



★ VIRGINIA ★  
DEPARTMENT *of* ELECTIONS

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the Handbook

# **Chapter 2**

## **Local Electoral Boards**

August 2024

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## 2. Local Electoral Boards

<p><b>REQUIRED FORMS</b></p> <p><a href="#">Certificate of Eligibility for Appointment to Electoral Board (ELECT 119)</a></p> <p><a href="#">General Registrar Certification of Appointment (SBE-110)</a></p>	<p><b>ADDITIONAL RESOURCES</b></p> <p><a href="#">Electoral Board Oath (ELECT-120EB)</a></p> <p><a href="#">Electoral Board Information Form (SBE-106)</a></p> <p><a href="#">Suggested Electoral Board Policy for Electronic Participation in Meetings</a></p> <p><a href="#">Virginia Regulatory Town Hall Department of Elections website</a></p> <p><a href="#">Department of Elections Policy 2010-2</a></p> <p><a href="#">Officer of Election Annual Certification (SBE-115)</a></p> <p><a href="#">ELECT-109(A) Petition for Removal of General Registrar- Local Electoral Board</a></p>
<p><b>REFERENCE</b></p> <p><a href="#">Virginia Freedom of Information Act</a></p> <p><a href="#">Opinion of the Virginia Attorney General (June 26, 2014)</a></p> <p><a href="#">Opinion of the Virginia Attorney General (May 15, 2023)</a></p> <p><a href="#">Virginia Freedom of Information Advisory Council Opinion (August 31, 2004)</a></p> <p><a href="#">Virginia Freedom of Information Advisory Council Opinion (July 11, 2007)</a></p> <p><a href="#">Beck v. Shelton, 267 Va. 482 (2004)</a></p> <p><a href="#">Hill v. Fairfax Cty Sch Bd, 284 Va. 306 (2012)</a></p> <p><a href="#">Shelby County, Ala. V. Holder, 133 S.Ct. 2612 (2013)</a></p>	<p><b>REGULATIONS</b></p> <p><a href="#">1VAC20-20-50. Fee for Nonattendance at Annual Training.</a></p> <p><a href="#">1VAC20-20-70 Duty to Request Assistance and to Notify Voters of Denial of Applications for Voter Registration or Absentee Ballots.</a></p> <p><a href="#">1VAC20-60-30: Electronic Devices in Polling Place</a></p> <p><a href="#">1VAC20-60-40: When Ballot Cast</a></p> <p><a href="#">1VAC20-60-60: Provisional Votes</a></p>



## 2.1 CHAPTER ORGANIZATION

This chapter is written for both local electoral board members and their general registrars. Members of local electoral boards are responsible for a substantial list of duties and possess a wide range of statutorily imposed authority. Herein, we discuss what makes up a local electoral board, and describe administrative obligations regarding providing notice, organizing, holding, recording, and closing a meeting. We also provide an overview, with references to the Code, of the main local electoral board responsibilities and duties regarding the conduct of elections. §2.2 presents the organization of each local electoral board, including the appointment of members, roles within the Board, terms, and required oaths of office. §2.3 distills the Virginia Freedom of Information Act (“FOIA” or “FOIA Act”) down to the key elements that apply to meetings held by local electoral boards and the State Board of Elections (hereafter “SBE”). The section discusses the three-day notice requirement applicable to all meetings held by local electoral boards or the SBE, including the Election Day exception and emergency meetings. §2.3.3 addresses meeting records, including working papers and materials, minutes (draft and final), and votes. §2.3.4 explains the circumstances and required motion which permits the SBE or a local electoral board to “close” a meeting, the requirement to certify each closed meeting, and public access to closed meetings. §2.3.5 notes that records regarding voting equipment and security plans may only be excluded from inspection and copying. It also details when a closed meeting is permitted when discussing voting equipment and election security plans, if [two conditions are met.

§§2.4 and 2.5 outline administrative obligations each electoral board must observe, in addition to logistics of attending meetings and required trainings.



**Please Note:** Every general registrar and electoral board member should also be familiar with Chapter 9 (Records Access and Retention), which goes far beyond the general presumption that government records are open to the public upon request. Chapter 9 (Records Access and Retention) outlines the documents each general registrar is expected to provide for public inspection in the local general registrar’s office. The Chapter also addresses what requests for information can be redirected to the Department of Elections, specific restrictions throughout Virginia’s election laws on providing election records and voter data, and finally, records the public does and does not have access to.

## 2.2 ORGANIZATION OF THE LOCAL ELECTORAL BOARD

### 2.2.1 Composition

Two members of the electoral board represent the political party that received the highest number of votes in the last preceding gubernatorial election. One member of the electoral board represents the party that received the next highest number of votes.<sup>1</sup> “[If] the Governor [is] not elected as the candidate of a political party, representation shall be given to each of the political parties having the highest and next highest number of members of the General Assembly at the time of appointment.”<sup>2</sup>

<sup>1</sup> See Code of Virginia [§24.2-106](#). See also [VA Const. art. II, § 8](#).

<sup>2</sup> *Id.*



The terms of incumbent members are not interrupted or shortened “to comply with the political party representation requirements” when the newly elected Governor is of a different party than the previous Governor.<sup>3</sup> Rather, electoral board representation regularly changes as the terms of incumbent members expire and new appointments are made, or when an interim appointment is necessary for an unexpired term. The first appointment (however occurring) for a seat previously held by a member representing the previous Governor's party must be given to the new Governor's party.<sup>4</sup>

### 2.2.2 Terms of Office

“Electoral board members [...] serve three-year terms and [are] appointed to staggered terms, one to expire at midnight on the last day of December each year.” Every year, one member of the electoral board in each county or city is appointed (or re-appointed) for a three-year term beginning on January 1 of the following year. Three years after the appointment, the term expires at midnight on the last day of December.<sup>5</sup> Members can serve an unlimited number of terms.

NOTE: If, by the last day in December, the results of an election are not certified or there is an ongoing recount of an election, the board member's term does not expire until midnight on the day the results are certified, or the recount is concluded.

#### 2.2.2.1 Court Ordered Expiration Date

Any order of appointment to the electoral board that specifies a term expiration date other than the last day of December has not been entered in accordance with law and should be corrected. An order specifying January 1 is construed to mean midnight on the last day of December.<sup>6</sup> Your local government attorney can assist with contacting the circuit court if needed.

#### 2.2.2.2 Party Recommendations and Representation

“The chairman [of the board] and the secretary [must] represent different political parties, unless the representative of the second-ranked political party declines in writing to accept the unfilled office.”<sup>7</sup> The political party entitled to make recommendations must submit a list to the circuit court recommending at least three qualified voters of the county or city. The party must submit their recommendations for a full-term appointment by December 15. For a vacancy, recommendations must be submitted within 30 days of the date of the death or resignation of the departing member.<sup>8</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> See Op. Va. Att’y Gen. (June 26, 2014), [14-032 Opinion Letter](#).

<sup>5</sup> See Code of Virginia [§24.2-106](#).

<sup>6</sup> *Id.* (specifying that the term is to end at midnight on the last day of December each year).

<sup>7</sup> See Code of Virginia [§24.2-106](#).

<sup>8</sup> *Id.*



### 2.2.2.3 *Appointment*

In each county or city, an appointment to the electoral board is determined by “the chief judge of the judicial circuit for the county or city or that judge’s designee.”<sup>9</sup> Later, the Code provides that “the chief judge, or his designee, shall promptly make [the] appointment from the recommendations (i) after receipt of the political party’s recommendation or (ii) after December 15 for a full term or after the 30-day period expires for a vacancy appointment, whichever [is first].”



