



★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

State Board of Elections Annual Report

January 1, 2020 – December 31, 2020

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Executive Summary

In accordance with the Code of Virginia § 24.2- 103 (J) the State Board of Elections (SBE), through the Department of Elections (ELECT), is pleased to provide to the Governor and the Virginia General Assembly the State Board of Elections Annual Report. Pursuant to §24.2-103 of the Code of Virginia, the SBE has the authority to oversee and direct the work of county and city electoral boards as well as general registrars in order to obtain uniformity and address major risks to elections. During the 2020 calendar year, the SBE met a total of seventeen times certifying three elections, approving seven regulations, adopting five amendments to existing regulations, assessing and addressing a variety of administrative matters, updating and ensuring election security, and defining penalties for Stand By Your Ad (SBYA) violations.

On March 12, 2020, Governor Ralph S. Northam declared that a state of emergency exists in the Commonwealth as the result of the potential spread of COVID-19, a communicable disease presenting a threat to public health. On March 30, 2020, the Governor issued an executive order requiring all individuals in Virginia to remain at their place of residence, with certain enumerated exceptions. Accordingly, the State Board of Elections held fourteen meetings through electronic communication means pursuant to the Virginia Freedom of Information Act § 2.2-3708.2 This is the SBE's first annual report regarding the Board's activities, following the passage of Acts of Assembly Chapter 619, during the 2020 Session of the General Assembly. This report details the activities of the SBE and ELECT during the 2020 calendar year.

Introduction

The Virginia State Board of Elections (SBE) was created in 1946 as a nonpolitical agency responsible for ensuring, fairness, accuracy and uniformity in all elections in the Commonwealth of Virginia. The Department of Elections (ELECT) was formed in 2014 to conduct the SBE’s administrative operations and other duties consistent with its delegated authority. In 2020, ELECT proposed approximately 24 memorandums to the SBE summarized in the table below.

2020 ELECT Memorandums and Proposals Presented to the State Board:

Type	Total
New Regulations	4
Amended Regulations	3
Election Administration	10
Election Security	5
SBYA Citations	2
ALL	24

Regulations

New Regulations

Pursuant to Virginia Code §24.2-103, the SBE has the authority to make rules and regulations consistent with election laws to the electoral boards and general registrars. Electoral Boards and registrars must adhere to the rules and regulations of the SBE and ELECT, ensuring compliance with Virginia and federal laws.

The SBE approved a number of new regulatory actions in 2020 including the repeal of 1VAC20-40-90, clarifying Satellite Voting Location Security, and enacting a series of regulations to promote fairness, security, and accuracy in absentee voting. These changes include Intelligent Mail Barcodes on Absentee Return Envelopes and Mandatory Logic and Accuracy Testing for Electronic Pollbooks. Each regulation is listed below along with a brief summary.

Repeal of 1VA20-40-90

1VAC20-40-90 outlines the rules and process for a voter to apply for and receive a free valid photo ID. 1VAC20-40-90 was repealed on August 4, 2020 following the passage of [Acts of Assembly Chapter 1064](#), during the 2020

Session of the General Assembly, which expanded the list of acceptable photo IDs to include IDs without photos. The bill also repealed ELECT's requirement to print photo voter ID's for the public, making 1VAC 20-60-50 void. The Board met on August 4, 2020 and unanimously approved the repeal of the regulation.

Satellite Voting Security Regulation (1VAC20-70-60)

The Satellite Voting Security Regulation, which was passed on April 21, 2020 clarified the meaning of the term "adequate facilities" that is referenced in Virginia Code § 24.2-701.2. This regulation consists of five requirements each locality operating a satellite office must comply with to ensure their facilities are adequate for the protection of all election materials and voting systems. Localities are also required to submit their satellite voting locations to ELECT no later than 60 days before Election Day as well as provide a completed readiness checklist for each location.

Intelligent Mail Barcodes (1VAC20-70-70)

Pursuant to §24.2-103, the SBE is tasked with ensuring that Electoral Boards and registrars obtain legality and uniformity in all elections. On August 4, 2020, the SBE mandated that Intelligent Mail barcodes (IMbs) be present on both the absentee ballot envelope and the absentee ballot return envelope, which allows voters to track their ballots. This action intended to increase voter confidence in the security of the absentee voting system, since an increasing number of voters were relying on mail-in ballots due to public health concerns raised by COVID-19.

