★ VIRGINIA ★
DEPARTMENT *of* ELECTIONS

VIRGINIA DEPARTMENT OF ELECTIONS

Precinct Level Absentee Ballot Reporting

Abstract

At the direction of the Virginia General Assembly, the Department of Elections has prepared a report to evaluate the methods for sorting absentee ballots by precinct and reporting absentee ballots separately by each precinct.

Executive Summary

The Department of Elections has prepared the following report at the direction of the Virginia General Assembly to evaluate the methods for sorting absentee ballots by precinct and reporting absentee ballots separately by each precinct. The report is a the byproduct of a bi-partisan work group consisting of representatives from both major political parties as well as general registrars and Electoral Boards from across the Commonwealth. Based on these discussions, interviews with stakeholders, and extensive research, the Department of Elections has prepared a list of five recommendations for any legislation that mandates reporting absentee ballot results by precinct. The Department's recommendations are as follows:

1. Allow localities to choose between printing ballots coded by precinct or utilizing Ballot on Demand (BOD) printers for in-person absentee voting.

2. Allow the Department of Elections to establish standards by which localities will report their precinct-level absentee ballot results.

3. Allow the Department of Elections to establish certification standards for Ballot on Demand systems.

4. Allow the Department of Elections to promulgate security and reporting standards.

5. That the General Assembly consider allowing for precinct level results to be reported shortly after election night, rather than on election night.

Background

Virginia tabulates absentee ballots, both in person and by mail, through Central Absentee Precinct(s) (CAP) in each locality. Thus, all absentee ballots in a locality are counted and

reported in one large group, separate from the precinct level in-person ballot count tallied after polls have closed on Election Day.[1]

Following the November 3, 2020 General Election, many Virginia voters expressed confusion based on the way election results were reported. Virginia's November 3, 2020 Post-Election Report summarizes this issue. "[A]s was the case in many states for this election, voters who took advantage of absentee or early voting tended to vote for a particular candidate or political party's candidates, while voters who waited to go to the polls on Election Day tended to support another candidate or party's candidates. As a result, the results from the votes cast on Election Day at polling places were reported first; therefore, a candidate or candidates from one political party showed an apparent advantage over the other. Because results from the absentee and early votes were not reported until much later in the evening, some voters complained that votes were "dumped" into the results. This was especially the case in larger localities. Some members of the public expressed confusion over how one candidate could be "winning" (in some cases by a significant amount), then once the results from one precinct were added (CAP), the numbers suddenly changed and the other candidate was significantly in the lead."[2]

Reporting absentee ballots by precinct could help create more transparency in the absentee voting process. This method of reporting would allow Virginians to compare the number of absentee voters registered in a precinct with the number of absentee ballots cast in that precinct. As the popularity of early voting increases, reporting absentee results by precinct may serve to reduce the confusion created by general reporting of absentee results through the Central

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[1.] See Code of Virginia § 24.2-712.

[2] Department of Elections November 3, 2020 Post-Election Report page 37 retrievable at https://www.elections.virginia.gov/media/formswarehouse/maintenance-reports/PostElectionReport_FinalRevised_211001.pdf.

Absentee Precinct (CAP). It also provides additional data insights for political parties, campaigns, news outlets, and candidates.

Mandate and Methodology

Passed during Special Session I of the 2021 General Assembly, Acts of Assembly Chapter 522 instructed "[T]hat the Department of Elections shall convene a work group to consider and evaluate methods for sorting absentee ballots by the precinct of the voter casting the absentee ballot and reporting vote totals from absentee ballots separately by each precinct. The work group shall include such persons determined by the Department of Elections as necessary or appropriate. The work group shall organize no later than July 31, 2021, and shall complete its work no later than October 31, 2021. If recommending any specific policies or legislative proposals, the work group, through the Commissioner of Elections, shall communicate such recommendations to the Chairmen of the House and Senate Committees on Privileges and Elections by November 15, 2021."[3]

Pursuant to this mandate, the Department of Elections organized a work group consisting of members of the Virginia elections community to consider this issue. The work group included general registrars, Electoral Board members, and representatives from the Republican and Democratic parties of Virginia.[4] The work group convened on two dates: first virtually on June 30, 2021 then in-person on July 28, 2021.

Much of the information in this report was collected through discussions with members of this work group, other general registrars, and Department of Elections' staff. Additionally, the

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[3] See Acts of Assembly from Special Session I of the 2021 Virginia General Assembly, retrievable at https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0522.
[4] Work Group Members: Democratic Party Representative Frank Leone; Republican Party Representative Janet Riddick and Greg Riddlemoser; Local Electoral Board Members Jim Nix, Roger Omwake, Susan Cobb, and Jonell McFadden; and general registrars Allison Robbins, Walt Latham, Brenda Cabrera, Teri Smithson, Angela Turner, Stephanie Iles, Dianna Dutton, and Jackie Britt.

