



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

# BOARD MEETING

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Tuesday, June 10, 2014  
Washington Building  
Room B27  
10:00 AM

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BOARD WORKING PAPERS



**STATE BOARD OF ELECTIONS  
AGENDA**

**DATE: June 10, 2014**  
**LOCATION: Washington Building, Room B27**  
**TIME: 10:00 a.m.**

- I. CALL TO ORDER** *Charles E. Judd  
Chair*
- II. APPROVAL OF MINUTES** *SBE Board Members*  
May 14, 2014
- III. SECRETARY'S REPORT** *Donald Palmer  
Secretary*
- IV. REPORT FROM LEGAL COUNSEL** *Kristina Perry Stoney  
SBE Legal Counsel*
- V. OLD BUSINESS**
  - A. Status of GR/EB Study requested by VEBA/VRAV** *Edgardo Cortés  
Deputy Secretary*
  - B. Approve New Chapter 45** *Martha Brissette  
SBE Policy Analyst*
  - C. Approve Periodic Review Chapter 40**
  - D. Approve Periodic Review Chapter 70**
- VI. NEW BUSINESS**
  - A. Proposed Amendments to Regulations on Material Omissions** *Martha Brissette*
  - B. Proposed Amendments to Regulations on Photo  
Voter Identification Cards** *Myron McClees  
SBE Policy Analyst*
  - C. Experian Presentation** *Barbara Rivera*
- VII. OTHER BUSINESS & PUBLIC COMMENT**
- VIII. GOOD OF THE ORDER**



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# Call to Order

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BOARD WORKING PAPERS



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STATE BOARD *of* ELECTIONS

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# Approval of Minutes May 14, 2014

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BOARD WORKING PAPERS  
SBE Board Members

1           MINUTES

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3           The State Board of Elections Board Meeting was held on Wednesday, May 14,  
4 2014. The meeting was held in the General Assembly Building, Room C in Richmond,  
5 Virginia. In attendance, representing the State Board of Elections (SBE) was Charles  
6 Judd, Chair; Kimberly Bowers, Vice Chair; Donald Palmer, Secretary; Edgardo Cortés,  
7 Deputy Secretary; Kristina Perry Stoney, Senior Assistant Attorney General and SBE  
8 Counsel; Anna Birkenheier, Assistant Attorney General and SBE Counsel; Chris Piper,  
9 Election Services Manager; Myron McClees, SBE Policy Analyst; Eugene Burton,  
10 Voting Technology Specialist; Garry Ellis, NVRA/Voting Registration Coordinator and  
11 Rose Mansfield, Executive Assistant. Chairman Judd called the meeting to order at  
12 9:00AM.

13           The first order of business was the approval of the Minutes from the State Board  
14 of Elections Board Meeting held on April 23, 2014. Chairman Judd asked if Board  
15 Members had any additions or corrections to the April 23, 2014 Board Minutes. Vice  
16 Chair Bowers noted a transcription error and cited the errors for the record and for  
17 change. Chairman Judd asked if there were additional additions or deletions to the  
18 Minutes and there were none. Vice Chair Bowers moved to adopt the Minutes for the  
19 April 23, 2014, Board Meeting as amended. Secretary Palmer seconded the motion and  
20 the Board unanimously approved the Minutes.

21           The second order of business was the Secretary's Report delivered by Secretary  
22 Palmer. Secretary Palmer stated that SBE is preparing for the July 1, 2014 voter  
23 identification law implementation. This week general registrar's and staff are being  
24 trained to utilize the software and are being provided with the technical expertise to  
25 utilize the new equipment. Secretary Palmer stated that beginning June 1, 2014 localities  
26 will begin to test the equipment and mailing process under the supervision of SBE. The  
27 first training session will start today in Henrico County, Virginia. SBE staff will also be  
28 conducting registration training on the National Voting Registration Act (NVRA)  
29 throughout the Commonwealth to designated agencies that will supplement online NVRA  
30 training in some agencies and meetings between SBE and the other executive branch  
31 agencies that provide these services. Vice Chair Bowers asked if expired drivers licenses