Mandatory Logic Accuracy Testing for Electronic Pollbooks (1VAC20-60-70)

Virginia code § 24.2-103 and §24.2-611 state that ELECT must incorporate safeguards to ensure records of the election are accurate. On August 4, 2020, the Mandatory Logic Accuracy Testing for Electronic Pollbooks was approved by the SBE. This regulation ensures testing confirms that the electronic pollbooks will promptly provide an accurate and secure record of those who have voted prior to the start of an election.

Amendments to Existing Regulations

The Board may, pursuant to code § 24.2-103, make rules and regulations (so long as they are not in violation of any Virginia or federal law) regarding the supervision and conduction of elections, through the Department of Elections. The Board may amend these rules and regulations, and must post any amendments on Town Hall within three business days. In 2020, the SBE amended three regulations, which are summarized in this section.

Processing Absentee Ballots with Missing or No Postmark (1VAC20-70-20)

Passed during the 2020 Session of the General Assembly, [Acts of Assembly Chapter 288](#) extended the deadline for an absentee ballot to be received until noon on the third day after the election. On August 4, 2020, the SBE adopted an amendment to 1VAC20-70-20 relating to material omissions in absentee voting, that allowed for the counting of mail absentee ballots with missing or illegible postmarks that are received by the appropriate general registrar by noon the third day after an election. In a subsequent board meeting held on October 20, 2020, the State Board of Elections adopted amendments to this regulatory action, compelling the use of Intelligent Mail barcodes (IMbs) and voter oaths as evidence of the date that a ballot was postmarked. The Board's intent was to avoid disenfranchising individuals who had mailed their ballot on Election Day or earlier, but the USPS either failed to postmark it or the postmark was illegible. This particular amendment was challenged in court in *Reed v. Virginia State Board of Elections*. On January 13, 2021, plaintiff Thomas P. Reed and the Virginia Department of Elections entered into a consent decree to further amend and refine the text of this regulatory action. The consent decree was signed by Judge William Eldridge IV of the Circuit Court for Frederick County.

Overfull Optical Scan Ballot Container (1VAC20-60-50)

On August 4, 2020, the SBE approved the Overfull Optical Scan Ballot Container regulation, which provides a solution to an issue that many general registrars previously faced regarding overfull optical scan ballot containers. This regulation added subsection 4 and subdivision 4(i) through 4(iv) to regulation 1VAC20-60-50, allowing overfull optical scan ballot containers at the general registrar's office and satellite locations to be deposited into a secure ballot storage container, as long as the containers meet certain requirements outlined in the amended regulatory action, pursuant to Virginia Code §24.2-623.

Voter Registration (1VAC20-40-10)

On August 4, 2020, ELECT addressed updates to 1VAC-20-40-10. Originally, this provision provided definitions of 'valid' voter identification. This original language conflicted with [Acts of Assembly Chapter 1064](#) regarding voter identification which passed during the 2020 legislative session. The proposed amendments presented by ELECT removed the conflict by excluding language that included photo identification requirements and the consideration of a Virginia driver's license expiration date. These amendments ensured compliance with new legislation and the Board unanimously adopted the amendments.

Election Administration

Election Administration encompasses the proper administration of election laws, campaign finance disclosure compliance, and voter registration processes in Virginia by promulgating rules, issuing instructions, and providing information to local electoral boards and general registrars. This includes creating rules, issuing instructions, and providing information consistent with state and federal election laws to promote the proper administration of elections and to obtain uniformity in the practices of election officials. The SBE approved many proposals from ELECT regarding election administration during the 2020 calendar year. These proposals include changes to recount procedures, amending registration and absentee applications, updating certification standards, certifying elections, determining ballot order, and reviewing candidate filing extensions.

Recounts Suite Report

Pursuant to Virginia Code § 24.2-802, the Board is responsible for creating and relaying procedures for a safe, timely, and accurate recount. ELECT reviewed the existing recount procedures in 2019 and enlisted the help of numerous general registrars to revise those procedures. On January 28, 2020, ELECT presented the amendments to the SBE. The amendments consisted of four changes designed to simplify the recount process.

ELECT initially clarified the existing instructions, which were over-detailed and confused many election officials. The update took into consideration that recount officials have a background in Election Day procedures and are familiar with different tasks that must be completed on Election Day, which simplified the instructions. Previously, the instructions detailed a complete overview of the procedures, creating confusion among officials as to their personal roles and responsibilities. The amendments clarified and distinctly separated roles, which allowed election officials to find their own responsibilities without reading the entire set of instructions.