#### **Legislative Note**

Current or former electoral board members are eligible for protected voter status under §24.2-418(B)(8).

### 2.2.2.4 *Interim Appointment of Temporary Member*

If a member of the electoral board dies or resigns during their term, the judge must make an interim appointment for the remainder of the unexpired term. In the case of a temporary absence or disability of an electoral board member, the senior judge appoints “on a meeting-to-meeting basis.”<sup>10</sup> This temporary member must meet all of the same qualification requirements as a regular member, “and to the extent practicable maintain representation of political parties.”<sup>11</sup> In making an appointment to fill a vacancy for an unexpired term, the court must, to the extent practicable, maintain the adequate representation of Virginia’s two political parties.<sup>12</sup>

### 2.2.2.5 *Removal From Office*

If a member of the electoral board fails to discharge the duties of their office in accordance with the law, the State Board of Elections may petition the circuit court where the member resides for their removal from the local electoral board.<sup>13</sup> The State Board of Elections must approve the removal petition by a majority vote.<sup>14</sup> Any member of a local electoral board against whom a petition for the removal has been filed may apply to the Virginia Division of Risk Management to assign counsel to their defense and subsequent appeal.<sup>15</sup>

## 2.2.3 *Oath of Office*

Before entering any term or performing any duties, any newly appointed or re-appointed member of the electoral board must take and sign the oath of office.<sup>16</sup> Any judge or the Clerk of the Circuit Court may administer the oath.<sup>17</sup>

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* and §24.2-101 for the definition of “party” or “Political party”.

<sup>13</sup> See Code of Virginia, §§24.2-103(E) and 24.2-234.1(A).

<sup>14</sup> *Id.* See also ELECT, [ELECT-103\(E\) Petition for Removal of Local Electoral Board Member-SBE](#).

<sup>15</sup> See the Code of Virginia, §24.2-234.1(C).

<sup>16</sup> See [Va. Const. art. II, § 7](#). See also Code of Virginia §24.2-120.

<sup>17</sup> See Code of Virginia §49-3.



“Each member of an electoral board and general registrar [must] file the original signed oath in the clerk’s office of the circuit court of his county or city,” and a copy of it must be placed with the secretary of the electoral board.<sup>18</sup> The Constitution requires this oath and failure to take it before serving is punishable by a fine of not less than \$100 or more than \$1,000.<sup>19</sup>

**Form.** A copy of the oath each electoral board member must sign, ELECT-120EB, can be found on ELECT’s Forms Warehouse > Local Administration > Electoral Board.

#### 2.2.4 Required Notification of Change in Electoral Board

After the electoral board has met and elected its officers, the Secretary must immediately notify ELECT of any change in membership or officers of the electoral board and keep ELECT informed of the name, residence and mailing addresses, and telephone numbers of each electoral board member.”<sup>20</sup>

**Forms.** When a new electoral board member is appointed:<sup>21</sup>

- Complete the Electoral Board Information form (ELECT-106)
- Retain in the records of the electoral board the writ of appointment, ELECT-106, the Electoral Board Member Oath and Qualification (ELECT-120EB), and the Certificate of Eligibility for Appointment to Electoral Board (ELECT-119)
- Retain a copy of the writ of appointment, ELECT-106, ELECT120EB, and ELECT119 in the records of the general registrar
- Submit a copy of the writ of appointment and ELECT-106 to ELECT

The general registrar must update the VERIS directory. Instructions are provided in the VERIS Step-by-Step Directory Entry. The general registrar must follow the onboarding and offboarding steps provided by their liaison, including submitting a JIRA ticket for the removal of the old electoral board member and the addition of the new electoral board member.

### 2.3 Meetings

FOIA ensures public access to state and local government meetings and records. The provisions of FOIA must be “liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.”<sup>22</sup> Any exemption, therefore, must be narrowly construed. This means that no meeting can be closed to the public unless specifically made exempt by FOIA or other specific law.<sup>23</sup>

<sup>18</sup> See Code of Virginia [§24.2-120](#).

<sup>19</sup> See Code of Virginia [§49-11](#).

<sup>20</sup> See Code of Virginia [§24.2-106](#).

<sup>21</sup> The forms described can be found in Formswarehouse under [Local Administration](#).

<sup>22</sup> See Code of Virginia [§2.2-3700](#).

<sup>23</sup> See Code of Virginia [§2.2-3700](#).



### 2.3.1 Public Bodies (the SBE and every local electoral board)

The three-member SBE and each three-member local electoral board are "public bodies" under FOIA.<sup>24</sup> Therefore, all electoral board meetings are open to the public.<sup>25</sup> The only possible exceptions, to hold a "closed" meeting, arise in strictly limited, explicitly stated circumstances. A meeting should not be closed to the public unless the meeting is specifically made exempt by FOIA or another law.

#### 2.3.1.1 What is a Meeting?

A "meeting" occurs any time two members gather for the purpose of considering or transacting any public business.<sup>26</sup> This includes "work sessions".<sup>27</sup> Two members of a three-member electoral board may communicate via email without violating FOIA if no simultaneous communication occurs.<sup>28</sup> But remember, all emails are public records.<sup>29</sup>



#### Law Note

In 2004 the Virginia Supreme Court held in *Beck v. Shelton*, 267 Va. 482, that email correspondence *may* constitute a meeting under FOIA, depending on "how the email is used." If the email is being used "as the functional equivalent of [a] letter communication by ordinary mail, courier, or facsimile transmission," it is *not* a meeting under FOIA. However, these communications are still considered public records under FOIA. The Virginia Freedom of Information Advisory Council issued an opinion in 2004 that stated that "members of a local electoral board are not violating FOIA by using email to communicate with one another." However, "emails relating to the transaction of public business are public records subject to access under FOIA" where there is a delay between when the email is sent and received and when a response is sent. It is important to note, however, that the Advisory Council suggested the implementation of a system that copies all emails to the registrar to keep on file for public inspection.

#### 2.3.1.2 What isn't a Meeting?



The Code of Virginia §24.2-107 states that "the presence of two or more board members while the ballots, election materials, or voting equipment are being prepared, current or potential polling places are being inspected, or election officials are being trained, or a telephone call between two board members preparing for a meeting" does

<sup>24</sup> See Code of Virginia [§2.2-3701](#).

<sup>25</sup> *Id.*

<sup>26</sup> See Code of Virginia [§§2.2-3701 and 2.2-3708](#).

<sup>27</sup> See Code of Virginia [§2.2-3701](#).

<sup>28</sup> See Virginia Freedom of Information Advisory Council, [Advisory Opinion 19 \(2004\)](#).

<sup>29</sup> See Code of Virginia [§2.2-3707](#).





not constitute a meeting, as long as “no discussion or deliberation takes place that would otherwise constitute a meeting.”<sup>30</sup>

Social gatherings of two or more members of an electoral board are not prohibited, if public business is neither transacted nor discussed, and if the gathering was not called for the purpose of transacting or discussing public business.<sup>31</sup>



#### Law Note

A 2012 opinion by the Supreme Court of Virginia in *Hill v. Fairfax Cty. Sch. Bd.*, 284 Va. 306 (2012) found that emails between school board members did not constitute a meeting subject to notice and open meeting requirements. The court stressed that the determination was fact-based because the emails did not involve sufficient simultaneity and the back-and-forth exchanges were limited to two members, instead of all three. The Court held that use of email did not constitute a meeting, because the definition of a “meeting” under FOIA entails a degree of simultaneity.