32 would be considered a valid form of identification at the polls. Myron McClees, SBE  
33 Policy Analyst, stated that a bill introduced during this legislative session to allow  
34 expired identification to be used as a valid form of identification did not pass. However,  
35 Mr. McClees stated that previous guidance from SBE is that the expiration date needed to  
36 be within 30 days past the expiration date. Vice Chair Bowers asked if policy guidance  
37 could be updated to allow expired identification cards to be utilized. Chairman Judd  
38 stated that if the picture and the address on the identification match the data base, the  
39 identification should be considered valid. Secretary Palmer said the language of the new  
40 identification law allowing for a valid Virginia driver's license seems to provide  
41 flexibility on the issue. Chairman Judd asked if there were any other questions or  
42 comments for the Secretary and there were none.

43 The next order of business was the Legal Report delivered by Kristina Perry  
44 Stoney, Senior Assistant Attorney General and SBE Counsel. Ms. Stoney stated that the  
45 hearing for the *Fairfax County Democratic Committee v. General Registrars, Electoral*  
46 *Board, and SBE Board Members* was held on May 9, 2014. The amended motion to  
47 dismiss and the motion to dismiss for the defendants were denied. The judge ruled that  
48 the answer be filed within 21 days. Ms. Stoney noted that this litigation has spanned a  
49 period of 18 months. Chairman Judd asked if there were any questions and there were  
50 none.

51 The next order of business was the General Registrar and Electoral Board Survey  
52 presented by Edgardo Cortés, Deputy Secretary. Deputy Cortés stated that SBE has  
53 received a requested from the general registrar and electoral board associations to  
54 conduct a study on the evolution of the duties of the general registrars. Deputy Cortés  
55 stated that the legislators reviewed this issue during the past session and deferred the  
56 matter to SBE. The last study of this nature was conducted in 1991 and since that time the  
57 National Voter Registration Act has passed, the Help America Vote Act became law, and  
58 significant amendments to UACOVA have occurred. Deputy Cortés stated that the  
59 request is that SBE conducts this study. Chairman Judd asked if there were any  
60 comments.

61 William Bell, Virginia Electoral Board Association (VEBA) approached the  
62 podium. Mr. Bell stated that VEBA members support conducting a study. VEBA is

63 following the advice of the legislators by submitting this request to SBE. VEBA members  
64 believe that a study is necessary, long overdue, and VEBA offers their support during the  
65 study.

66 Lisa Wooten, Waynesboro City General Registrar and Voter Registrars  
67 Association of Virginia (VRAV) President approached the podium. Ms. Wooten stated  
68 that VRAV spoke with legislators and are following their guidance on how to approach  
69 the request for a study. Ms. Wooten stated that general registrars represent the same  
70 population that local constitutional officers represent. The difference between  
71 compensation for general registrars and constitutional officers is vast. VRAV would  
72 appreciate SBE conducting a survey and analyzing the results.

73 Robin Lind, Goochland County Electoral Board Secretary and Communications  
74 Director of VEBA approached the podium. Mr. Lind stated that a study of both general  
75 registrars and electoral board members in the past has been unsuccessful. Mr. Lind stated  
76 that the legislators will support SBE if they select to conduct a study.

77 Carol Noggle, Virginia League of Women Voters approached the podium. Ms.  
78 Noggle stated that the league is aware of the advancement of responsibilities that the  
79 general registrars' have undergone to conduct the election process.

