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A SURVEY OF ELECTION LAW REFORM IN VIRGINIA

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The Virginia General Assembly of 1970 enacted the first large scale revision of Virginia election laws since the Constitution of 1902. The new law, effective December 1, 1970, re-writes, rearranges, and adds to the entire body of Virginia election law. The pressures which caused such extensive revision were brought about by the Twenty-Fourth Amendment to the United States Constitution, which abolished the poll tax, the 1965 Federal Voting Rights Act, repeated scandals concerning abuses in the administration of Virginia's loosely drawn absentee voting law, the proposed new Virginia Constitution, and the increasingly urban population of the Commonwealth.

The 1968 General Assembly established an Election Laws Study Commission consisting of three members of the Privileges and Elections Committee of the Senate, four members of the Privileges and Elections Committee of the House, and eight members from the public. The Commission was bi-racial, and the various political philosophies in the Commonwealth were represented.[1] Its report was enacted by the 1970 General Assembly with few changes.[2]

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1. H. J. Res. No. 73, [1968] Va. Acts. The designated House of Delegates members were: M. Caldwell Butler, Roanoke, attorney; Walther B. Fidler, Sharps, attorney; Lyman C. Harrell, Jr., Emporia, attorney; and James M. Thomson, Alexandria, Chairman of the House Privileges and Elections Committee and attorney. The designated Senate members were: Hunter B. Andrews, Hampton, attorney; Lloyd C. Bird, Chesterfield, business executive; and Joseph C. Hutcheson, Lawrenceville, attorney. The members appointed by the Governor from the state at large were: Will D. Baugh, Lynchburg, Secretary of the Lynchburg Electoral Board; Mrs. John C. Doud, Alexandria, President of the Virginia League of Women Voters; John Wingo Knowles, Richmond, Judge of the Circuit Court of the City of Richmond and of Henrico County; Byron N. Puryear, Hampton; Cecil D. Quillen, Gate City, attorney; James M. Robertson, Norfolk, attorney; Turner T. Smith, Manassas, Secretary of the Prince William County Electoral Board and attorney; and the author. The Governor designated James M. Thomson as Chairman of the Commission. The Commission elected Lloyd C. Bird to serve as vice-chairman and employed William Griffith Thomas, attorney from Alexandria, to serve as counsel to the Commission.

The author would like to note the unfailingly evenhanded rulings of Hon. James M. Thomson, Chairman of the Commission. It should also be said that the Commission Report could never have been written as it was, incorporating the various reforms, or passed the General Assembly essentially unchanged, without the efforts in the State Senate of Hon. Lloyd C. Bird and Hon. Hunter B. Andrews, members, and Hon. George M. Warren, Jr., not a member of the Commission. The Commission Report was drastically amended by the House Privileges and Elections Committee to avoid

The Commission began by working with the Commission on Constitutional Revision in drafting the proposed sections relating to suffrage in the Constitution to be submitted to the electorate in November, 1970.[3] Constitutional modifications worthy of particular note are: change in the state residence requirement from twelve to six months;[4] provision that residence shall include both domicile and a place of abode;[5] allowance of a designation of party affiliation on ballots;[6] and provision for the automatic purging from the rolls of any voter who has not voted once in four consecutive calendar years.[7] There is also a change which prevents an employee of any government (federal, state, or local) from serving as a registrar, officer of election, or member of a local electoral board.[8] The purpose of this change was to stop the practice, in some parts of the state, of having employees of elected officers placed in supervisory

many absentee voting reforms. The amended version passed the House, but the Senate returned the bill essentially to its original form.

2. Ch. 462 [1970] Va. Acts, enacted as VA. CODE tit. 24.1 (Supp. 1970).

3. The proposed amendments were approved overwhelmingly by the voters on November 3, 1970.

4. VA. CONST. art. II, § 18 (1902) [hereinafter cited as Old Const.]. VA. CONST. art. II, § 1 [hereinafter cited as New Const.].

Since the revision of the election laws certain proceedings in the Supreme Court of the United States may require further amendment of the Virginia statute. The cases which bear directly on the law concern voting age and residency requirements.

In Oregon v. Mitchell, 39 U.S.L.W. 4027 (U.S. Dec. 22, 1970), the Supreme Court upheld the constitutionality of those provisions of the Voting Rights Act Amendments of 1970 which enfranchised 18 year-olds in national elections. However, by holding unconstitutional the portion of the Amendment which sought to compel the states to allow 18 year-olds to vote in state and local elections, the Court has created a serious dichotomy, and Virginia is now faced with the decision of either establishing separate election lists and procedures or allowing 18 year-olds to vote in all elections.

Oregon v. Mitchell also held constitutional that portion of the Amendment which established a national election residency requirement. In Bufford v. Holton, 39 U.S.L.W. 2253 (E.D. Va. Oct. 27, 1970), a three-judge federal court held invalid Virginia's one year residency requirement as being unreasonably long and, therefore, in violation of the due process clause of the Fourteenth Amendment to the United States Constitution. The Attorney General of Virginia has filed a petition for certiorari asking the Supreme Court to review that decision. Even if the Virginia residency provision is upheld, dual residency requirements analagous to the voting age standards would exist, and either expediency or decision may require alteration of the existing residency period.

5. *Id.* The addition of the requirement of an abode in the residence requirement was inserted in an effort to tighten loosely drawn provisions of Virginia election laws enabling persons who were actually non-residents of Virginia to maintain a voting residence in the state.

6. Old Const. art. II, § 28. New Const. art. II, § 3.

7. New Const. art. II, § 4.

8. *Id.* art. II, § 8.

capacities during elections, and to place all government employees on the same footing.[9]

Immediately following the organization of the Commission, the chairman appointed subcommittees on registration, general, primary, and special elections and absentee voting. The Commission held twenty-three full-day working sessions, most of which were conducted in Richmond. Public hearings were held in Abingdon, Lynchburg, Alexandria, Norfolk, and Richmond, so that everyone in the state wishing to express his views could do so without great inconvenience.