The Court found that email was more akin to traditional forms of written correspondence, such as a letter or a facsimile, and that there may be a significant delay between the time an email communication is sent and received and when a response is sent. It is important to note that the Court stopped short of saying that use of e-mail could never be a meeting under FOIA. The dispositive determination in examining email under the meeting provisions of FOIA is to examine how the email was used. Members of public bodies need not refrain from using email in a manner that is the equivalent of sending a letter; however, members of public bodies should be cautioned against using email in a manner that appears to entail simultaneity.

<sup>30</sup> See Code of Virginia [§24.2-107](#).

<sup>31</sup> See Code of Virginia [§2.2-3707](#).



### 2.3.1.3 Required Meetings

Local electoral boards are required by the Code of Virginia §24.2-107 to “meet during the first week in February” to appoint officers of election, and second, “during the month of March each year at the time set by the board.” Beyond these two required meetings, any electoral board member can call for a meeting.<sup>32</sup> The electoral board must also meet to reorganize following a member’s appointment to fill a vacancy in an unexpired term.<sup>33</sup> In the year in which the term of the general registrar expires (2023 and every fourth year thereafter), the Code directs the board to meet in May or June to appoint or reappoint a general registrar for a four-year term to begin that July 1.<sup>34</sup>

#### 2.3.1.3.1 First Week in February

At its regular meeting in the first week of February, each electoral board appoints officers of election.<sup>35</sup> “Their terms of office [...] begin on March 1 following their appointment and continue, for a term not to exceed three years or until their successors are appointed.”<sup>36</sup>

#### 2.3.1.3.2 During March

Code Section 24.2-107 does not say the March meeting is required to be for the electoral board reorganization. The board may organize at any meeting but should do so as soon after a new member is appointed as possible. Va. Code § 24.2-107 still requires a meeting in March whether the board has already reorganized or not.<sup>37</sup>

#### 2.3.1.4 Electronic Participation

Electoral boards cannot conduct business “through telephonic, video, electronic or other [means of communication] where the members are not physically assembled” except as provided in §§ 2.2-3708.2 and 2.2-3708.3 of the Code of Virginia.<sup>38</sup> In situations other than declared states of emergency, electoral boards may conduct meetings through electronic communication means when certain conditions are met. Individual members may request to participate in a meeting remotely or the board may decide to hold an “all-virtual public meeting”. An “all-virtual public meeting” is when *all* members of the board participate remotely rather than being assembled in one physical location and which public access to the meeting is provided electronically.<sup>39</sup>

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<sup>32</sup> See Code of Virginia [§24.2-107](#).

<sup>33</sup> See Code of Virginia [§24.2-110](#).

<sup>34</sup> *Id.*

<sup>35</sup> See Code of Virginia [§24.2-107](#).

<sup>36</sup> See Code of Virginia [§24.2-115](#).

<sup>37</sup> See Code of Virginia [§24.2-107](#).

<sup>38</sup> See Code of Virginia [§2.2-3707](#).

<sup>39</sup> See Code of Virginia [§2.2-3701](#).



Before any electoral board can conduct a meeting through electronic communication means, there must be a policy adopted by a recorded vote that does the following:<sup>40</sup>

- Describes the circumstances under which an all-virtual public meeting and remote participation will be allowed.
- Describes the process the board will use for making requests to use remote participation, approving, or denying such requests, and creating a record of such requests.
- Fixes the number of times remote participation can be used by an individual member for personal matters to two meetings per calendar year or 25 percent of the meetings held per calendar year to the next whole number, whichever is greater; and
- Fixes the number of times an all-virtual public meeting can be used by the board to two meetings per calendar year or 50 percent of the meetings held per calendar year to the next whole number, whichever is greater. **All-virtual public meetings cannot be held consecutively with another all-virtual public meeting.**

For individual board members, in case of a personal matter, a temporary disability or other medical condition (impacting themselves or a family member), or the member's principal residence is more than 60 miles from the meeting location, which prevents the member's attendance, one electoral board member may participate electronically as long as five conditions are met:<sup>41</sup>

1. The electoral board has adopted a uniform written policy governing electronic participation as stated above.
2. The member notified the board's chair of the request to participate remotely (or vice-chair if requested by the chair).
3. A general description of the remote location the member is using is recorded in the minutes.
4. The reason the member requested to participate remotely is recorded in the minutes. (*If remote participation is disapproved, this must be recorded in the minutes.*)
5. The other two members are physically assembled for the purpose of attaining quorum. All meetings require a quorum of two members to conduct public business.

To conduct all-virtual public meetings, the electoral board must ensure the following nine conditions are met:<sup>42</sup>

1. The electoral board has adopted a uniform written policy governing electronic participation as stated above.

<sup>40</sup> See Code of Virginia [§2.2-3708.2\(D\)](#).

<sup>41</sup> See Code of Virginia [§2.2-3708.2\(B\)](#).

<sup>42</sup> See Code of Virginia [§2.2-3708.2\(C\)](#).



2. An indication of whether the meeting will be an in-person or all-virtual public meeting is included in the meeting's required notice (along with a statement that notifies the public the method shall not be changed unless new notice pursuant to §2.2-3707 is provided).
3. Public access to the all-virtual public meeting is provided via electronic communication means which allows the public to hear all members of the board, and when audio-visual technology is available, see the members of the board as well.
4. A phone number or other live contact information is provided to alert the board of any audio or video transmission issues that arise. (The board must take a recess until public access is restored if transmission fails.)
5. A copy of the proposed agenda and all materials, unless exempt, furnished to the board for a meeting is made available to the public in electronic format at the same time it is made available to the board.
6. The public is afforded the opportunity to comment through electronic communication means.
7. If a closed session is held, transmission of the meeting to the public resumes before the board votes to certify the closed meeting as required by § 2.2-3712(D).
8. Minutes are taken as required by § 2.2-3707 and include the fact that the meeting was held through electronic communication means.
9. No two members of the board are together in any one remote location unless that location is open to the public.

When audio-visual technology is available, a member of the electoral board shall, for the purpose of a quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails.<sup>43</sup> Pursuant to §2.2-3708.3(D), the electoral board must annually adopt a policy regarding their all-virtual public meetings.<sup>44</sup>

**Best Practice**

A suggested electoral board policy for electronic participation in meetings can be found online at the Forms Warehouse (Suggested Electoral Board Policy for Electronic Participation in Meetings under Local Administration).

<sup>43</sup> See Code of Virginia [§2.2-3708.3\(C\)\(3\)](#).

<sup>44</sup> See Code of Virginia [§2.2-3708.3\(D\)](#).



### 2.3.1.5 *Electronic Meetings in a Declared State of Emergency*<sup>45</sup>

Electoral boards may meet by electronic communication means without a quorum of the board physically assembled at one location when the Governor has declared a state of emergency in accordance with §44-146.17, or if the locality in which the board is located has declared a local state of emergency pursuant to §44-146.21. To meet electronically, certain conditions must be met. It must be true that:

- The nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location; and
- The purpose of the meeting is to provide for the continuity of operations of the board or to allow the board to discharge its lawful purposes, duties, and responsibilities.

If the electoral board holds an electronic meeting under these circumstances, the following steps must be taken:

- Give notice to the public using the best available method given the nature of the emergency. The notice must be given contemporaneously with the notice provided to members of the public body or governing board conducting the meeting.
- Plan for public access to the meeting through electronic means including, to the extent practicable, videoconferencing technology.
- Provide the public with an opportunity to comment.
- Comply with the provisions of §2.2-3708.2 of the Code of Virginia; and
- State in the minutes of the meeting the nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means.