Department reached out to national stakeholders, including election officials in other states, and representatives from voting system vendors (such as Dominion, Unisyn, Electronic Systems & Software (ES&S), and Hart InterCivic) to solicit best practices and to estimate both the fiscal and administrative impact on localities.

National Landscape

Approximately thirty states report absentee ballot results by precinct with small variations in requirements.[5] In Alabama, ballots are delivered to precinct polling places where they are counted and otherwise handled as if the voter were present and voting in person.[6] Maine reports its absentee ballots by precinct; however, military and overseas ballots are counted centrally and reported separately.[7] Nevada and Missouri report absentee results separately from the regular precinct votes, unless reporting these returns separately would violate the secrecy of a voter's ballot.[8] This can happen in small precincts and particularly in elections with low turnout.

All-Mail States

Oregon is an all-mail state, which means that all voters are mailed a ballot for each election in which they are eligible. All election results in Oregon are reported by precinct, and the votes must be counted either by a vote tally system or a counting board.[9] Ballots may be returned to any drop-box in the state, through the USPS, or any Oregon county elections office. Mail ballots are traced back to their precinct of origin through identification on the exterior of the envelope. These mail-in ballots are then grouped together by precinct and processed accordingly. County elections officials may begin scanning ballots into a vote tally system seven days before

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[5] See National Conference of State Legislature's "How Election Results are Reported" retrievable at https://www.ncsl.org/research/elections-and-campaigns/vopp-table-17-how-election-results-are-reported.aspx.
[6] See Code of Alabama § 17-11-10.
[7] See 21-A Maine Revised Statutes Annotated § 759.
[8] See Vernon's Annotated Missouri Statues § 115.507; see also Nevada Statues §293.325 and § 293.333.
[9] See Oregon Revised Statutes § 254.478 (retrievable at https://oregon.public.law/statutes/ors_254.485).

Election Day but they are not allowed to publicize the results from any precinct within the county before 8:00 PM Pacific Time on Election Day.

Discussion

I.   *Sorting Absentee Ballots by Voter's Precinct*

To sort absentee ballots by precinct, localities will have to create a unique "ballot style" for each precinct in their locality. The phrase "ballot style" refers to "ballot data that has been put into contest order for a particular precinct and considers a particular set of voter situations. Voter situations include party affiliation (for closed primaries), and age of the voter (in states that permit 17-year-olds to vote in primary elections), among others."[10]

Traditionally, many localities in Virginia have created absentee ballot styles by the combination(s) of ballot contests that will appear on the face of the ballot. For example, two or more precincts may share the same "ballot style" because voters in those precincts are entitled to vote for the same offices. In Virginia, this is common during federal elections when many Virginians have the same federal candidates on their ballots.

Reporting absentee ballots by precinct will increase the number of ballot styles in many localities, since precincts will need unique ballot styles even if they share the same candidates and contests on their ballot. For example, currently during a federal election year, Wise County may have only one ballot style. However, precinct-level reporting would require Wise County to manage twelve ballot styles, one per precinct, for the same election. This is reflected in the figures below:

Figure 1. Wise County Ballot Styles during a Federal Election

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[10] See Pages.nist.gov. 2021. *Election Terminology Glossary - Draft*. [online] Available at: <https://pages.nist.gov/ElectionGlossary/> [Accessed 5 October 2021].

Ballot Style	Precinct	Congressional District
1	101	9
1	102	9
1	103	9
1	104	9
1	201	9
1	202	9
1	203	9
1	301	9
1	302	9
1	401	9
1	402	9
1	403	9

Figure 2. Wise County Ballot Styles during a Federal Election with Precinct Level Absentee Reporting

Ballot Style	Precinct	Congressional District
1	101	9
2	102	9
3	103	9
4	104	9

5	201	9
6	202	9
7	203	9
8	301	9
9	302	9
10	401	9
11	402	9
12	403	9

[11]

In years when multiple ballot styles are needed, it is absolutely imperative that general registrars and staff properly match the ballot style to the voter's assigned precinct. This matching is necessary to ensure that voters are given the ballot that displays the ballot contests for which they are eligible.