The Commission believed that the laws relating to registration should be completely revamped. The state had changed from what was, in 1902, an almost wholly rural economy to one encompassing the rapidly expanding Northern Virginia, Richmond, and Norfolk urban areas as well as the rural counties. The Commission heard ample evidence of the deplorable condition of the registration books in many counties and resolved to require a general registrar in each county or city in the state.[10] The State Board of Elections, whose authority to supervise elections was increased and clarified has been required to establish a central registration roster for the entire state by October 1, 1973.[11] The Commission report contemplates the use of modern computer methods and data processing equipment, and a special subcommittee was sent to South Carolina to study its statewide computerized registration system.

The problem of modernizing the voting process itself was also considered. The only method compatible with the secret ballot was believed to be statewide use of voting machines.[12] This innovation would also help in preventing absentee ballot abuse, since the absentee ballots must now be counted separately in all precincts using voting machines. The Commission believed that punch card voting should be discouraged because it lends itself too readily to mistake, as well as abuse, and recommended the deletion of the Code sections authorizing punch card balloting.[13]

The Commission was convinced that the absentee voting laws of the state had been badly abused in some areas, and that the abuse was spreading.[14] It therefore decided to work on the theory that no one should

9. VA. CODE ANN. § 24.1-33 (Supp. 1970) [hereinafter cited as New Code]. VA. CODE ANN. §§ 24-31, -198 (Repl. Vol. 1969) [hereinafter cited as Old Code].

10. New Code § 24.1-43.

11. *Id.* § 24.1-23.

12. Old Code §§ 24-291, *et seq.* New Code §§ 24.1-203, *et seq.*

13. Old Code §§ 24-318.1, *et seq.*

14. *See* United States v. Weston, 417 F.2d 181 (4th Cir. 1969), *cert. denied,* 396 U.S.

be allowed to vote prior to election day merely for his own convenience. Voting by mail should be limited to the sick, students, and military personnel. Other persons qualified to vote, but absent on business or vacation, should vote in person in the office of the registrar or the electoral board.[15]

The Commission also considered the subject of campaign spending and determined that as a matter of policy, limits should be removed but disclosure of substantially all monies spent should be required. Because of the entirely different system of reporting expenses in federal elections, candidates for the United States Senate and House are exempt from the provisions of this section, but are required to file a copy of their federal reports with the State Board of Elections.[16]

The procedure for challenging election results was modified significantly by providing that election contests tried in court would now be subject to review by the Supreme Court of Appeals as are other civil cases.[17]

THE STATUTE

The following is a chapter by chapter analysis of the new law, with emphasis on changes from the existing law.[18]

Chapter 1: Apportionment of Representatives

No substantive change was made in the method of apportionment of representatives to the General Assembly. It is to be particularly noted that Virginia has thus far not created any separate assembly districts within political subdivisions, either in the Senate or the House of Dele-

1062 (1970); Fields v. United States, 228 F.2d 544 (4th Cir. 1955), *cert. denied*, 350 U.S. 982 (1956).

15. Old Code §§ 24-319, *et seq.* New Code §§ 24.1-227, *et seq.*

16. Old Code §§ 24-440, *et seq.* New Code §§ 24.1-251, *et seq.*

17. Old Code § 24-439; *see also* Election Laws Study Commission Report, H. Doc. No. 14 at 10 (1970).

18. The author has borrowed heavily from the Election Laws Study Commission Report, H. Doc. No. 14 (1970) [hereinafter cited as Commission Report]. One purpose of this article is to more widely disseminate and make available to the bar the substance of the report. Persons interested in statutory research should consult copies of the Election Laws Study Commission Report to the Governor dated December 13, 1969; House Bill 125 (1970); Senate Bill 99 (1970) (identical to House Bill 125); and House Privileges and Elections Committee Amendment in the nature of a substitute to House Bill 125 (1970). This article does not attempt to annunciate all the changes but does outline the major ones sufficiently to present the general impact of the revision.

gates. It has instead employed the device of floater seats and multiple member districts, utilizing county and city boundaries for assembly district lines.[19] The same is true for the United States Congressional Districts, except for the 8th and 10th which divide Fairfax County.[20]

Included in Chapter 1 is a section which defines eleven of the most commonly used terms in election law.[21] Some of these terms were scattered throughout the Virginia code, while others were taken by inference from the body of the law or because of their general acceptance throughout the state. The terms which have new meanings are: general election, officers of election, party or political party, and residence.

General election was defined under the old law as an election held on a statewide basis. With reference to primaries, it described that election held on the Tuesday after the first Monday in November. The term now means any election held on the Tuesday after the first Monday in November, or, in the case of elections for the governing bodies of cities and towns, on the first Tuesday in May.[22]

Officers of election is a new term not heretofore used in Virginia. Officials who manned a polling place were known as judges and clerks of election. They are now referred to as officers of election.[23]

Party or *political party* formerly meant, with reference to primaries, an organization which in the immediately preceding Presidential election polled at least one-fourth of the total vote. The present meaning, with reference to all elections, is an organization which in the last statewide general election polled at least ten per cent of the total vote, and was organized, at least by way of having a central committee and a chairman, for six months preceding the filing of a nomination.[24] While liberalizing the requirement for the number of votes cast, the definition puts a premium on continuity and organization not present before.

The word *residence* formerly meant a voting residence,[25] and was undefined by statute, except in town elections, where the voter was required to be an actual resident. The new Constitution and the new statute more closely follow the definition formerly used in town elec-

19. Old Code §§ 24-12, -14. New Code §§ 24.1-12, -14.
20. Old Code § 24-3. New Code § 24.1-4.
21. New Code § 24.1-1.
22. Old Code § 24-346. New Code § 24.1-1.
23. Old Code §§ 24-193, -194. New Code § 24.1-1.
24. Old Code § 24-346. New Code § 24.1-1.
25. Bruner v. Bunting, 15 VA. LAW REG. 514, 515-18 (1909).

tions by requiring both domicile and a place of abode.[26] This is the great reform directed toward preventing abuse of the absentee voting law.