80 Chairman Judd asked if there were additional public comments and there were  
81 none. Secretary Palmer stated to successfully conduct a study a workgroup should be  
82 established that has members of the election community involved and participating.  
83 Secretary Palmer stated that a first organizational meeting could occur before or  
84 simultaneously with the annual training in Richmond. Deputy Cortés stated that SBE  
85 could identify workgroup members and create a timeline for conducting the study and  
86 present the information at the next Board Meeting. Chairman Judd stated that SB313  
87 passed by the General Assembly during the last session, added to the *code* a section that  
88 states: "the state board shall report annually by August 1<sup>st</sup> for the preceding 12 months,  
89 ending June 30<sup>th</sup> to the committees of Privileges and Elections for each of its' activities  
90 undertaken to maintain the Virginia Voter Registration System and the results of those  
91 activities, the Boards' report shall encompass those activities under and pursuant to  
92 subdivisions 8, 9, and 10." Chairman Judd stated that the results of the study should be  
93 included in the report to the committees. Vice Chair Bowers moved *that SBE move*

94 *forward with the study and the creation of a workgroup.* Secretary Palmer seconded the  
95 motion and the Board unanimously approved the motion.

96 The next order of business was the State Certification Document for Electronic  
97 Poll Books presented by Eugene Burton, Voting Technology Specialist. Mr. Burton  
98 stated that SBE is submitting a certification checklist for electronic pollbooks. Mr. Burton  
99 stated that the *Code of Virginia* allows all localities to expend their own funds to  
100 purchase electronic pollbooks that have been approved for use in elections by SBE.  
101 Although most localities in Virginia use the EPB program developed by SBE, many  
102 localities are looking at vendors for solutions that offer newer technology. To help ensure  
103 the EPB solutions offered by vendors meet Virginia Election Law requirements, SBE  
104 staff is proposing a certification process. Chairman Judd asked if there were any  
105 questions and there were none. Secretary Palmer moved *that the Board approve the*  
106 *request for certification checklist-electronic pollbooks as recommended by SBE staff.*  
107 Vice Chair Bowers seconded the motion. Chairman Judd asked if there were any public  
108 comments and there were none. The Board unanimously approved the motion.

109 The next order of business was the Voter Photo ID Regulation presented by  
110 Myron McClees, SBE Policy Analyst. Mr. McClees stated that the General Assembly  
111 passed legislation in 2013 that requires all individuals voting in-person to show a photo  
112 identification document prior to casting a regular ballot. Mr. McClees stated a proposed  
113 regulation was presented before the Board during the April 2, 2014 meeting and went out  
114 for public comment on April 21, 2014 and expired on May 12, 2014. Mr. McClees stated  
115 that the comments received have been provided to the Board for potential edits for  
116 inclusion in the final regulation to be presented during the June 11, 2014 Board Meeting.  
117 Vice Chair Bowers commended the staff for their work compiling the public comments.  
118 Chairman Judd stated that it was good to see folks weighing in on the subject and sharing  
119 their concerns. Chairman Judd stated that the use of expired drivers' license should be  
120 included in the regulation as a form of photo identification. Mr. McClees stated that the  
121 definition of the term "valid" would need to be further defined. Chairman Judd stated that  
122 "valid" should mean that the address on the identification matches what is on file for the  
123 voter with some reasonable resemblance to the photo. Secretary Palmer stated that photo  
124 identification is presented to confirm the identity of the voter. Vice Chair Bowers asked:

125 “On Election Day: “Do poll workers look at the expiration date?”” Deputy Cortés stated  
126 that there is variation across the state in the way officers of elections may check the  
127 identification. The address confirmation occurs verbally when the voter cites the  
128 information to the election worker. The new voter identification card will not contain the  
129 address or expiration date. Chairman Judd asked if there were additional comments.

130 Donna Rostant, Chair of the Election Law and Voter Protection of the Fairfax  
131 Democratic Committee approached the podium. Ms. Rostant stated that the definition of  
132 what is a “valid” identification should be defined to help relieve the anxiety that some  
133 voters may have when heading to the polls on Election Day. Chairman Judd asked if  
134 there were additional public comments and there were none.

