 2002, for possible action at the 2003 Session.

LD 0625872: HB 640 (O'Brien) (Changes Affecting Absentee Voting, Officers of Election, Emergency Situations, and Miscellaneous Provisions). -- *Passed by the House (92-0) and Senate 37-1). Chapter 819, 2002 Acts of Assembly. . See, also, similar SB 113 (Bolling), Chapter 785, 2002 Acts.*

The General Assembly adopted a number of technical amendments to the bill before final passage.

LD 0623872: HB 640 (O'Brien) (Proposed Constitutional Amendment Concerning Postponement of Elections in Certain Emergency Situations). -- *Carried over to the 2003 Session in the House Committee on Privileges and Elections (22-0). See, also, SJR 40, carried over to 2003 Session in the Senate Committee on Privileges and Elections.*

The Committee carried the resolution over to 2003 in accordance with its usual policy to carry over constitutional amendment proposals for consideration in the odd-numbered year at the session preceding an election for the House of Delegates. A constitutional amendment must be passed twice by the General Assembly-- once before and once after the 2003 November election for a new House of Delegates. If passed twice, the proposal will be submitted to voters for approval in a November 2004 statewide referendum.

LD 0624872: HB 985 (O'Brien) (Recount Procedures and Standards). --
*Passed by the House (93-0) and Senate 40-0). Chapter 647, 2002 Acts of
Assembly. See, also, identical SB 112 (Bolling), Chapter 601, 2002 Acts.*

The House proposed changes in the bill to eliminate any review of overvotes or undervotes in recount proceedings but receded from that position and agreed to the bill as it was originally introduced.