Chapter 2: State Board of Elections

The powers and duties of the State Board of Elections to supervise and coordinate elections in the Commonwealth and to obtain regularity and purity in all elections have been increased.[27] The provision which required the State Board to purge local registration books is made mandatory at stated times, rather than discretionary,[28] and the method of appointing the members has been changed.

Formerly, the Board of Elections consisted of three members representing the political parties with the highest and next highest number of adherents in the state. The members were appointed by the Governor and confirmed by the General Assembly. It operated within the Office of the Secretary of the Commonwealth, and its office was required to be in the City of Richmond. Under the new statute appointment and confirmation remain the same. Two members, however, shall be from the party having the highest number of votes, and one member shall be from the party having the next highest number of votes in the last preceding gubernatorial election.[29] The requirement that the Board maintain its office in the City of Richmond has been deleted, and it is now a separate body not subject to the Secretary of the Commonwealth.

Under the old law, the Board could require purging of local registration books whenever it deemed proper, and was required to direct such purge within a reasonable period. The new statute mandates purges annually beginning in 1974.[30]

The old law required the Board to furnish books and forms for distribution to local election officials. The new law requires the furnishing of forms for registration, transfer, and identification of voters, and further provides that the forms shall be used throughout the Commonwealth.[31] The Commission found a myriad of books and forms used throughout the different cities and counties of the state and concluded that, particularly in view of its recommendation to establish central registrars and a statewide central registration roster, the use of uniform

26. Old Code § 24-23. New Code § 24.1-1.
27. Old Code §§ 24-24, *et seq.* New Code §§ 24.1-18, *et seq.*
28. Old Code §§ 24-24, -26. New Code §§ 24.1-18, -20.
29. Old Code § 24-24. New Code § 24.1-18. Commission Report at 4, 33, 34.
30. Old Code § 24-26. New Code §§ 24.1-20, -59.
31. Old Code § 24-28. New Code § 24.1-22.

forms in all aspects of administering the election laws would lead to simplicity, economy, and efficiency throughout the state.

The major addition to the Board's duties was the requirement that it establish, operate, and maintain a central record-keeping system on or before October 1, 1973.[32] This responsibility was not considered by the former statute. The Board is now charged with establishing the roster by cities or counties and by precincts, deleting voters who are dead or who are no longer qualified to vote, adding qualified voters to the central roster, and furnishing each local electoral board (at least ten days prior to the election) a list of voters for the county or city with an additional three copies of voting lists for each precinct. It is also required to furnish, at a reasonable price, precinct lists to candidates, or political party committees and officials thereof.[33] The statute establishes requirements for reporting information, such as criminal records and deaths, for purging registration books and for adding new voters.[34] It also provides that the Board shall have the power to issue sufficient regulations to enforce the intent of the chapter that a uniform system of registration be established throughout the Commonwealth.[35] In the event of a conflict between central registration roster records and local records, the local records shall govern.[36]

Chapter 3: Electoral Boards

The duties of local electoral boards remain essentially the same. Important changes are made, however, in the method of appointment, the selection of members, the record-keeping, and the requirement that registrars make themselves available for registration.

The old law provided for three-member electoral boards in each county and city, appointed by the Circuit Court of the county or the Corporation Court of the city. Under the new statute, appointment to the three-member board is by the resident judges of the court of record. If there is more than one resident judge, selection is made by a majority. If there is no majority, the senior judge, with the approval of the other judges makes the appointment. If there are no resident judges then the judge of the court of record will make the appointments.[37]

32. New Code § 24.1-23.
33. *Id.*
34. *Id.* §§ 24.1-24, -25, -26.
35. *Id.* § 24.1-27.
36. *Id.* § 24.1-28.
37. Old Code § 24-29. New Code § 24.1-29.

Representation under the old statute went, as far as practicable, to the political parties receiving the highest and next highest number of votes at the last election preceding their appointment, with the majority coming from the party having the highest number of votes in the last gubernatorial election.[38] Under the old law, the judge's discretion as to whom to appoint was unlimited. The new statute requires representation of the political parties having the highest and next highest number of votes in the last preceding gubernatorial election. The majority will be from the party which had the highest number of votes in that election. Political parties may now recommend three qualified voters of the county or city for appointment.[39]

Numerous complaints received by the Commission condemning the unavailability of electoral board records, a point about which the old law was silent, led to a provision that all books, records, and papers be open to inspection by any qualified voter at the office of the board between 8:00 a.m. and 5:00 p.m. on week days and at such other times as may be fixed by the Secretary. During the period thirty days prior to an election, however, they will be open only to one duly designated representative of each nominee or candidate.[40]

The old law made no reference to any requirement that the electoral board keep the office of the registrar open. The new law provides that, where the office of the general registrar is not open for business between 8:00 a.m. and 5:00 p.m. on week days, he is to open the office, in addition to other required times, at least one day each week during the period thirty days prior to an election. He shall also post a notice of such days at ten public places or in a newspaper of general circulation.[41]

The electoral board appoints all officers of election and the general registrar. Previously, the law had provided for representation, as far as possible, by each of the two political parties which next preceding their appointment cast the highest and next highest number of votes. Representation of these two parties is now mandatory.[42]

Where no requirement of notice previously existed, one day's notice of meetings of the electoral board must now be given.[43] Additionally,

38. Old Code § 24-29.

39. *Id.* New Code § 24.1-29. The General Assembly rejected recommendations that the judge be required to appoint from a list of persons submitted by the political parties and that members' terms be limited to two three-year periods.