## 2.3.2 Notice for Meetings of Public Bodies (the SBE and every local electoral board)

### 2.3.2.1 *Three Days' Notice*

Either the secretary or the member calling the meeting must provide notice to the public and all board members at least three business days prior to the meeting. Providing notice includes posting the date, time, and location of meetings in a prominent public location (such as on the locality website or a public bulletin board) and at the general registrar's office. Notice should also be provided electronically on the locality website.<sup>46</sup>

<sup>45</sup> See Code of Virginia [§2.2-3708.2](#).

<sup>46</sup> See Code of Virginia [§24.2-107](#). See also Code of Virginia [§2.2-3707](#).



**Law Note*****The FOIA Council’s opinion on Three Working Days: Weekends, Holidays, Day Of:***

The three working days do not include weekends or legal holidays, and the day of the meeting should not be counted as one of the three working days. All notices of special meetings must be *reasonable under the circumstance*. Public bodies should post notice at least three working days in advance of any meeting unless the factual circumstances surrounding a special or emergency meeting necessitate some shorter time period. The second requirement of subsection D is that notice of a special meeting must always *be given contemporaneously with the notice provided members of the public body*. Therefore, public notice of this special meeting should have been posted while notice was given to the members of the Committee.

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**2.3.2.2 Emergency Meetings**

Special or emergency meetings can be held, but notice must be given to the public contemporaneously with the notice provided to the electoral board members. An “emergency” meeting “means an unforeseen circumstance” arose requiring “immediate action,” therefore rendering the FOIA three-day notice requirement “impossible or impracticable.”<sup>48</sup> While emergency meetings must be public, a public body can go into closed session if there is a need to discuss a matter properly exempt under FOIA.<sup>49</sup>

**2.3.2.3 “Election Day” Exception**

Under the Code of Virginia §24.2-107, electoral board members can discuss Election Day matters without formally noticing a meeting if “an effort has been made by all available means” to notify the public and board members.<sup>50</sup> The SBE anticipates that Election Days may require them to meet to discuss issues that arise that day, for example. Accordingly, the SBE proactively notices a meeting for each Election Day even though this exception exists.

<sup>47</sup> See Virginia FOIA Council Opinion [August 1, 2017](#). See also Code of Virginia [§2.2-3707](#).

<sup>48</sup> See Code of Virginia [§2.2-3701](#).

<sup>49</sup> *Id.*

<sup>50</sup> See Code of Virginia [§24.2-107](#).



### 2.3.3 Meeting Records

#### 2.3.3.1 *Materials*

All working papers and materials furnished to local electoral boards must be made available for public inspection upon request at the same time these documents are provided to the board members.<sup>51</sup> Materials may include but are not limited to working papers, agendas, and memos.

#### 2.3.3.2 *Minutes*



Minutes are required for all meetings and must be available for public inspection after being finalized and approved by the board. The secretary of the board should promptly prepare and deliver the draft minutes to the local general registrar's office after the meeting. Minutes must be posted on the locality's official public government website within seven working days of the final approval of the minutes.<sup>52</sup>

#### 2.3.3.3 *Votes*

Any public business must be transacted by a public vote in an open meeting. FOIA does not permit voting in secret, written ballots, or telephone polling by one board member of the others as per the Code of Virginia §2.2-3710.

#### 2.3.3.4 *General Registrar Responsible for Providing Books, Papers, and Records to Public*

Books, papers, and records of the local electoral board shall be open to public inspection and copying whenever the general registrar's office is open for business either at the office of the board or at the office of the general registrar. The general registrar shall determine a reasonable charge, not to exceed the fee authorized pursuant to subdivision A 8 of §17.1-275, to be paid for copies made from the books, papers, and records of the board.<sup>53</sup> **No part of an individual's social security number on any record can be made available for inspection or copying by anyone.**

### 2.3.4 Closed Meetings

#### 2.3.4.1 *Permitted for Strictly Limited Purposes*

Local electoral boards may hold closed meetings only in a few limited circumstances. Please refer to the Code of Virginia §2.2-3711(A) for a list of these reasons but note that FOIA does not *require* that these meetings must be closed. Rather, FOIA permits the board to decide if, in certain circumstances, a closed meeting is warranted.<sup>54</sup>

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<sup>51</sup> *Id.*

<sup>52</sup> See Code of Virginia [§2.2-3707.2](#).

<sup>53</sup> See Code of Virginia [§17.1-275](#).

<sup>54</sup> See Code of Virginia [§2.2-3711](#).



#### 2.3.4.2 *How to Close a Meeting: Member must Move (during an Open Meeting) to Close Meeting*

A member must make a motion, during an open meeting, to close the meeting. The motion must identify the subject matter, purpose “of the meeting as authorized in subsection A of §2.2-3711 or other provision of law,” and “applicable exemption from open meeting requirements provided in subsection A of §2.2-3711 or other provision of law” for discussing the subject in a closed meeting.<sup>55</sup> The board must restrict the topics discussed to only those matters stated in the motion, specifically exempted from FOIA.<sup>56</sup>

#### 2.3.4.3 *The Closed Meeting Must be Certified.*

At the end of any closed meeting, the board must “immediately reconvene in an open meeting and [...] take a roll call or other recorded vote” to certify the meeting. Each member must certify that to the best of that member’s knowledge the meeting heard, discussed, and considered:

- (i) only public business lawfully exempted under FOIA and
- (ii) only such business matters identified in the motion to close the meeting.

Any member who believes that there was a departure from these requirements should state this prior to the vote. This statement must be recorded in the minutes of the electoral board.<sup>57</sup>

#### 2.3.4.4 *Public Access to Closed Meetings*

The public should be informed as soon as the closed meeting ends and given sufficient time to reenter the room before the board certifies the closed meeting. A board “may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the [board] in its consideration of a topic that is a subject of the meeting.”<sup>58</sup>

### 2.3.5 *Voting Equipment and Election Security Plans*

Certain electoral board meetings and records concerning voting equipment and election security may be closed. However, records may only be excluded from inspection and copying, and meetings may only be closed under both of the following conditions:



- Records or discussions in the meeting describe protocols for maintaining the security of ballots or voting and counting equipment or reveal the results of risk assessments of specific local electoral procedures and
- The release of such records or discussions of such matters in an open meeting would compromise the security of an election.

The Code of Virginia §24.2-625.1(E) specifies that this section should not “be construed to prohibit the release of information concerning any breach of security in the conduct of an election.”<sup>59</sup>

<sup>55</sup> See Code of Virginia [§2.2-3711](#).

<sup>56</sup> See Code of Virginia [§2.2-3712](#).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> See Code of Virginia [§§24.2-625.1](#) and [2.2-3711](#)(34).





## 2.4 RESPONSIBILITIES

### 2.4.1 Administrative Tasks – the Secretary



It is always essential that one member of the electoral board serve as secretary to ensure that the board performs the necessary administrative duties. At any time that the secretary is incapacitated in such a way that makes it impossible for the secretary to carry out the duties of the position, the board should designate one of its other members as acting secretary. This designation must be made in an open meeting and recorded in the minutes of the board. Should the member elected as secretary die, resign, or become incapacitated in such a way that makes it impossible for that person to carry out the duties of the position, the electoral board may elect another of its members acting secretary until such time as a new member is appointed and the electoral board meets to reorganize.<sup>60</sup>

The minutes of any board meetings held during such time and any required official documents must be signed accordingly. The annual compensation paid to any member shall not be affected by the member's temporary election as acting secretary.<sup>61</sup>

### 2.4.2 Attendance, Absences and Notice to ELECT

An electoral board member who has missed more than two meetings of the electoral board during the calendar year must also provide written or email notice to the Commissioner or Deputy Commissioner of the Department of Elections.