135 Chairman Judd stated: “photo identification is required to complete most  
136 functions to include age restricted purchases and boarding a plane. The end result is that  
137 more individuals have photo identification than in times past. The Vice Chair questioned,  
138 after the 2012 elections, how many people cast provisional ballots due to lack of  
139 identification...out of 2.4 million votes cast only 200 were for this reason. I think we  
140 have covered the photo identification solution very well. Photo identification is the norm  
141 for so many things now which means regardless of age. We will have the equipment and  
142 the facilities in place to serve those individuals.” Vice Chair Bowers stated: “Moving  
143 forward I want the definition of “valid” defined because we do not want the voters to be  
144 unclear of what is an acceptable form of identification. I am looking forward to getting  
145 the word out to the election community about this issue. I would like to see expired  
146 identification considered as a form of “valid” identification.” Secretary Palmer stated:  
147 “SBE is working to ensure that the new voter identification law is implemented smoothly  
148 and will improve the administration of elections and increase public confidence in the  
149 voting process. We will have a SBE team that will be assisting the general registrar  
150 offices in outreach providing information and free voter IDs as necessary. For example,  
151 SBE has periodic contact with agencies that work with the elderly population and voters  
152 with disabilities because of the ongoing annual absentee ballot process and if there is a  
153 need in that community, we will have a team of employees to respond to that need. SBE  
154 will also be an additional location for voters to obtain the free identification. The ID  
155 program is tied to the statewide database system (VERIS) to aid the general registrar’s

156 and their staff in quickly identifying the voter and processing the information. The SBE  
157 staff will continue look at the interaction between VERIS and using the program in a  
158 mobile way. The overall goal is to incorporate the mobility function into current outreach  
159 practices of voter registration or education. The voter identification outreach program  
160 would take place when a need is identified in conjunction with other requests to the  
161 general registrar's office or SBE. Chairman Judd asked if there were additional  
162 comments and there were none.

163 The next order of business was the Voter Registration Drive Guidelines-Approval  
164 of Revisions, presented by Garry Ellis, NVRA/Voting Registration Coordinator. Mr. Ellis  
165 stated that the changes presented are due to the upcoming name change establishing the  
166 Department of Elections as well as the photo identification requirements. Chairman Judd  
167 stated: "Mr. Ellis is an effective trainer and when the guidelines became the standard, I  
168 took the training and passed." Secretary Palmer asked: "Mr. Ellis what are the statistics of  
169 the on-line training?" Mr. Ellis replied: "Over 800 individuals last year took the third-  
170 party on-line training and 116 of those individuals took the in-person training." Chairman  
171 Judd asked if there were any other comments and there were none. Vice Chair Bowers  
172 moved *that the Board approve staff's proposed changes to the Guidelines for Conducting*  
173 *Voter Registration Drives*. Secretary Palmer seconded the motion and Chairman Judd  
174 asked if there were any comments and there were none. The Board unanimously passed  
175 the motion.

176 The next order of business was the Stand by Your Ad Violations presented by  
177 Chris Piper, Election Services Manager. Mr. Piper stated that on or about March 19,  
178 2014, the staff received a complaint concerning a political advertisement appearing on a  
179 yard sign which was paid for by the Chesterfield County Republican Committee but did  
180 not contain the disclosure statement required by § 24.2-956.1. Mr. Piper stated that the  
181 *Code of Virginia* and the Board's guidance is unclear on whether disclosures are required  
182 on yard signs and the Board is currently reviewing a proposed definition of yard sign to  
183 clear up this confusion. Staff recommendation is to not assess a penalty. Secretary Palmer  
184 moved *that the complaint be dismissed*. Vice Chair Bowers seconded the motion and  
185 Chairman Judd asked if there were any comments and there were none. The Board  
186 unanimously passed the motion.

187 Chairman Judd asked if there was any other business to come before the Board.  
188 Lisa Wooten, Waynesboro City General Registrar and Voter Registrars Association of  
189 Virginia (VRAV) President approached the podium. Ms. Wooten stated that the mobile  
190 equipment for the general registrar's could not be utilized by all general registrars  
191 because of the lack of resources. Ms. Wooten asked if there would be guidance on taken  
192 the equipment to a voter's personal residence. Chairman Judd asked if there were  
193 additional questions.