40. New Code § 24.1-30.

41. *Id.*

42. Old Code § 24-30. New Code § 24.1-32.

43. New Code § 24.1-30.

under the old law, except in a few instances, the county clerks and clerks of the Corporation Courts were required to make reports to the State Board concerning the number of election districts and the number of voters in each district. These reports are now to be submitted either by the electoral board or the general registrar, and the information required has been broadened to include the names of new, transferred, and purged voters.[44]

Chapter 4: Election Districts

The general propositions that the governing body of a city may establish election districts or precincts, and that courts of record have authority to establish election districts and precincts in counties have been continued.[45] The previous Code provision made each magisterial district of a county and each ward of a city an election district, unless otherwise specified. Although this provision has been repealed, the new Code contemplates the continuance of existing election districts and precincts unless changed by law.[46]

The old general law provided for an election district in a city for every one thousand voters or fractional part thereof above five hundred. The new law provides for election districts in cities of not less than five hundred nor more than five thousand.[47] The old law had no provision for notice of changes in boundaries, which could be made until thirty days before a general election. The new law provides for notice by mail to all the registered voters affected, for publication of the change in a newspaper of general circulation, and that no such change may be made within sixty days of a general election.[48]

Special provisions for cities of certain populations were repealed, and the law now applies uniformly in all cities throughout the state. If the number of qualified voters in an election district exceeds five thousand, the city shall, within six months, alter the boundaries of the precinct. The failure to alter them shall not, however, be cause to attack an election.[49]

The old law provided for abandonment of a precinct containing less than twenty qualified voters on petition signed by a majority thereof,

44. Old Code §§ 24-255, -255.1. New Code § 24.1-35.
45. Old Code §§ 24-44, -45, -46. New Code §§ 24.1-36, -37.
46. Old Code § 24-44. New Code § 24.1-1(4), (8), (9).
47. Old Code § 24-45. New Code § 24.1-36.
48. *Id.*
49. Old Code § 24-45.1. New Code § 24.1-36.

and for abandonment upon petition of the governing body of the county if the precinct contained less than thirty qualified voters. The new law provides for such abandonment if there are fewer than thirty qualified voters in a precinct.[50] Similarly, it was formerly provided that upon the petition of twenty qualified voters of a magisterial district or upon petition of the governing body, the Circuit Court of a county could make any changes of precinct boundaries within the magisterial district. Notice by posting at the courthouse door and at each voting place, new and old, until thirty days before an election was required. Before the court could act on such petition, the twenty qualified voters had to *actually* reside in the district and hold real estate therein in fee simple.[51] The new law provides for changes in election district boundaries upon the petition of twenty qualified voters of the district in a county, or of a majority of the qualified voters of the district in a city or town, or upon petition of the governing body of a county or town. The districts established shall have not less than one hundred nor more than five thousand qualified voters, and counties shall, within six months after a district attains a population of five thousand, petition the court to alter the district to lower the number of voters. Failure to comply with this requirement shall not be cause to attack an election. No change by the court shall be made within sixty days of any primary, general, or special election, and notice by mail to all the registered voters affected, and publication in a newspaper of general circulation are required.[52]

The principal changes in this chapter, then, are the creation of limits for county election districts; empowering the courts, on a petition of the majority of the voters, to change district lines in cities where before they had no jurisdiction; and providing that precincts may not be altered so as to avoid the use of voting machines.[53]

Chapter 5: Qualification of Voters and Registration

The sections on voter qualification have been generally altered only to comply with the new Constitution, to repeal all references to literacy

50. Old Code §§ 24-47, -48. New Code § 24.1-38.

51. Old Code §§ 24-46, -50, -51.

52. New Code §§ 24.1-37, -39.

53. *Id.* § 24.1-37. The Commission recommendation that voting machines be required in every precinct of three hundred or more registered voters was rejected by the General Assembly in enacting New Code § 24.1-203, but was retained in § 24.1-37, giving rise to a potential conflict between the two sections. It was reported to the Commission that, in some states, similar enactments requiring voting machines caused the splitting of precincts to avoid their use.

requirements, and to add abode to the residence requirements.[54] The sections on registrars and registration of voters have been completely re-written to assure uniform application throughout the state by eliminating the existing morass of general and special legislation.[55] So many acts had been passed at the instance of particular political subdivisions concerning general or central registrars that it was considered appropriate to make the extensive modifications in the new law by the combination of a number of sections and the outright repeal of others. A uniform system of registration is, therefore, established throughout the state under the new law.

The old law contemplated a registrar for each electoral district in the state, unless the city or county came under some special act allowing the appointment of a central or general registrar, the appointment of whom was generally discretionary.[56] The principal reform of this chapter is that it requires general registrars in every county and city in Virginia,[57] thus causing all pertinent records to be maintained at a central place open to public inspection, and mandatory minimum times for registration of voters. The old requirement of only one registration day for each election under the conditions which now obtain in the state was wholly inadequate and the subject of many justifiable complaints. In addition, the requirement that the office of the central registrar be in a public place makes the registrar more accessible to the general public and encourages registration of new voters. Formerly, many registrars kept their books at home and had no regular hours for registration.

The new law also provides for uniform terms of four years for all registrars throughout the state beginning in March, 1971.[58] The provision that a registrar could not hold any other office by election or appointment during his term has been continued, with the additional proviso that no registrar shall offer himself for any elected office filled solely by the voters of his jurisdiction. Upon his election or appointment to any other office, he shall vacate the office of registrar.[59]

In the discretion of the electoral board, the registrar may appoint assistants, whose compensation shall be fixed by the local governing body. The compensation of general registrars is twenty dollars per day, with

54. Old Const. art II, § 20. New Const. art II, § 2.
55. *See* Old Code §§ 24-52, -52.1, -57, -64, -64.1, -92, -118.4, -119, -119.1.
56. *Id.*
57. New Code § 24.1-43.
58. *Id.* § 24.1-44.
59. Old Code § 24-53. New Code §§ 24.1-43, -44.

any additional compensation fixed and paid by the governing body.[60] Thus, the governing body retains veto power over the appointment of assistant registrars. Although the general registrar is disqualified to serve as an officer of election, an assistant registrar is not.[61]

The general registrar is required to maintain a public office provided by the governing body, and such additional public offices for the registration of voters as are designated by the electoral board. He must also provide forms, maintain alphabetical lists of voters, make reports as required by law and the State Board of Elections, preserve records, notify persons refused registration the reason for refusal in writing, and purge the books of disqualified voters.[62]

A registration applicant shall provide the information necessary to complete the application under oath, on standard forms, and sign the application unless physically disabled.[63] The Commission noted that a person may sign with his mark,[64] thus ensuring that there is no literacy requirement.