The Recount Results Precinct form and hand count procedures also suffered from over-complication. The Recount Results Precinct form was simplified to ease comprehension and efficiency, and the hand count procedure now outlines a process of grouping ballots by 10 and tallying the votes to create a more streamlined tallying method.

Next, ELECT clarified voting system usage for recounts. Originally, direct-recording electronic voting machines (DREs) were used. DREs were decertified by the SBE in 2017; however, recount standards were never updated. This amendment listed optical scanner machines as the official voting system in the instructions used for recounts.

Finally, ELECT provided more flexibility in the directions for recounts. Previously, the directions only included recount instructions regarding two candidates; the updates allowed for more than two candidates to be included in a recount. The Board adopted the amendments to the recount procedure with a unanimous vote.

VA_NVRA-1 Voter Registration Application

In response to [Acts of Assembly Chapter 710](#) which passed during the 2020 legislative session regarding requests for protected voter status, ELECT proposed amendments to voter registration applications which aimed to clarify language on what is considered protected voter classification. Additionally, the requirement to provide evidence of filing a complaint to law enforcement was removed. Protected voter status provides certain privacy protections, such as a protected voter's residential address is not permitted to be released to the public, only their P.O. Box.

The proposed changes also reflected [Acts of Assembly Chapter 1064](#) and [Acts of Assembly Chapter 1065](#) related to voter identification updates, including removing photo identification requirements, accepting more forms of ID, and allowing for a signed statement subject to penalties in lieu of an ID. The Board adopted the amendments unanimously.

Revised SBE-701 Absentee Application

The next amendment to elections administration was regarding absentee, or vote by mail, applications. The General Assembly enacted numerous legislation during the 2020 Virginia General Assembly Session increasing voter's access to absentee voting. The proposed amendments to the Virginia Absentee Ballot Application Form reflected these legislative changes by: removing reason requirements on absentee ballot requests; changing the term from 'absentee' to 'vote by mail'; updating sections regarding uninformed voters, overseas voters, and first time voters; clarifying instruction language; and permitting the choice of voting absentee one time by mail ballot, or for an entire calendar year. Previously, there were two absentee ballots, SBE-701 Virginia Absentee Ballot Application Form and ELECT-703.1 Annual Absentee Ballot Application. The proposed amendments created one new form, titled SBE-701/703.1 Virginia Vote by Mail Application Form. The Board adopted the changes unanimously on April 21, 2020.

Voting System Certification Standards

In September 2019, the SBE adopted a new set of voting system certification standards. These standards were amended to better reflect the current technological capabilities of voting equipment. The revised document was re-written by ELECT and is more concise. The alterations also set additional requirements to implement Elections Security Best Practices guidelines. For example, all voting systems must provide a voter-verifiable audit trail and additional forms must be submitted by the vendor when requesting certification in order to improve election integrity in the Commonwealth. The motion was passed unanimously at the January 28, 2020 SBE meeting.

Certification of Elections

During the 2020 Calendar year, the SBE certified 3 elections. On March 17, 2020, the SBE certified the results of the March 3, 2020 Democratic Party Presidential Primary, pursuant to Virginia Code §24.2-545(D), and provided those results to the chairwoman of the Democratic Party.

Then, on July 7, 2020, the SBE certified the results of the June 23, 2020 Democratic and Republican Primaries which included 6 US House of Representatives Districts and one US Senate race. The winners of each primary were declared as that party's nominee for the November 3, 2020 election, pursuant to Virginia Code § 24.2-543.

Last, on November 16 through November 18, the SBE completed the certification of the November 3, 2020 General and Special Election required by § 24.2-679. The Board certified the election results for the races of fourteen different offices and two proposed amendments.

Review of Hopewell City and Prince William County Certification

Pursuant to Virginia Code § 24.2-679 "The State Board shall meet on the third Monday in November to ascertain the results of the November election." On November 18, the SBE of Elections certified the results of the November 3, 2020 General and Special Elections. After the election occurred, ELECT staff found errors in the total votes cast as certified by the City of Hopewell Electoral Board and the Prince William County Electoral

Board. The previous errors had no statistical impact on the original results of the election. The revised abstract presented to the Board included Electors for President and Vice President, United States Senate, United States House of Representatives District 4, Constitutional Amendment Question #1, and Constitutional Amendment Question #2. ELECT presented the SBE with the revised abstract of votes from the previous election and recommended the Board to approve the results. The Board approved the results by a unanimous vote.