If any board member becomes unable to serve for an extended period of time but expects to return to the board later, the remaining members may request that the Court appoint a temporary member to ensure that the work of the board can go forward in an efficient and bi-partisan manner. If necessary for a quorum (two members) due to a member's temporary absence or disability, the senior circuit judge may appoint temporary members on a meeting-to-meeting basis; the temporary appointee is subject to the same qualification requirements as a regular member and must maintain party representation if practicable.<sup>62</sup>

### 2.4.3 Annual Training

Each member of each electoral board must attend ELECT's annual training program the first year of [their initial] appointment and [in] the first year of any subsequent reappointment.<sup>63</sup> The local governing body is required to pay or reimburse the reasonable expenses and mileage costs for at least one member incurred in attending this training.<sup>64</sup>

<sup>60</sup> See Code of Virginia [§24.2-106](#).

<sup>61</sup> See Code of Virginia [§24.2-108](#).

<sup>62</sup> See Code of Virginia [§§24.2-106](#) and [15.2-1503](#).

<sup>63</sup> See Code of Virginia [§24.2-106](#).

<sup>64</sup> See Code of Virginia [§24.2-108](#).



**Fee for Non-Attendance at Annual Training.** The Board has the authority to charge a fee to those who register to attend the annual training but do not cancel their registration within 3 days before the event, and do not show up.<sup>65</sup> The fee must be limited to the cost incurred due to their non-cancellation.

#### 2.4.4 Notary Services

Any person appointed as a member of an electoral board, or a general registrar shall be **prohibited from collecting any fee as a notary** during the time of such appointment.<sup>66</sup> Any person appointed as a deputy registrar or officer of election shall be prohibited from collecting any fee as a notary for services relating to the administration of elections or the elections law.<sup>67</sup>

## 2.5 DUTIES

In general, the duties outlined below are the responsibilities of the whole electoral board; in some cases, they are responsibilities specifically assigned to the electoral board secretary. Some of these duties may be delegated to the registrar. Such delegation should be in writing and recorded in the minutes of the board. The electoral board remains legally responsible for any statutory responsibility delegated to the registrar. Duties are grouped according to subject area. The core supervisory functions of the electoral board, such as protecting ballots, appointing officers, and evaluating the general registrar, cannot be delegated.

### 2.5.1 Duties Related to General Organization

- Electoral board members must take the oath of office.<sup>68</sup>
- At least one member of each electoral board must attend the annual training provided by the Department of Elections.<sup>69</sup>
- The secretary must notify the Department of Elections “of any change in the membership or officers of the electoral board.”<sup>70</sup>
- The electoral board must provide any information requested by the Department of Elections as provided: “Electoral boards and registrars shall provide information requested by the State Board and shall follow (i) the elections laws and (ii) the rules and regulations of the State Board insofar as they do not conflict with Virginia or federal law.”<sup>71</sup>

### 2.5.2 Duties Related to Polling Places

- The electoral board is responsible for **reviewing all polling places after each election** to determine that there will be polling places for the next election that meet the requirements of the Code of Virginia §§24.2-305-310.

<sup>65</sup> See Virginia Administrative Code [IVAC20-20-50](#).

<sup>66</sup> See Code of Virginia [§47.1-19\(C\)](#).

<sup>67</sup> *Id.*

<sup>68</sup> See the Code of Virginia [§24.2-120](#).

<sup>69</sup> See Code of Virginia [§24.2-106](#).

<sup>70</sup> *Id.*

<sup>71</sup> See Code of Virginia [§24.2-103](#).



- The “governing body of each county, city and town [must] provide funds to enable the general registrar to provide adequate facilities at each polling place for the conduct of elections.”<sup>72</sup>
- The **electoral board must assist** the local governing body in complying with various state and federal acts designed to **ensure the accessibility** of all polling places to persons with disabilities.<sup>73</sup>
- “If an emergency makes a polling place unusable or inaccessible, the electoral board or the general registrar [must] provide an alternate polling place.”<sup>74</sup>
- “The electoral board or the general registrar [must] provide and have posted outside each polling place appropriate signs to direct people with disabilities and elderly persons to any special entrance designed for their use.”<sup>75</sup>
- The electoral board or the general registrar must provide voting booths to each polling place, including at least one designed with privacy shields that permits the voter to vote a printed ballot in secret, is equipped with a writing surface, operative writing implements, and adequate lighting.<sup>76</sup>
- When a polling place has changed, the electoral board or the general registrar must provide notice at the old polling place regarding the change and information on how voters may find their new polling place, if practicable.
  - This notice must be posted at the old polling place for the first primary and general election at the new polling place.
- The use of electronic devices inside the polling place is generally permitted. However, representatives of candidates and political parties authorized to observe the election are prohibited from taking photos or video within the polling place.<sup>77</sup>
  - The determination of the officers of election of any dispute concerning the use of an electronic device in the polling place shall be subject to immediate appeal to the local electoral board.
  - An electoral board may not enact any policy that disallows the use of any electronic device by all individuals.

### 2.5.3 Duties Related to Voter Registration

- The electoral board or the general registrar may set additional hours for the voter registration office to be open.<sup>78</sup>

<sup>72</sup>See Code of Virginia [§24.2-310](#).

<sup>73</sup> *Id.*

<sup>74</sup> See Code of Virginia [§24.2-310](#).

<sup>75</sup> See Code of Virginia [§24.2-604.1](#).

<sup>76</sup> See Code of Virginia [§24.2-609](#); see also Chapter 3 Precincts and Polling Places.

<sup>77</sup> See Administrative Code of Virginia [1VAC20-60-30](#). See also [OAG Opinion 16-038 \(Bell\)](#) (regarding the use of cameras and phones in polling places.)

<sup>78</sup> See Code of Virginia [§24.2-411](#).



- The electoral board must approve any agreement for ongoing registration sites at businesses or other governmental agencies, as provided: “The agreement shall provide for the appointment of employees of the agency, business, or establishment to serve as deputy registrars and shall be in writing and approved by the local electoral board prior to implementation.”<sup>79</sup>
- The electoral board or general registrar may set additional occasional registration sites.<sup>80</sup>
- The electoral board, along with the general registrar, should ensure that all permanent registration sites comply with various state and federal acts designed to ensure the accessibility of all polling places to persons with disabilities, such as the Virginians with Disabilities Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Americans with Disabilities Act.<sup>81</sup>
- Changes in hours and locations of official voter registration sites staffed with a government employee are subject to notice requirements.<sup>82</sup>



#### Regulation Note

**1VAC20-20-70: Duty to Request Assistance and to Notify Voters of Denial of Applications for Voter Registration or Absentee Ballots.** General registrars should notify the secretary of the Board of Elections if he or she is having difficulty processing applications for voter registration or absentee ballots in a timely fashion in order to maintain in compliance with state and federal law (20-20-70(A)). If a registration or absentee ballot application is denied, the general registrar should provide the applicant with specific reasons why it was denied (20-20-70(B)). The board will automate this process through standard correspondence and the statewide voter registration system (20-20-70(B)).

#### 2.5.4 Duties Related to Candidate Qualifications

- If requested by a candidate, the electoral board must notify the candidate of any deficiencies in his declaration of candidacy or his petitions “which can be corrected prior to the filing deadline.”<sup>83</sup>

#### 2.5.5 Duties Related to Primaries and Special Elections

- The secretary must post or publish any notice of a primary or special election that is received from the Department of Elections or other appropriate authority such as the Governor, Speaker of the House, or President pro tempore of the Senate.<sup>84</sup>

<sup>79</sup> See Code of Virginia [§24.2-412](#).