The new law provides for regular registration days thirty days before each primary and general election, and, in addition, not less than one registration day each month. The general registrar shall give notice of the time and place of regular registration days, and of the time and place at which he will sit, at least ten days before each registration day. Additional registration days and locations may be ordered by the electoral board. Notice for regular registration days shall be posted at ten or more public places in the jurisdiction or published once in a newspaper of general circulation.[65]

The foregoing provisions constitute significant changes in existing law in that they require more convenient access by the public to every registrar in Virginia, and completely discard the old system of precinct registrars. Under the old system many of the registrars were unavailable because of offices in their homes or because they were away during the work day.

The new constitutional and Code provisions provide for an abode, as well as a domicile, in the election district in which one votes. This has required a further provision that a voter who moves to a different elec-

60. New Code §§ 24.1-43, -45.
61. *Id.* §§ 24.1-44, -45.
62. *Id.* § 24.1-46.
63. *Id.* § 24.1-48.
64. *See* Commission Report at 47.
65. New Code § 24.1-49.

tion district within a county or city must promptly notify the registrar in writing of his removal and change of address. The registrar, upon receipt of such notice, shall change the voter's registration to the new precinct. If the voter does not comply, his name is purged from the registration books.[66]

Registration records under the new law shall be only in such books and by such system as are approved by the State Board of Elections.[67] The prior system had allowed various types of books throughout the counties and cities of Virginia.

The provision requiring registration books to be open for public inspection has generally been followed in that they are now open for inspection by any qualified voter when the office is open for business. In addition, the general registrar shall make the books available at reasonable times upon request, as shall the secretary of the electoral board on additional days.[68]

The provisions for purging in the old and new law are substantially the same. Each provides for purging upon the judgment of the registrar, or the court upon the petition of three qualified voters of the election district, after ten days prior publication of a printed purge list and written notice. The provision for notice to those purged by certified mail has been changed to notice by regular mail. Under the old law, the registrar could continue the hearing from time to time, but under the new law he may continue the hearing for not more than thirty days.[69]

Appeals to courts of record from decisions of the registrar concerning purging and registration have been preserved.[70] The registration provisions also provide a "grandfather clause" so that any person registered on December 1, 1970, shall continue to be registered.[71]

Chapter 6: Commonwealth and Local Officers

In an attempt to bring about as much uniformity as possible, the new law, except where otherwise provided by statute or charter, provides that officers elected at a general election shall embark upon their duties the first day of January following the election. An exception is made for the governing bodies of cities and towns, the officers of which shall

66. *Id.* §§ 24.1-46(8), -53.
67. *Id.* § 24.1-54.
68. Old Code § 24-113. New Code § 24.1-56.
69. Old Code §§ 24-97, -98, -102, -107, -108. New Code §§ 24.1-59, -60, -61, -64.
70. Old Code §§ 24-99, -100, -109, -112. New Code §§ 24.1-62, -67.
71. New Code § 24.1-69.

begin their terms the first of July following the election.[72] A former provision which permitted the filling by election of any public office filled by the people, has been made mandatory.[73] The law governing the filling of vacancies in county, city, town, or district offices, not including the governing bodies of cities and towns, has been substantially changed. Formerly, the Circuit or Corporation Court filled the vacancy for the remainder of the unexpired term. Under the new law, the vacancy is filled by the resident judge of the court of record; or if there is more than one, by a majority; or if no majority is obtained, by the senior judge, with approval of the other judges; if there are no resident judges, then by the judge of the court of record.[74]

The court is now required to issue a writ of election to fill the vacancy at the time the vacancy occurs. The election shall be held at the next ensuing general election, unless the general election is within 120 days of the vacancy, in which event the writ of election shall issue for the second ensuing general election.[75] The effect of the new law is to limit appointments by courts to less than a year in most cases, and, in the unusual case, to one year and 119 days.

When a person is elected as a member of the governing body of any county, city, or town, and he does not for any reason enter into the duties of his office, a writ of election shall issue to fill the vacancy under the new law. The old law covered only the governing bodies of counties.[76]

No change of consequence was made by the legislature in its provisions for the office of Governor, Lieutenant-Governor, and Attorney General. These are the only statewide officers elected by the people in Virginia. It should be noted, however, that the new Constitution changes the succession to the office of Governor to conform with the parallel provisions in Article II and the Twenty-fifth Amendment of the United States Constitution. The order of succession is Lieutenant-Governor, Attorney General, and Speaker of the House of Delegates. Should vacancies or ineligibilities exist in all of these offices, the House of Delegates shall convene and fill the vacancy.[77]

Provisions for the terms of the constitutional local officers of Vir-

72. Old Code §§ 24-142, -169. New Code § 24.1-73. City and Town officers formerly assumed their duties September first following their election.

73. Old Code § 24-143. New Code § 24.1-74.

74. Old Code § 24-145. New Code § 24.1-76.

75. New Code § 24.1-76.

76. Old Code § 24-147.1. New Code § 24.1-79.

77. New Const. art. V, § 16.

ginia, treasurer, sheriff, commonwealth's attorney, and clerk, remain substantially unchanged. An exception is that the clerks of courts of cities whose terms formerly expired at varying times are now made to expire January 1, 1980. The new law provides for an election in the cities in November, 1979, and every eight years thereafter.[78]

Elected justices of the peace have been reduced from three in each magisterial district to one per magisterial district,[79] with provision for the appointment of others if necessary.[80] The Commission found that in some communities there were no active elected justices of the peace. The office having declined in authority, in some parts of the state no candidates offer for the office.