194 Carol Noggle, Virginia League of Women Voters approached the podium. Ms.  
195 Noggle stated that in some localities the sheriffs' office provides photo identification. Ms.  
196 Noggle asked if the third-party registration training would have to be updated with the  
197 new revisions. Mr. Ellis stated that that the certification expires on June 30, 2014  
198 therefore, all individuals will need to recertify their training. Chairman Judd asked if  
199 there were additional public comments and there were none.

200 Chairman Judd then moved *to close the meeting to discuss actual and probable*  
201 *litigation matters and specific legal matters requiring the provision of legal advice by*  
202 *legal counsel as authorized by § 2.2-3711(A)(7) of the Code of Virginia.* Vice Chair  
203 Bowers seconded the motion and the Board unanimously carried the motion. Chairman  
204 Judd directed Kimberly Bowers, Vice Chair; Donald Palmer, Secretary; Edgardo Cortés,  
205 Deputy Secretary; Anna Birkenheier, Assistant Attorney General and SBE Counsel and  
206 Rose Mansfield, Executive Assistant, to remain with the Board during the closed session.  
207 Secretary Palmer seconded the motion and the Board went into Executive Session at  
208 10:10AM. At 10:25AM Chairman Judd directed Kristina Stoney, Senior Assistant  
209 Attorney General and SBE Counsel to join the second half of the executive session.

210 At 10:55AM Chairman Judd *moved to reconvene in open session and a roll call*  
211 *vote was taken as required by § 2.2-3712(D) of the Code of Virginia, unanimously*  
212 *certifying that during the closed meeting (i) only public business matters lawfully*  
213 *exempted from open meeting requirements under this chapter, and (ii) only such public*  
214 *business matters as were identified in the motion by which the closed meeting was*  
215 *concerned were heard, were discussed or considered.* Vice Chair Bowers seconded the  
216 motion and the Board unanimously approved the motion. Rose Mansfield, Executive  
217 Assistant performed the roll call vote and all Board Members approved the motion.

218 Chairman Judd moved *that the Board adjourn*. Vice Chair Bowers seconded the  
219 motion and without further comment the Board voted to adjourn. The meeting was  
220 adjourned at approximately 11:00AM.

221 The Board shall reconvene on June 11, 2014 at 10:00AM in the General  
222 Assembly Building, Room C.

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Secretary

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Chair

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Vice Chair

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# Secretary's Report

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BOARD WORKING PAPERS  
Donald Palmer  
SBE Secretary



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# Legal Report

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BOARD WORKING PAPERS  
Kristina Perry Stoney  
SBE Legal Counsel



# COMMONWEALTH of VIRGINIA

Office of the Attorney General  
Richmond 23219

Mark R. Herring  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
804 - 786 - 2071  
804 - 371 - 8946 TDD

## MEMORANDUM

**To:** Mr. Donald Palmer  
Secretary  
State Board of Elections

**From:** Kristina Perry Stoney  
Senior Assistant Attorney General

**Date:** May 30, 2014

**Subject:** Letter of Assurance for Proposed Regulation 1 VAC 20-45-10 through 1 VAC 20-45-40. Absent Military and Overseas Voters

I have reviewed the State Board of Election's regulatory proposal for creation of Chapter 45: Absent Military and Overseas Voters, proposed as 1 VAC 20-45-10 through 1 VAC 20-45-40, most recently posted on the Virginia Regulatory Town Hall on December 17, 2013. In my view, as counsel to the State Board of Elections, these regulations may be promulgated pursuant to Title 24.2 of the *Code of Virginia*. Moreover, this regulatory action is exempt from the Administrative Process Act pursuant to §2.2-4002-B.8 as it relates to the conduct of elections. The proposed regulations do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect.

This memorandum addresses legal matters only and is not intended to serve, nor should it be construed, as a comment for or against the merits of the proposed regulations.