Ballot Order

Pursuant to § 24.2-529, in the event that two or more candidates file simultaneously, the order of the filing is determined by the electoral board or the SBE.

On April 3, 2020, the Board certified the determinations by lot of the order of candidates on the ballot for primary elections to be held on June 9, 2020. Then, on April 13, 2020, the Board certified the determinations by lot of the order of candidates on the ballot for primary elections to be held on June 23, 2020.

Pursuant to § 24.2-613, the SBE must determine by lot the order of political parties. On May 15, 2020, the Board determined by lot and then certified the ballot order for the elections held between July 1, 2020 and September 30, 2020. On July 7, 2020, the Board determined by lot and certified the ballot order for all general and special elections being held between October 1, 2020 and April 30, 2021.

Candidate Filing Extension

Pursuant to § 24.2-503 of the Code of Virginia, candidates must submit written statements of qualification and economic interests to qualify for ballot access, and deadlines are specified based on the type of election. The SBE is granted the authority to extend the deadline to all candidates. The Board must notify all candidates included in the race, and the extension is granted for 10 days after the notice date. On April 3, 2020, ELECT moved that the Board extend the filing deadline for the June Primary Elections. While the request was made to ELECT from one candidate, the extension must be applied to all candidates. The Board unanimously voted to extend the deadline.

On July 7, 2020 ELECT proposed that the Board extend the candidate filing deadline for the November General elections. This proposal was in response to Executive Order 56 by Governor Northam, which delayed the June primary by two weeks. The filing deadline was set for the same date as the primary but was not mentioned in the order; therefore, many candidates missed the filing deadline. ELECT moved that the Board extend the deadline. The Board voted 2-1 in favor of the extension.

The final action conducted by the Board related to candidate filing extensions was on December 16, 2020. ELECT proposed that the Board grant an extension for a special election to be held January 5, 2021. The request was brought on by one candidate missing the filing deadline and requesting extension, and was passed by the Board in a 2-1 vote.

Party Abbreviations

Pursuant to Virginia Code § 24.2-613 (A) “The ballots shall comply with...the standards prescribed by the SBE.” ELECT staff recommended on August 4, 2020 that the Board vote to use the recommended abbreviations for general and special elections being held through April 30, 2021. The memorandum included political parties, recognized political parties, and potential abbreviation options. The Board approved the party abbreviations by a unanimous vote.

General Registrar Certification Process

Pursuant to Virginia Code § 24.2-103 Subsection C, the SBE, through ELECT, is required to provide a certification program for general registrars. The general registrars are required to complete the program and receive certification within 12 months of their initial appointment or any subsequent reappointment. ELECT moved that the Board adopt the General Registrar Certification Program effective July 1, 2020. A core curriculum was developed by ELECT which includes 11 courses approximately 60 minutes in length. When general registrars are not completing the core curriculum, they are required to complete at least 3 elective courses annually to maintain certification. The majority of the training program is directed through online, self-learning platforms. All courses that are completed are monitored in ELECT’s learning management system. (LMS). The motion was passed unanimously on April 21, 2020.

Election Security

The SBE and ELECT consistently work to ensure the integrity and security of every election is upheld in the Commonwealth of Virginia. Throughout the 2020 Calendar year, the SBE approved various changes to voting systems and voting system security.

HART Intercivic 2.3

The Code of Virginia §24.2-629, allows “Any person, firm, or corporation, referred to in this article as the "vendor," manufacturing, owning, or offering for sale any electronic voting or counting machine and ballots designed to be used with such equipment may apply to the SBE, in the manner prescribed by the Board, to have examined a production model of such equipment and the ballots used with it.” On January 28, 2020 ELECT requested the Board approve the Hart InterCivic 2.3 Voting System, which was an updated version from Hart InterCivic 2.0. Additionally, on November 5, 2019, the Hart voting system piloted a successful election in Essex County with the updated system. These updates included a newly introduced ballot marking device that outputs a print vote record rather than a marked ballot. The SLI, an independent testing authority, determined that the Hart Verity Voting System met the requirements of the Election Assistance Commission Voluntary Voting System Guidelines 1.0 (2005). The Board motioned and approved the use of the updated system by a unanimous vote.

KnowInk 2.5 Certification

ELECT recommended that the Board certify the use of KnowInk 2.50 in elections in the Commonwealth of Virginia on May 26, 2020, and KnowInk initiated the certification evaluation process to the Department of Elections on March 20, 2020. Additionally, KnowInk conducted a successful mock election in Richmond City on May 20, 2020. KnowInk also successfully completed the Virginia Electronic Pollbook State Certification. The Board motioned and approved the use of the updated system by a unanimous vote on May 26, 2020.