City and town elections formerly held in June have been moved to May under the new law.[81] Because the new law abolishes town registrars, it makes specific provision that the electoral board and registrar of a county in which a town, or the greater part thereof, is located shall control the process of an election in towns.[82]

Chapter 7: The Election

This chapter consists of statutes regulating the mechanical conduct of the election, special provisions for Presidential, special, and primary elections, and sections on candidates, voting machines, and absentee voting. Because of the diverse subject matter and length of Chapter 7, it is helpful to break it down by article for discussion. Provisions concerning primaries and general elections, which were formerly discussed, have been deleted for purposes of brevity.

Article 1: In General

The Commission found there were justifiable complaints in many parts of the state that adherents of candidates for office clustered around the entrances to polling places, handing out sample ballots and campaign literature. This annoyed and delayed the voters coming to the polls. The old statute prohibited congregation within forty feet of the polls. The new statute also forbids congregation within forty feet of the entrance to a polling place, and also requires the officers of an election to mark

78. New Code § 24.1-87.
79. Old Code §§ 24-157, -158. New Code § 24.1-89.
80. VA. CODE ANN. § 39.1-6 (Repl. Vol. 1970).
81. Old Code §§ 24-160, -168. New Code § 24.1-90.
82. New Code § 24.1-93.

off an area forty feet from the entrance to the poll and post it with signs stating that it is a prohibited area. The new statute forbids loitering or congregating within this area, and passing out sample ballots, campaign literature, or electioneering within the designated area.[83]

The old law contained no provision for making public the names of election officials appointed each year. It is now required that a list of such names be posted and available for inspection in the general registrar's office.[84]

It was formerly provided that election judges were to be chosen, when possible, from persons known to belong to the two political parties which cast the highest and next highest number of votes during the immediately preceding election. The party casting the next highest number could nominate five persons for appointment. The new law provides that, when possible, election officers shall be appointed from the political parties casting the highest and next highest votes in the last gubernatorial election, but the requirement of five names has been deleted. Both parties may nominate.[85] A provision requiring the presence of three voters at a polling place to conduct an election if no judges were appointed was repealed.[86]

The limitation on the number of ballots which local electoral boards could print was repealed, and is now governed by the electoral board.[87] This was necessary because growing population and heavy registration in many sections of the state required the printing of more ballots than the old limit of double the number of votes cast in the last Presidential election. The Commission believed that the mandatory use of voting machines would substantially reduce the recognized danger of fraud when a large number of excess ballots are printed.

The order of candidates on the ballot in general elections is to be determined by lot by political parties in which independent candidates are treated as a class under the heading "Independent." The statute requires the candidates of a party to appear together designated by office, and the name of the political party shall not appear on the ballot, except in Presidential elections, for which there shall be a separate ballot.[88] The

83. Old Code §§ 24-186, -188. New Code § 24.1-101.

84. New Code § 24.1-105.

85. Old Code §§ 24-193, -194, -195. New Code §§ 24.1-105, -106.

86. Old Code § 24-197.

87. *Id.* § 24-213. New Code § 24.1-109.

88. New Code § 24.1-111. The General Assembly rejected the Commission proposal to print the names of the political parties on the ballots and to group the candidates by office.

form of the ballot shall be the same in all places where the same persons are candidates.[89] The old law was silent as to the order of names on the ballot, but, as a practical matter, it was determined by local electoral boards.

Formerly, a member of the electoral board was required to be present at the printing of the ballots, except for large counties and cities. Now, the electoral board may appoint a person to be present who shall be sworn to faithfully execute the office.[90] When the ballots are divided into packages for each precinct, a member of the electoral board or an appointed person under the new law must be present. The old law provided that this be done only in the presence of a member of the board.[91]

The new law provides that in the event a person is physically disabled and unable to enter the polling place, one of the officers of election may take a ballot to him as long as he is within forty feet of the polling place. The old requirement was one hundred feet.[92] The old law provided for assistance in preparing a ballot for a voter who was physically unable to do so. The new law extends this provision to those unable to prepare it because of a lack of education.[93]

Challenging procedure formerly allowed the election judges to reject the ballot although the voter had taken a statutory oath that he was entitled to vote. The new law provides that the ballot be received, but the fact that he was sworn is to be noted after the voter's name in the poll books.[94]

The form of poll book in which the name of each voter is recorded is not materially changed. However, a sworn certificate by the election officers that the poll books are true and accurate and constitute a legal election is now required.[95]

The old provision that allowed each political party two representatives to witness the counting of ballots is retained, and a provision for representatives of primary and independent candidates is added. The representatives must now have written authority from the party or candidate.[96]

Provisions requiring the destruction of double ballots are repealed and

89. Old Code § 24-216. New Code § 24.1-112.
90. Old Code §§ 24-219, -220. New Code § 24.1-115.
91. Old Code § 24-226. New Code § 24.1-119.
92. Old Code § 24-245. New Code § 24.1-129.
93. Old Code § 24-251. New Code § 24.1-132.
94. Old Code § 24-254. New Code § 24.1-133.
95. Old Code § 24-257. New Code § 24.1-135.
96. Old Code § 24-260. New Code § 24.1-137.

they are now to be set aside and not counted.[97] The old mandatory provision for stringing ballots is changed to allow them to be stamped and placed in an envelope as well as being strung.[98] The provisions of the old law providing for commissioners of election to meet and ascertain the results of the election from the returns in the various precincts has been repealed. This duty is now given to the electoral board.[99]