<sup>80</sup> *Id.*

<sup>81</sup> See Code of Virginia [§24.2-413](#).

<sup>82</sup> See Code of Virginia [§24.2-415](#).

<sup>83</sup> See Code of Virginia [§24.2-505\(D\)](#).

<sup>84</sup> See Code of Virginia [§§24.2-517](#) and [24.2-683](#).



- **For primaries**, within 5 days if the order, “Each secretary [must] post a copy of the notice on the official website of any county or city, post copies of the notice at not less than 10 public places in the county or city, or have notice of the election published at least once in a newspaper of general circulation in the county or city.”<sup>85</sup>
- **For special elections**, “Each general registrar shall post a copy of the writ on the official website for the county or city or at not less than 10 public places or have notice of the election published once in a newspaper of general circulation in his jurisdiction at least 10 days before the election.”<sup>86</sup>
  - “If the special election is held in more than one county or city, the general registrars may act jointly to have the notice published once before the election in the affected jurisdictions.”<sup>87</sup>
- The electoral board must notify the locality’s treasurer or director of finance if any local office candidate is running unopposed in a primary, so that the candidate’s filing fee may be returned.<sup>88</sup> The Department of Elections will notify the locality’s treasurer or director of finance to return filing fees for unopposed General Assembly primary candidates.
- “In the event two or more [primary] candidates file simultaneously, the order of filing [is] then determined by lot by the electoral board.”<sup>89</sup>

#### 2.5.5.1 *Duties Related to the Withdraw of a Primary Candidate (Effective January 1, 2025)*

Once early voting has begun, if a qualified candidate for a primary election withdraws and as a result only one candidate remains, the electoral board may have to petition the circuit court for the cancellation of the primary election.

A qualified candidate for a primary election may submit *on or after* the 44th day before, but *prior to* the immediate Tuesday before the primary election, notice of intent to withdraw.<sup>90</sup> Such withdrawal notice must be signed and notarized.<sup>91</sup>

Upon receipt of the withdrawal notice within the timeframe stated above, the general registrar must immediately send the notice to ELECT and certify that the remaining candidate is now unopposed for the primary election. Within one calendar day of receiving such notice, the State Board of Elections will declare the remaining candidate as the nominee. As soon thereafter as possible, the local electoral board must petition the circuit court for the cancellation of the primary election.

<sup>85</sup> See Code of Virginia [§24.2-517](#).

<sup>86</sup> See Code of Virginia [§24.2-683](#).

<sup>87</sup> *Id.*

<sup>88</sup> See Code of Virginia [§24.2-524](#).

<sup>89</sup> See Code of Virginia [§24.2-529](#).

<sup>90</sup> See Code of Virginia [§24.2-612.2](#).

<sup>91</sup> *Id.*



If a candidate for a primary election withdraws on or before the 45<sup>th</sup> day, or after the immediate Tuesday before the primary election and only one candidate remains, the primary election cannot be cancelled through this process.

### 2.5.6 Duties Related to Town Elections

- The electoral board, along with the general registrar, must carry out elections for any town within its county and any town whose major portion is within its county. In a November election, the electoral board in a locality containing a town whose major portion is within another county must report the results ascertained for the town offices to the county in which the greatest part of the town is located.<sup>92</sup>
- For more information on election results ascertainment for a town split between two counties, visit ELECT's Forms Warehouse > Election Management > Canvass Documents > Shared Towns One Pager (Word Document).

### 2.5.7 Duties Related to Ballots

- The general registrar must order the printing of the number of ballots he determines are sufficient for the proper conduct of the election. This number is "subject to the approval [of] the electoral board."<sup>93</sup>
- "The general registrar [must] make printed ballots available for absentee voting not later than 45 days before any election," or as soon thereafter as possible for a nonfederal special election.<sup>94</sup>
- The electoral board must certify its compliance with the deadline to the Department of Elections and report to SBE the number of ballots ordered.<sup>95</sup> The Department of Elections issues electronic surveys for this purpose.
- The general registrar must send "proofs of each printed ballot for verification, and copies of each final ballot" to the Department of Elections.<sup>96</sup>
- 
- "The electoral board or the general registrar [must] designate one person to be continuously present in the room in which the ballots are printed." If not an electoral board member, the person must be paid at least \$20 per day.<sup>97</sup>
- The electoral board or the general registrar must designate one of its members, or a registrar, or an employee, to "receive the ballots after they are printed and [to] certify the number of ballots received. This certificate must be filed with other" election materials.<sup>98</sup>

<sup>92</sup> See Code of Virginia [§24.2-601](#).

<sup>93</sup> See Code of Virginia [§24.2-612](#).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> See Code of Virginia [§24.2-617](#).

<sup>98</sup> See Code of Virginia [§24.2-618](#).



- The electoral board or the general registrar must designate a person to affix the electoral board seal to each ballot and to sign a statement witnessing such. This statement must be filed with the board’s minutes.<sup>99</sup>
- The electoral board or the general registrar must have the printed ballots sorted for each precinct with at least one electoral board member or designee of the board present.<sup>100</sup>
- The electoral board must designate a member, or a registrar, or an employee, to “deliver to an officer of election of each precinct the official ballots for that precinct and obtain a receipt for the package or packages.”<sup>101</sup>

### 2.5.8 Duties Related to Voting Equipment

- The board must keep all ballot containers to be used in the precincts.<sup>102</sup>
- The board and general registrar must employ a person or persons (called “custodians”) to set up and test each voting machine before each election. “The local electoral board or general registrar may assign a board member or a deputy registrar to serve as a custodian without pay for such service.” A board member serving as the custodian may not also serve in his capacity as a board member when both the custodian and a board member are required to be present.<sup>103</sup>
- “The final testing of the equipment prior to each election [must] be done in the presence of an electoral board member, a representative of the electoral board, or the general registrar.” Again, if a board member is serving as custodian, another board member must be present.<sup>104</sup>
- The board must notify appropriate local party chairs (or independent candidates for a city or town election if there are no party nominees on the ballot for any office) of the time and place that the voting equipment will be prepared and sealed and allow the persons notified to have one representative each to witness the preparation and sealing.<sup>105</sup>
- The general registrar must retain custody of all voting machine keys after the machines have been sealed.<sup>106</sup>
- The board or the general registrar must deliver the keys in sealed packages to designated officers of election in each precinct before the polls open.<sup>107</sup>

<sup>99</sup> See Code of Virginia [§24.2-619](#).

<sup>100</sup> See Code of Virginia [§24.2-620](#).

<sup>101</sup> See Code of Virginia [§24.2-621](#).

<sup>102</sup> See Code of Virginia [§24.2-623](#).

<sup>103</sup> See Code of Virginia [§24.2-632](#).

<sup>104</sup> *Id.*

<sup>105</sup> See Code of Virginia [§24.2-633](#).

<sup>106</sup> See Code of Virginia [§24.2-634](#).

<sup>107</sup> See Code of Virginia [§24.2-639](#).



- The board or the general registrar may designate times and places for “the exhibition of equipment containing sample ballots, showing the title of offices to be filled, and, so far as practicable, the names of the candidates to be voted for at the next election for the purpose of informing voters who request instruction on the use of equipment.”<sup>108</sup>
- The board must take all necessary steps to assure the security of all voting equipment hardware, software, and firmware.<sup>109</sup>
  - Two members of any local electoral board may conduct site visits for the sole purpose of investigating compliance with security policies and procedures.
  - The electoral board of each county and city that utilizes electronic voting systems shall develop and annually update written plans and procedures to ensure the security and integrity of its electronic voting systems. The general registrar and ELECT are available, upon request, should the board need assistance in developing or reviewing its voting systems security plan.