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Richmond 23219

Mark R. Herring  
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## MEMORANDUM

**To:** Mr. Donald Palmer  
Secretary  
State Board of Elections

**From:** Kristina Perry Stoney  
Senior Assistant Attorney General

**Date:** May 30, 2014

**Subject:** Letter of Assurance for proposed changes to 1 VAC 20-40-50, 1 VAC 20-40-70, 1 VAC 20-40-80. Voter Registration

I have reviewed the State Board of Election's proposed amendments to its Regulations, particularly 1 VAC 20-40-50, 1 VAC 20-40-70, and 1 VAC 20-40-80 that were most recently posted on the Virginia Regulatory Town Hall on December 17, 2013. In my view, as counsel to the State Board of Elections, these regulations may be promulgated pursuant to Title 24.2 of the *Code of Virginia*. Moreover, this regulatory action is exempt from the Administrative Process Act pursuant to §2.2-4002-B.8 as it relates to the conduct of elections. The proposed amendments to the regulations do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect.

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## MEMORANDUM

**To:** Mr. Donald Palmer  
Secretary  
State Board of Elections

**From:** Kristina Perry Stoney  
Senior Assistant Attorney General

**Date:** May 30, 2014

**Subject:** Letter of Assurance for proposed changes to 1 VAC 20-70-10 through 1 VAC 20-70-50. Absentee Voting

I have reviewed the State Board of Election's proposed amendments to its Regulations, particularly 1 VAC 20-70-10 through 1 VAC 20-70-50 that were most recently posted on the Virginia Regulatory Town Hall on December 17, 2013. In my view, as counsel to the State Board of Elections, these regulations may be promulgated pursuant to Title 24.2 of the *Code of Virginia*. Moreover, this regulatory action is exempt from the Administrative Process Act pursuant to §2.2-4002-B.8 as it relates to the conduct of elections. The proposed amendments to the regulations do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect.

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# Old Business

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BOARD WORKING PAPERS



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# Status of GR/EB Study Requested by VEBA/VRAV

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BOARD WORKING PAPERS  
Presented by Edgardo Cortés  
Deputy Secretary



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# Approve New Chapter 45

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BOARD WORKING PAPERS  
Presented by Martha Brissette  
SBE Policy Analyst



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STATE BOARD *of* ELECTIONS

## Memorandum

To: Members of the State Board of Elections  
From: Martha Brissette, Policy Analyst  
Date: June 10, 2014  
Subject: Proposed Final Text--New Chapter 45, Absent Military and Overseas Voters

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**Suggested motion for a Board member to make:** I move that the Board approve the proposed new Chapter 45, Military and Overseas voting, including updated federal form references, to be effective on filing with the Registrar of Regulations.

**Affected Regulations:** 1 VAC §§ 20-45-10 through 20-45-40 (proposed); 1 VAC §§ 20-40-30(B)(1)-(2), 20-40-70(C), 20-40-80, 20-70-10, 20-70-30.

**Applicable Code Sections:** Va. Code §§ 2.2-4002(B)(8), 24.2-103

### Board Materials:

- May 30, 2014 Office of Attorney General Letter of Assurance
- Proposed new Chapter 45 Military and Overseas Voters on file in the Town Hall
- Federal forms update for proposed Chapter 45
- Draft Agency Statement Final Stage

### Background:

Proposed Chapter 45 results from the 2013 periodic reviews of Chapters 40 and 70 announced last May 15. The Board approved posting new Chapter 45 for public comment at its meeting on December 2, 2013, and no comments were received during the public comment period December 30, 2013, through January 13, 2014. The new separate chapter collecting the regulations for absent military and overseas citizens will make it easier to find and apply the regulations affecting voters covered by Virginia's Uniform Military and Overseas Voters Act (UMOVA). Staff also proposes to update the references for two federal form revisions communicated by the Federal Voting Assistance Plan after the proposed text was filed.