Article 2: Presidential Elections

No substantial changes were made in the provisions for Presidential elections. The law formerly required notification of the State Board of Elections of the names of electors selected at political conventions, but did not specify who should furnish this notice. It now requires the information to be reported by the chairman or secretary of the political party.[100] Under the old law, names of Presidential electors could be submitted by the petition of one thousand qualified voters. The new law requires not less than one half of one percent of the qualified voters, and a party name may not be utilized for such electors unless the party has had a state central committee and a chairman for six months prior to filing the petition.[101] A provision in the old law allowing a state convention to be held for the purpose of instructing electors that they were expected to vote for someone other than the party nominee has been repealed.[102]

Article 3: Special Elections

Writs of election for special elections are now directed to the secretary of the electoral board instead of to the sheriff or sergeant as was formerly done.[103] A provision has been added that the listing of candidates shall be in the chronological order of filing.[104]

Article 4: Candidates for Office

The old law provided for late filing by independent candidates. The new law requires candidates nominated by petition or by convention

97. Old Code § 24-262. New Code § 24.1-138.
98. Old Code § 24-265. New Code § 24.1-142.
99. Old Code §§ 24-271, -272. New Code § 24.1-146.
100. Old Code § 24-290.1. New Code § 24.1-158.
101. Old Code § 24-290.3. New Code § 24.1-159.
102. Old Code § 24-290.6.
103. *Id.* §§ 24-137, -138. New Code § 24.1-163.
104. New Code § 24.1-164.

to be nominated at or before the closing of the polls on the day of the primary if one is held for the office. A political party not nominating by primary may not nominate by convention more than thirty days prior to the primary date. Notice of candidacy provisions are retained for candidates other than party nominees.[105] The specified numbers of qualified voters previously required to sign petitions for independent candidates was replaced by a requirement for one percent of the registered voters within the election district as of the first of January of the year next preceding the year of the filing of the petition.[106] The provision allowing the State Board of Elections to declare a person to be a party candidate upon the failure of the party to certify him has been retained in the case of candidates nominated by primary but not for candidates nominated by convention.[107]

Article 5: Primary Elections

The two major changes in the provisions for primary elections are the repeal of the provision for the runoff primary,[108] and the new requirement that a candidate may not have his name printed upon a ballot unless a petition is filed which has been signed by one percent of the registered voters within the district, as of January 1 of the year before the year in which the petition was filed.[109] The declaration of candidacy must now be filed not more than seventy-five nor less than sixty days before the election.[110] This has the effect of stopping very early filing for the sole purpose of having first place in the order of names on the ballot. Names on primary ballots are now in chronological order of filing, and, in the event of a tie, are determined by lot.[111] Primary elections for the November general election have been changed from July to June.[112]

Article 6: Voting Machines

The new law requires the use of voting machines in all precincts in

105. Old Code §§ 24-130, -131, -134.1, -135. New Code § 24.1-166.
106. Old Code § 24-133. New Code § 24.1-168.
107. Old Code § 24-134. New Code § 24.1-169.
108. Old Code § 24-359.
109. New Code § 24.1-185.
110. *Id.* § 24.1-184.
111. *Id.* § 24.1-188.
112. Old Code § 24-349. New Code § 24.1-174. The General Assembly rejected a Commission recommendation to hold a September primary for the November election. Commission Report at 86.

all cities and counties with optional forms of government, and in all other precincts with more than five hundred registered voters. This is one of the major reforms of the new statute, since use of machines throughout the state was formerly permissive.[113] The use of voting machines not only serves the convenience of the voter but makes substantial progress in the prevention of fraud in elections by segregating absentee ballots. It also eliminates mistakes in counting, double ballots, and chain ballots[114] or similar devious procedures.

The new Code does not allow the use of punch card voting.[115] The Commission believed that too great an opportunity for fraud was created by the use of punch cards, and that the canvassing of the ballots in heavily populated communities would be a never-ending process for the election officials.

Article 7: Absentee Voting

In the field of absentee voting the Commission recommended and the legislature enacted substantial changes in the law. As previously noted, both the new Constitution and the new statute require that an individual maintain a place of abode in Virginia to qualify as a voter. This should remove from the absentee voting rolls the names of many people who have moved from the community or state and continue to vote at their old voting place by absentee ballot. The old statute allowed absentee voting by those who would be absent from the precinct because of personal affairs. The new law requires absence from the county or city to be on account of business, profession, occupation, or while on vacation.[116] The effect is to forbid absentee voting as a matter of personal convenience.

Members of the armed forces and their spouses, students and their spouses, and those physically unable to attend the polls are also entitled

113. Old Code § 24-291. New Code § 24.1-203. The General Assembly rejected a Commission recommendation to require voting machines in all county precincts with more than three hundred voters. Commission Report at 3, 9, 95. The deadline for cities and counties with optional forms of government is October 1, 1972. For all other counties it is October 1, 1976.

114. Chain balloting occurs when a voter takes a concealed and marked official ballot, fraudulently obtained, into the voting booth with him. He conceals his unmarked ballot, casts the marked ballot, and returns the unmarked ballot for payment outside the polls.

115. Old Code §§ 24-318.1, *et seq.*

116. *Id.* § 24-319. New Code § 24.1-227.

to vote by absentee ballot under the new law.[117] The new Constitution provides for absentee registration for members of the armed forces on active duty and their spouses.[118] If the General Assembly makes provision for absentee registration for members of the armed forces under the new Constitution, there appears to be no reason why all voting by servicemen and their wives should not be processed through local electoral boards rather than through the State Board of Elections.[119]

The old law provided for voting by mail or in person at the office of the electoral board for all those allowed to vote. The new law prohibits voting by mail for everyone except the serviceman and spouse, the student and spouse, and the sick. Others must vote in person in the office of the general registrar or of a member of the electoral board.[120] The registrar's office is required to be in a public place,[121] so voters' actions may be in view of the public in much the same way that voting at the polls now is.