### 2.5.9 Duties Related to Election Day

- The board must “ensure that the general registrar has the voting and counting equipment and all necessary furniture and materials at the polling places, with counters on the voting or counting devices set at zero (000), and otherwise in good and proper order for use at the election.” before the polls open.<sup>110</sup>
- The board or general registrar must “provide for each precinct in which any voting or counting machines are used two sample ballots.” “Such sample ballots [must] be posted for public inspection at each polling place during the day of election.”<sup>111</sup>
- The general registrar must provide to each polling place a model of a portion of the machine ballot face to use in instructing voters on how to use the machine.<sup>112</sup>

### 2.5.10 Duties Following the Election, Primary, or Referendum<sup>113</sup>

- The board or general registrar may direct the return of all materials from the precincts to the office of the general registrar instead of the Clerk of Circuit Court. These materials must be conveyed to the Clerk of the Circuit Court by noon on the day following the electoral board’s ascertainment of the results.<sup>114</sup>
- The board must meet beginning on the day after the election to determine the official results. A determination of the provisional ballots must be conducted within 10 days of the election.<sup>115</sup> The board must deliver “the certification of the results of the count together with all ballots and envelopes,” to the Clerk of Circuit Court.<sup>116</sup>

<sup>108</sup> See Code of Virginia [§24.2-635](#).

<sup>109</sup> See Code of Virginia [§24.2-625.1](#) et. seq. See also Chapter 4 Voting Equipment.

<sup>110</sup> See Code of Virginia [§§24.2-610, 24.2-637](#).

<sup>111</sup> See Code of Virginia [§24.2-641](#). See also Chapter 11 Election Day.

<sup>112</sup> See Code of Virginia [§24.2-647](#).

<sup>113</sup> See Chapter 14 Canvass.

<sup>114</sup> See Code of Virginia [§24.2-668](#).

<sup>115</sup> See Chapter 13 Provisional Ballots.

<sup>116</sup> See Code of Virginia [§24.2-653](#).





- The electoral board or general registrar may attempt to contact an individual who has voted a provisional ballot and remind the individual that they are permitted to provide a copy of a form of identification until noon on the Friday after Election Day.<sup>117</sup>
- “Each electoral board [must] meet at the clerk’s or general registrar’s office of the county or city for which they are appointed at or before 5:00 p.m. on the day after any election” to ascertain the results. This meeting may be adjourned to another day as needed, within 10 days from the date of the election.<sup>118</sup>
- The board must complete, certify, and sign abstracts of results for each office or question on any ballot in the locality. It must deliver copies of these abstracts to the appropriate authorities, depending on the type of election held.<sup>119</sup> Provisions for referenda can also be found in Title 15.2.
  - At its 2024 Session, the General Assembly granted election results ascertainment and provisional adjudication procedures to not exceed 10 days. However, the Assembly did not alter the six-day requirement for signed abstracts of votes cast documents to be delivered to the Department of Elections, i.e., §24.2-532. This might be perceived as a conflict. Rather, retaining the language “not to exceed” allows the participating localities in primary or non-November special elections the flexibility to end provisional and ascertainment procedures within the required timelines.
- The board must inform the Clerk of Circuit Court of any officer of election who has failed to return the election materials by the time of the board’s meeting to ascertain the results.<sup>120</sup>
- The board, along with the general registrar and the officers of election, must account for all used and unused paper ballots.<sup>121</sup>
- If a local election results in a tie, “the electoral board [must] proceed publicly to determine by lot which of the candidates shall be declared elected.”<sup>122</sup>
  - The secretary must make, and deliver, certificates of election to all winners of local offices.<sup>123</sup> Reminder: certificates of election may only be delivered or mailed until the winning candidate has satisfied § 24.2-948.2.<sup>124</sup>
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<sup>117</sup> See Administrative Code of Virginia [1VAC20-60-60](#).

<sup>118</sup> See Code of Virginia [§24.2-671](#).

<sup>119</sup> See, e.g., Code of Virginia [§§22.1-42](#), [24.2-532](#), [24.2-671](#), [24.2-675](#), [59.1-391](#).

<sup>120</sup> See Code of Virginia [§24.2-670](#).

<sup>121</sup> See Code of Virginia [§24.2-666](#).

<sup>122</sup> See Code of Virginia [§24.2-674](#).

<sup>123</sup> See Code of Virginia [§24.2-676](#).

<sup>124</sup> See Code of Virginia [§24.2-948.2](#).



### 2.5.11 Duties Related to Absentee Balloting

- “The general registrar shall note on the voter’s record, opposite the name of the voter, the fact that the ballot was returned unused and the date of the return and shall carefully preserve the ballot with all ballots returned unused. Such ballots shall be delivered, with other returned ballots, to the officers of election on election day.”<sup>125</sup>
- 
- The board must deliver one attested copy of the final absentee applicants list to the chief officer of election for each precinct on the day before the election.<sup>126</sup>
- 
- “Absentee ballots shall be collected from drop-off locations in accordance with the instructions provided by the Department. Such instructions shall include chain of custody requirements and recordkeeping requirements. Absentee ballots shall be collected at least daily by (i) two officers of election or electoral board members representing the two major political parties where practicable or (ii) two employees from the office of the general registrar, in which case the general registrar or a deputy general registrar may collect the absentee ballots.”<sup>127</sup>
- “The secretary of the electoral board [must] deliver all absentee ballots received after the election to the Clerk of Circuit Court.”<sup>128</sup>
- Any “member of an electoral board ...” who fails to discharge his duty as provided in this section – if “guilty of willful neglect of his [her] duty” – shall be guilty of a Class 1 misdemeanor as provided in the Code of Virginia §24.2-1001(A).



#### Law Note

On June 25, 2013, the U.S. Supreme Court in *Shelby County, Alabama v. Holder*, 133 S.Ct. 2612, held invalid Section 4 of the Voting Rights Act that outlines the formula for determining what jurisdictions are covered under the Section 5 Preclearance processes. This ruling makes Section 5 dormant until such time as Congress enacts another formula for coverage that is consistent with the Constitution. The practical effect is that it is no longer necessary to preclear changes affecting voting with the Department of Justice.

<sup>125</sup> See Code of Virginia [§24.2-708](#).

<sup>126</sup> *Id.*

<sup>127</sup> See Code of Virginia [§24.2-707.1\(D\)](#).

<sup>128</sup> See Code of Virginia [§24.2-711\(C\)](#).