If absentee ballots are required to be reported by precinct in the future, general registrars and staff will need to take steps during every single election to ensure the voter is properly matched with their precinct specific ballot. Initially, this will require increased training for election officers, particularly in localities that typically have few ballot styles. As the number of ballot styles in a locality increases, the likelihood of an administrative error on the part of election officers increases as well. An increase in vendor-printed ballot styles also increases the likelihood of errors if, for example, a vendor were to mistakenly mix ballots of the wrong precinct style into a package of ballots delivered to the locality. This may be especially significant in federal election years, when many localities have traditionally had few ballot styles

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[11] Figures 1 and 2 prepared and provided by Allison J. Robbins, general registrar Wise County.

and therefore election officers may not be used to dealing with multiple ballot styles. Further, the Code of Virginia does not currently provide a remedy if the wrong ballot style is issued to a voter.

II.   *Methods for sorting absentee ballots by precinct*

Generating precinct-level ballot styles for absentee ballots can be accomplished two different ways: 1) with vendor printed paper ballots that are coded or packaged by precinct; or 2) using Ballot on Demand (BOD) printers in the general registrar's office and satellite offices.

A. Vendor printed ballots coded by precinct

This process is ideal for localities with relatively few precincts. In this scenario, administrative staff at the general registrar's office and satellite offices would be responsible for confirming the voter's precinct, then guaranteeing that the voter is properly matched with the corresponding precinct ballot style. The general registrar or staff would simply pull the ballot by hand from the correct tray or hanging file at the time the voter appears in person to vote. This solution would be less desirable for localities with large numbers of precincts. It has the potential to increase the risk of human error, if election officers were to provide a voter with the wrong precinct specific ballot style. Further, an increase in the number of ballot styles will also increase the need for localities to anticipate how many of each ballot style must be printed for a successful election.

B. Ballot on Demand (BOD) printers

Larger localities or localities with many precincts may wish to purchase and deploy Ballot on Demand (BOD) printers. While BOD systems vary depending on the vendor, they all effectively operate in the following way: once a voter has appeared in person to vote and been checked into a pollbook, a BOD printer will print a paper ballot that corresponds to the voter's

assigned ballot style. While this solution eliminates the manual matching required with vendor printed ballots, BOD printers vary in price and the total costs could be cost-prohibitive for many localities. BOD printers also vary in size with some resembling desktop style office printers, while others are larger, cabinet based units. BOD printers will also generate ongoing costs associated with ink, toner, and component replacements depending on usage.

Very few localities currently have BOD printers.[12] The cost for localities to purchase these machines is variable, but the price could be as high as several thousand dollars.[13] Additionally, as with any technology, BOD printers may not always work correctly. Therefore, even localities utilizing these printers will likely need to purchase additional ballot stock or print extra ballots to use in case of a printer failure. Further, as these machines become more common throughout the Commonwealth, the Department of Elections must develop certification standards for these machines to create uniformity and quality control.

C. Additional Considerations

In addition to ballot management and distribution solutions, precinct specific reporting requirements will also require state and local election officials to design, proof, and approve precinct style ballots for every single election, every single year. Based on the total number of precincts in the Commonwealth, this increase in ballot types will require the Department of Elections to proof and approve approximately 2,500 ballot styles prior to every election. For perspective, the Department approved 540 ballot styles for the November 2021 General

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[12] Fairfax County is one exception to this rule and does currently operate a El system.
[13] Price range information obtained by ELECT staff in interviews with system vendors including Dominion, Hart, and Unisyn.

Election.[14] This would require the Department to proof nearly five times the current amount of ballots for every election.[15]

Voting equipment testing, specifically Logic and Accuracy Test (L&A Testing), will also be impacted on a locality level. With the permanent increase in ballot styles for every election, testing will be needed on each and every ballot style regardless of ballot content. More time and resources will be needed at the local level to complete testing in a timely, efficient manner.

III. *Reporting Vote Totals from Absentee Ballots Separately by Precinct*

The second step to report precinct-level absentee ballot results is generating results on election night. During work group meetings, general registrars and Electoral Board members expressed concern about being able to meet election night reporting deadlines, if they are required to report absentee results by precinct. Depending on the size of the locality, precinct level results may be tallied using results tape or reporting software.

A. *Results Tape*

Localities currently report election results using results tape that is generated by their voting machines. The amount of time that it takes for a piece of voting equipment to produce results tape increases drastically in accordance with the number of ballot styles processed by a machine. The more ballot styles, the longer that it takes for the results export to generate. Producing results tape can take significant time for an election with many ballot styles and high turnout. As a reminder, the number of ballot styles increases significantly when reporting absentee ballots by precinct.