Election Equipment Uniformity Plan

At the January 28, 2020 SBE meeting, ELECT advised the Board to recognize that all voting systems and electronic poll books were compliant with the Board's security standards pursuant to Virginia Code §24.2-629, upon the ELECT's confirmation of proof of current and valid certification. ELECT also proposed updated security standards which upgraded localities' standardized versions of voting equipment and included additional security enhancements, with the main goal of protecting the integrity of elections. The update had little cost to the localities and greatly improved the uniformity and security of elections in Virginia. The Board passed the motion unanimously.

Electronic Pollbook Certification Standard

Pursuant to Virginia Code §24.2-629, ELECT provided formal procedures for vendors to follow when seeking state certification for an electronic pollbook (EPB) system in Virginia. These procedures were designed to ensure conformity between different vendors, better evaluate EPB systems for use in Virginia, re-evaluate and recertify vendor systems, and standardize the process of EPB systems. The standard passed unanimously on January 28, 2020.

Demtech Electronic Pollbook Certification

ELECT recommended that the Board certify the use of Centerpoint ePollTab 1.0 in elections in the Commonwealth of Virginia on September 18, 2020. Dem Tech initiated the certification evaluation process to the Department of Elections on June 22, 2020. Additionally, the Demtech system successfully conducted a mock election in Loudoun County on August 27, 2020 and successfully completed the Virginia Electronic Pollbook State Certification. The Board unanimously approved the certification.

Stand By Your Ad Citations: (SBYA)

Revised Schedule of Penalties

Stand by Your Ad is a provision of the 2002 Bipartisan Campaign Reform Act, which requires any United States candidate running for federal political office to identify themselves on and approve any political advertisement. At the state and local level in Virginia, state law § 24.2-955 defines any sponsor of print media, radio, television, or online platform advertising is required to disclose their sponsorship on said advertisement. If a violation of Political Campaign Advertisement occurs, §24.2-955.3 defines the penalties and in what manner the Board must handle the assessment of the violation. The revised penalties indicated that the SBE may not assess a civil penalty of more than \$1,000 per violation, \$2,500 if the violation occurs within 14 days of an election. The Board must hold a public hearing and report at least 10 days prior to all persons in question of violation. The notice must include time and place of hearing, explanation of violation in question, and maximum penalty that may be assessed. The Board receives complaints through the Virginia Department of Elections website. ELECT notifies responsible parties pursuant to § 24.2-955.3 and presents the Board with information and recommendations regarding the potential violation. The revised schedule of penalties was passed on October 20, 2020.

SBYA Citations

On October 20, 2020 the Board held a public hearing to assess violations of § 24.2-955. ELECT presented the Revised Schedule of Penalties, which updated penalty totals per request of the Board. The new schedule, unanimously adopted by the Board, is divided into a statewide or General Assembly office, and local or constitutional offices. For statewide or General Assembly offices, ELECT recommends a \$100 penalty for a first time violation and \$300 thereafter, doubling the value if the violation is within 14 days of the election. For local or constitutional offices, ELECT recommends a \$50 penalty for a first time violation, and \$100 thereafter, again doubling the penalty within 14 days of an election. If the Board unanimously agrees that the consequences of the ad are low, the Board may address a \$25 violation so long as the perpetrator is a first time offender. The Board heard 12 cases, finding in each case the accused was guilty. The board assessed a total of \$2,600 in civil penalties.

Conclusion

In conclusion, this report provides insight into various regulations, amendments, administration, election security, and campaign finance updates approved by the SBE in 2020. These updated rules and regulations were proposed by ELECT staff at SBE meetings. Due to the Covid-19 pandemic, the SBE and ELECT responded quickly by implementing and instituting new regulations and updates to the absentee voting process. The Board certified new voting systems with various pollbook vendors in accordance with the state certification process. The Board and ELECT also provided updates to campaign finance regulations, specifically relating to stand by your ad campaigns. Furthermore, the Board accurately certified the election results of the 2020 primary and general elections. Many of these changes have not only helped Virginians continue to vote during a pandemic, but in November 2020, helped us produce the highest number of voters that cast ballots in the history of the Commonwealth. The elections community will continue to promote and support accurate, fair, open and secure elections for the citizens of the Commonwealth.