Applying for an absentee ballot is an offer to vote.[122] Therefore, the first opportunity to challenge this vote is afforded at the time the application is submitted. All persons voting in person must complete their application only in the office of the registrar or secretary of the electoral board and in the presence of either the registrar or a member of the board. The ballot is then delivered by the registrar or the secretary of the electoral board to the applicant personally. No item shall be removed from the office of the registrar or secretary of the board.[123]

Prior to an election, the general registrar, under the new law, makes a list in triplicate of the names and addresses of all persons who have applied for absentee ballots. Four days before the election he must deliver one copy to the electoral board, post one in his office, and deliver one to the clerk of the court. The latter two lists are maintained as a public record for twelve months. The old law required the list to be filed with the clerk three days before the election, which was a Saturday.[124]

117. New Code § 24.1-227. Students and soldiers, of course, were allowed to vote by absentee ballot under the old law. Old Code §§ 24-319, -345.1, *et seq.*

118. New Const. art. II, § 4.

119. Old Code §§ 24-345.1, *et seq.*

120. New Code § 24.1-229 provides that the ballot shall not be removed from the office of the registrar or secretary of the electoral board.

121. New Code § 24.1-46. No provision of law requires the office of the electoral board to be in a public place. This is an obvious oversight in the statute as drafted by the Commission. *See* Commission Report at 9-10.

122. New Code § 24.1-133.

123. *Id.* § 24.1-229.

124. Old Code § 24-330. New Code § 24.1-231.

This often resulted in its not becoming truly public until the Monday before the election.

The old law provided that the application be made not less than five nor more than sixty days prior to the election, or not less than ten nor more than ninety days before the election if outside the continental United States. The new law provides that the application shall be made not less than five nor more than forty days before an election, regardless of the location of the applicant.[125] The general use of air mail makes unnecessary the longer period of time for those outside the continental United States.

Another major change in the law is that anyone voting by absentee ballot, except servicemen and their spouses, students and their spouses, and the disabled, are now required to vote not later than five days before the election.[126] The effect of this change is to prevent the flooding of the electoral boards and registrars with absentee ballots of dubious validity shortly before the election. Since all books, records, and papers of the electoral boards are now public, precisely who has voted by absentee ballot, with the exception of those who vote by mail, can now be determined on the Thursday before the election.

Chapter 8: Contested Elections and Recounts

While the new law makes little change in the form of the chapter on contested elections and recounts, major changes are made in the substance. The principal change is that most election contests may now be appealed as may other civil cases. The old law dating back at least to 1887 has been repealed.[127] The contest is still decided by a court of three judges without a jury.[128] In contests for local offices, nominations for the United States House of Representatives and Senate, and nominations for the state Senate and House of Delegates, the time for filing has been extended under the new law to thirty days after the election for a general election, but remains at ten days for a primary.[129] The old law provided for taxation of costs against the unsuccessful party in the contest. The new law taxes costs against the unsuccessful plaintiff, but if the contest is successful the costs must be borne by the political subdivisions in-

125. Old Code § 24-321. New Code § 24.1-228.

126. New Code § 24.1-232.

127. Old Code § 24-439.

128. *Id.* §§ 24-431, -436. New Code §§ 24.1-239, -243.

129. Old Code § 24-434. New Code § 24.1-241.

volved.[130] Formerly, contests were initiated by varying numbers of qualified voters, while under the new law they may be initiated only by the unsuccessful candidate.[131]

Under the old law, provisions for recounts existed for certain offices and referenda. Under the new law, all offices filled by the qualified voters are subject to recount, as are all referenda. Generally, with exceptions for small voting units or for referenda with few votes cast, a recount may be had if the difference between the two candidates or between the "yes" and "no" votes on the proposition is less than one percent of the votes cast. Under the new as under the old law, recounts are conducted under the supervision of the court.[132]

Chapter 9: Fair Elections Practices Act

This completely new chapter borrows heavily from Maryland law.[133] The old Virginia law limited the amount of money which could be spent in a campaign as well as the purposes for which it could be spent. It left open spending by others on behalf of a candidate, by requiring financial reports from only the candidate personally.[134] The new law, while it removes all financial limitation on campaign spending, requires the appointment of a campaign treasurer to serve as custodian of all campaign funds.[135] Everyone disbursing money in a campaign must pay it to the campaign treasurer, or at least report it to him.[136] Any other person receiving or disbursing money on behalf of a candidate is required to report to the State Board of Elections, and political parties receiving or disbursing funds must report to the local electoral board or the State Board of Elections.[137] The campaign treasurer is required to file a report signed not only by the treasurer but also by the candidate.[138] The report must include a detailed account of contributions and disbursements of fifty-one dollars or more, and the total amount of contributions under fifty-one dollars.[139] A treasurer's report must be filed not later than seven days before an election, and another report not later than thirty

130. Old Code § 24-437. New Code § 24.1-244.
131. Old Code § 24-430. New Code § 24.1-240.
132. Old Code §§ 24-277.1, -277.2, -277.4. New Code § 24.1-247.
133. MD. ANN. CODE art. 33, §§ 26-1, *et seq.* (1967).
134. Old Code §§ 24-402, -440, *et seq.*
135. New Code § 24.1-253.
136. *Id.* § 24.1-255.
137. *Id.*
138. *Id.* § 24.1-258.
139. *Id.*

days after an election.[140] Willfully false statements are punishable as perjury.[141]

Candidates for the United States Senate and House of Representatives are exempted from the provisions of this chapter, but are required to file a copy of their federal report.[142] Because the federal reporting requirements are similar to the old state requirements, they would have conflicted with the intent and purpose of this chapter.

Chapter 10: Election Offenses Penalty

The various violations of the election laws under the old statute were scattered throughout the Code. Under the new law, they have been grouped together where possible. The unlawful acts are punishable either as misdemeanors under general law, or as felonies, and the statute fixes the penalty.[143]

140. *Id.* § 24.1-257.
141. *Id.* § 24.1-279.
142. *Id.* § 24.1-251.
143. *Id.* §§ 24.1-264, *et seq.*