B. *Reporting Software*

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[14] Commonwealth of Virginia, Department of Elections, Ballot Style Summary Report, Tuesday, November 2, 2021.
[15] See Va. Code §24.2-612.

Another consideration is that the reporting software used in mid-size to larger localities may need to be updated or changed all together. For smaller localities, this will not be a problem because they can continue to give election data via results tape; the length of the tape will not become unmanageable, if precinct specific absentee ballot reporting becomes common practice. For the larger and midsized localities, the results tape would increase substantially if all election results were to be reported by precinct. To accommodate for this change, these larger localities would need to update their voting system software in order to generate results in a timely manner without waiting for their systems to generate results tape. This would not be a universal burden, Unisyn voting systems already have the capability. Localities that use other vendors may not have purchased or leased the tabulation software for their systems and thus would need to update. Making this transition would be costly for the affected localities but would likely be necessary to efficiently report precinct specific absentee voting results on election night.

C. Timetable for Reporting

One solution to the issues addressed above is to allow for precinct level absentee ballot results to be published after election night. While the Department of Elections is not making a recommendation on this issue at this time, it should be noted that the majority of the election officials present at work group meetings indicated that they would prefer to report precinct-level data after election night

If this is done, consolidated results could be reported, as usual, on election night and from the Post-Election Central Absentee Precinct (CAP). Precinct Level CAP Results could later be generated by the general registrar via the reporting options available from the voting equipment specific to that locality. For example, the ES&S voting equipment used by Wise County

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currently provides two options for obtaining precinct level CAP Results in a post-election timeframe:

1) Generate Precinct Specific Results tapes from a DS200 Optical Scanner. This would be a cost-neutral solution.

2) Generate Precinct Specific Results reports from the reporting module available through Election Ware. Election Ware is the Election Management Software for ES&S products. The current estimate in Wise County for the purchase of ES&S Election Ware software is a one-time cost of $5,000 for equipment and training and an ongoing cost of $5,700 per year in licensing fees.[16]

Many of the challenges faced by reporting absentee ballots by precinct revolve around when the precinct specific data is expected to be reported. If this information can come out after election night, then many of these concerns can be eliminated. For instance, fewer localities would be required to update their reporting software as they would not be operating under such a difficult time constraint and would then be able to report this information later. As such, they would only need minor software upgrades to do the post-election analysis.

D. *Virginia Case Study*

Chesapeake Virginia has been reporting its absentee ballots by precinct since 2011. Chesapeake reports its absentee results via a Central Absentee Precinct on election night and prints off a precinct specific report in the days after. Chesapeake uses Hart Intercivic voting machines; their machines are equipped with a tally system to get a precinct specific report. This post-election report is created electronically by uploading data from all the early-voting locations to the localities central system, this data is then compiled and printed out into the final precinct

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[16] Provided by Allison J. Robbins, general registrar for Wise County.

specific report. During early voting, a voter enters an early-voting location, where their voter registration and precinct is verified using the Virginia Election and Registration Information System (VERIS). Once this step is finished, they are then given a ballot for their corresponding precinct. Chesapeake does not use a BOD system, so early-voting locations have all precinct specific ballots in individually sorted hanging folders on-site. All ballots also have a specific bar code so that once they are read by the voting machine they cannot be scanned again, this is a feature of all Hart ballots. After every day of early voting the systems are double checked to ensure accuracy.

Chesapeake provides a model and demonstrates that Virginia's localities are capable of making this transition to precinct-specific reporting of absentee ballot results. However, for the reasons discussed above, localities will need flexibility to develop a solution commensurate with their size, number of precincts, available staff, cost, and available software and hardware.

Conclusion

Precinct level reporting will require a combination of vendor-printed ballots with precinct code and Ballot on Demand (BOD) printers in the Commonwealth. There will be an increased administrative cost on localities, as election officials will need to exercise caution in administering a larger number of ballot styles in most elections. Many localities may find a need to upgrade their voting systems software to meet election night reporting requirements for reporting precinct level absentee results. Finally, many localities have expressed concerns that precinct-level absentee reporting will delay the process of reporting results on election night.

To address those issues, ELECT has prepared the following recommendations for any legislation that requires precinct level reporting of absentee ballot results:

1. Allow localities to choose between printing ballots coded by precinct or utilizing Ballot on Demand printers for in-person absentee voting.

2. Allow the Department of Elections to establish standards by which localities will report their precinct-level absentee ballot results.

3. Allow the Department of Elections to establish certification standards for Ballot on Demand systems.

4. Allow the Department of Elections to promulgate security and reporting standards.

5. That the General Assembly consider allowing for precinct level results to be reported shortly after election night, rather than on election night.