At its meeting on April 23, 2014, the Board requested staff to present the new Chapter 45 and underlying periodic reviews when the regulation dealing with material omissions from absentee envelope B could be considered with public comment invited. Staff accordingly has prepared a separate action to allow public comment on proposed changes to the regulations dealing with material omissions from absentee ballots. The proposed new Chapter 45 has already been published for public comment with no comments received.

Staff is again recommending the Board approve a new Chapter 45 to collect all of its regulations dealing with absent military and overseas voters. This structure follows 2012 legislation enacting a new Chapter 4.1 of Title 24.2 for Virginia’s enactment of the Uniform Military and Overseas Voters Act (UMOVA). The recommendation to restructure the regulations results from the periodic reviews of Chapters 40 and 70. The table below explains the relation to current regulations:

<b>New</b>	<b>Current</b>	<b>Change</b>
20-45-10	20-70-10	Limit scope; clarify federal only ballot definition
20-45-20	20-40-30(B), -70(C)	Relocate residency and registration related provisions for absent military and overseas voters
20-45-30	20-40-80	Relocate provision for electronic submission of FPCA for registration and absentee ballot request
20-45-40	20-70-30	Clarifying language on mail absentee application deadline

Citations to relevant sections in Chapter 4.1 of the Code of Virginia are added throughout.

Attorney General certification for the proposed changes will be requested as part of the Town Hall filing of the final stage and submission to the Register of Regulations.



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## MEMORANDUM

**To:** Mr. Donald Palmer  
Secretary  
State Board of Elections

**From:** Kristina Perry Stoney  
Senior Assistant Attorney General

**Date:** May 30, 2014

**Subject:** Letter of Assurance for Proposed Regulation 1 VAC 20-45-10 through 1 VAC 20-45-40. Absent Military and Overseas Voters

I have reviewed the State Board of Election's regulatory proposal for creation of Chapter 45: Absent Military and Overseas Voters, proposed as 1 VAC 20-45-10 through 1 VAC 20-45-40, most recently posted on the Virginia Regulatory Town Hall on December 17, 2013. In my view, as counsel to the State Board of Elections, these regulations may be promulgated pursuant to Title 24.2 of the *Code of Virginia*. Moreover, this regulatory action is exempt from the Administrative Process Act pursuant to §2.2-4002-B.8 as it relates to the conduct of elections. The proposed regulations do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect.

This memorandum addresses legal matters only and is not intended to serve, nor should it be construed, as a comment for or against the merits of the proposed regulations.



## Proposed Text

**Action:** Absent Military and Overseas Voters

**Stage:** Proposed

12/17/13 10:04 AM [latest]

1VAC20-45

CHAPTER 45

ABSENT MILITARY AND OVERSEAS VOTERS

1VAC20-45-

FORMS (1VAC20-45-)

[Enter document list here](#)

1VAC20-45-10

1VAC20-45-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Application for an absentee ballot" means a Federal Post Card Application (Form SF-76). A Federal Write-In Absentee Ballot (SF-186) is an absentee ballot application only for the voted ballot being submitted and is not an application for future elections.

"Federal-only ballot overseas voter" means a United States citizen residing outside the United States indefinitely who has not provided his last date of residence in Virginia or employment information showing that he is employed overseas or is the spouse or dependent residing with a person employed overseas. The date the applicant has provided next to his affirmation will serve as his last date of residence.

1VAC20-45-20

1VAC20-45-20. Voter registration.

A. Presumptions. As provided in 1VAC20-40-30 B, no presumption in favor of or against residence may arise merely on the basis of a person's presence or absence in the following circumstances:

1. While employed in the service of the Commonwealth or United States, whether military or civilian; or
2. While engaged in the navigation of the waters of the United States or of the high seas.

B. Material omissions from applications for voter registration on a Federal Post Card Application or Federal Write-in Absentee Ballot. The following omissions are not material:

1. Service identification number, rank, grade, or rate on an application that declares active duty military status.
2. Employer name and address on an application that declares temporary overseas residence with no date of last residence.
3. Employer name and address on an application that declares temporary overseas residence with a date of last residence. If practicable, the general

registrar should inform the applicant that eligibility for full ballots requires providing the name and address of an employer outside the United States.