### 2.5.12 Duties Related to Recounts<sup>129</sup>

- “The [recount] petitioner and his counsel and each other party and their counsel under the supervision of the electoral board and its agents shall have access to pollbooks and other materials used in the election for examination purposes, provided that individual ballots cast in the election shall not be examined at the preliminary hearing.”<sup>130</sup>
- The board must assist and advise the court on establishing procedures for a recount.<sup>131</sup>
- Board members must serve as recount coordinators if so, requested by the court.<sup>132</sup>

### 2.5.13 Duties Related to Officers of Election

- The electoral board must appoint all officers of election for each precinct.<sup>133</sup>
- “The electoral board by a recorded majority vote may remove from office, on notice, any [...] officer of election who fails to discharge the duties of his office according to law.”<sup>134</sup>
- The electoral board must designate a chief officer and assistant chief officer for each precinct. “Not less than three [officers of election must] be appointed for each precinct.” “In appointing officers of election, representation [must] be given to each of the two political parties having the highest and next highest number of votes in the Commonwealth for Governor at the last preceding gubernatorial election.” “If practicable, no more than one-third of the total number of officers appointed for each precinct may be citizens who do not represent any political party.”<sup>135</sup>
- The Department of Elections sets the training standards for the officers of election to be fulfilled by the local electoral boards and general registrars. Department of Elections policy 2010-2 establishes the training standards.<sup>136</sup>
- The electoral board must certify to the Department of Elections that training of the officers of election has been conducted consistent with Section 24.2-115.2 and [SBE Policy 2021-002](#).<sup>137</sup>
- The Department of Elections recommends training any newly appointed officers before their first election and all officers whenever there are either Title 24.2 election law or ELECT regulation changes that alter the duties or conduct of the officers of election. The Code of Virginia also requires that officers of election must be trained on new changes at least three days prior to the first election in which the new law or regulation takes effect.<sup>138</sup>

<sup>129</sup> See Chapter 15 Recounts and Contests.

<sup>130</sup> See Code of Virginia [§24.2-802.1\(A\)](#).

<sup>131</sup> See Code of Virginia [§24.2-802.1\(B\)](#).

<sup>132</sup> See Code of Virginia [§24.2-802.1\(C\)](#). See also Chapter 15 Recounts and Contests.

<sup>133</sup> See Code of Virginia [§§24.2-109](#) and [24.2-115](#).

<sup>134</sup> See Code of Virginia [§24.2-109](#).

<sup>135</sup> See Code of Virginia [§24.2-115](#).

<sup>136</sup> See Code of Virginia [§24.2-103](#).

<sup>137</sup> See Code of Virginia [§24.2-115.2](#) and [SBE Policy 2021-002](#).

<sup>138</sup> *Id.*



- “The board or the general registrar [must] not permit any person to serve as an officer [of election] who is not fully trained to conduct an election properly with the equipment” used in the precinct.<sup>139</sup>
- An electoral board member, the general registrar, or designated officer of election must give an oath to each officer of election before the polls open.<sup>140</sup>
- “The secretary of the electoral board or the general registrar [must] prepare a list of the officers of election that [must] be available for inspection and posted in the general registrar’s office prior to March 1 each year. Whenever substitute or additional officers are appointed, the secretary of the electoral board or the general registrar [must] promptly add the names of the appointees to the public list.”<sup>141</sup>
- Officers of election must be instructed on how to assist voters who use curbside voting.<sup>142</sup>

#### 2.5.14 Duties Related to Registrars

##### 2.5.14.1 *The Electoral Board Must Appoint the General Registrar*

Starting in May or June of 2023, and every four years after, the electoral board for each county and city meet to appoint the general registrar.<sup>143</sup> General registrars serve four-year terms beginning July 1 of the year of appointment.<sup>144</sup> The electoral board must fill any vacancy in the office of general registrar for the remainder of an unexpired term.<sup>145</sup> The electoral board may seek the assistance of the locality’s human resource personnel to draft an advertisement, screen applications, and develop an interview format.

Following the expiration of the general registrar’s four-year term, the electoral board is not required to reappoint the general registrar. However, the Attorney General stated in a 2023 opinion that “the decision to replace the registrar cannot be based on political affiliation or other impermissible grounds.”<sup>146</sup> Additionally, the process by which an electoral board seeks to appoint a new general registrar must be objective and apolitical.

<sup>139</sup> See Code of Virginia [§24.2-636](#).

<sup>140</sup> See Code of Virginia [§24.2-611](#).

<sup>141</sup> See Code of Virginia [§24.2-115](#).

<sup>142</sup> See Code of Virginia [§24.2-649.1\(E\)](#).

<sup>143</sup> See Code of Virginia [§24.2-110](#).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> See Op. Va. Att’y Gen. (May 15, 2023) [23-023 Opinion Letter](#).



#### 2.5.14.2 *Removal of the General Registrar*

The electoral board may institute proceedings for the removal of any general registrar who “fails to discharge the duties of their office according to law.”<sup>147</sup> To remove a general registrar, the State Board of Elections or the electoral board must file a petition, signed by a majority of the State Board or the electoral board, with the circuit court in the locality where the general registrar serves.<sup>148</sup> The general registrar may apply to the Virginia Division of Risk Management to assign counsel to their defense and any subsequent appeals.

General registrars have 12 months after their appointment or reappointment to receive certification through the State Board’s Certification Program. An electoral board may ask the State Board for a three-month extension of the deadline, and the State Board will consider such request on a case-by-case basis. If the general registrar does not receive certification, the electoral board is required to remove the registrar from their position.<sup>149</sup>

#### 2.5.14.3 *Additional Duties*

The electoral board may prescribe additional duties – beyond those prescribed in the Code – to the general registrar.<sup>150</sup> If this is done, the board should create a delegation of authority policy, which should become part of the minutes, listing those board duties that are being delegated to the general registrar to perform. The delegation of authority policy should be reviewed annually. ELECT recommends that the Secretary of each electoral board retain an updated list of delegated duties to provide to any new registrar. An example of how the State Board of Elections delegates duties to the Department of Elections can be found on Virginia’s Regulatory Townhall.<sup>151</sup>

#### 2.5.14.4 *Deputy registrars*

“The electoral board [must] determine the number and set the term for deputy registrars.”<sup>152</sup> The term set by the electoral board may not extend beyond the term of the general registrar in office at the time but may also expire sooner.<sup>153</sup> The general registrar appoints all deputy registrars and establishes their duties. Localities with populations over 15,500 must have at least one deputy registrar. Smaller localities must have at least one substitute registrar who can perform the general duties if necessary.<sup>154</sup>

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<sup>147</sup> See Code of Virginia [§24.2-109\(A\)](#).

<sup>148</sup> See Code of Virginia [§24.2-234.1](#). See also ELECT, [ELECT-109\(A\) Petition for Removal of General Registrar-Local Electoral Board](#) and [ELECT-103\(E\) Petition for Removal of General Registrar -State Board of Elections](#).

<sup>149</sup> See Code of Virginia §§[24.2-103\(C\)](#) and [24.2-114\(19\)](#).

<sup>150</sup> See Code of Virginia [§24.2-114](#).

<sup>151</sup> See Virginia Regulatory TownHall, State Board of Elections [Guidance Documents](#).

<sup>152</sup> See Code of Virginia [§24.2-112](#).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*



#### 2.5.14.5 *Performance Evaluation*

The electoral board must conduct an annual performance review of the general registrar each year for the 12-month period ending June 30. The electoral board must complete the review by August 1 and a copy of the summary of the review submitted to the Department of Elections as soon after discussing the GR's performance review as possible. The electoral board must retain a copy of the complete review document in their files.<sup>155</sup>

#### 2.5.15 *Prohibited Activities in the Conduct of Elections*

Electoral boards are prohibited from soliciting, accepting, using, or disposing of any money, grants, property, or services, given by a private individual or nongovernmental entity for the purpose of funding voter education and outreach programs, voter registration programs, or any other expense incurred in the conduct of elections.<sup>156</sup> The prohibition does not apply to: (i) the operation of polling places or voter satellite offices in a facility furnished by a prohibited entity; or (ii) the acceptance of federal government grants that are funded in whole or part by donations from a prohibited entity. It is important to note "services" can include volunteer efforts.

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<sup>155</sup> See Code of Virginia [§24.2-109.1](#).

<sup>156</sup> See Code of Virginia [§24.2-124.1](#).