4. Date of last residence on an application that declares indefinite overseas residence. The date of last residence for an application declaring indefinite overseas residence without indicating a date of last residence in the United States shall be the date the application is signed.

1VAC20-45-30

1VAC20-45-30. Electronic submission of Federal Post Card Application.

An applicant eligible for registration who applies for registration simultaneously with a request for an absentee ballot on a Federal Post Card Application (FPCA) as authorized by §§ 24.2-458 and 24.2-703 of the Code of Virginia may apply for registration as well as request an absentee ballot by facsimile transmission or scanned email attachment. An electronically submitted FPCA shall be sufficient to apply for registration and request an absentee ballot if signed and otherwise complete.

1VAC20-45-40

1VAC20-45-40. Material omissions from Federal Write-In Absentee Ballots.

A. Pursuant to the requirements of §§ 24.2-467, 24.2-702.1, and 24.2-706 of the Code of Virginia, a timely received write-in absentee ballot on a Federal Write-In Absentee Ballot (FWAB) (Form SF-186) should not be rendered invalid if it contains an error or omission not material to determining the eligibility of the applicant to vote in the election in which he offers to vote.

B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline. Section 24.2-419 of the Code of Virginia extends the mail registration deadline for certain military applicants. All applications requesting mailed ballots are subject to the mail absentee application deadline in §§ 24.2-459 and 24.2-701 of the Code of Virginia.

C. The following omissions are always material and any FWAB containing such omissions should be rendered invalid if on the declaration/affirmation any of the following, or combination thereof, exists:

1. The applicant has omitted the signature of the voter or the notation of an assistant in the voter signature box that the voter is unable to sign;

2. The applicant has omitted the signature of the witness; or

3. The applicant did not include the declaration/affirmation page.

D. The ballot should not be rendered invalid if on the FWAB any of the following, or combination thereof, exists:

1. The applicant has not listed the names specifically in the order of last, first, and middle name;

2. The applicant has listed a middle initial or maiden name, instead of the full middle name;

3. The applicant has omitted the street identifier, such as the term "road" or "street," when filling in the legal residence;

4. The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;

5. The applicant has omitted the zip code;

6. The applicant has omitted the date of the signature of the voter;

7. The applicant has omitted the address of the witness:

8. The applicant has omitted the date of signature of the witness:

9. The applicant did not seal the ballot within the security envelope, provided there is substantial compliance with the requirement that the ballot be accompanied by the required voter statement; or

10. The applicant has submitted a ballot containing offices or issues for which he is not eligible.

1VAC20-45-9998  
FORMS (1VAC20-45)

**Federal Post Card Application (FPCA), Voter Registration and Absentee Ballot Request, Standard Form 76 (rev. 8/11)**

**Federal Write-in Absentee Ballot (FWAB), Voter's Declaration/Affirmation, Standard Form 186 (rev. 8/11)**

**Envelope B for Statement of UOCAVA Absentee Voter, 42 USC 1973ff-1 (rev. 7/13)**

1VAC20-45-9998  
FORMS (1VAC20-45)

Federal Post Card Application (FPCA), Voter Registration and Absentee Ballot Request, Standard Form 76 (rev. 8/143)

Federal Write-in Absentee Ballot (FWAB), Voter's Declaration/Affirmation, Standard Form 186 (rev. 8/143)

Envelope B for Statement of UOCAVA Absentee Voter, 42 USC 1973ff-1 (rev. 7/13)



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Elections
<b>Virginia Administrative Code (VAC) citation</b>	1 VAC20-45-10 through 20-45-40, Forms
<b>Regulation title</b>	Chapter 45 Absent Military and Overseas Voters
<b>Action title</b>	Chapter 45 Absent Military and Overseas Voters
<b>Final agency action date</b>	June 10, 2014
<b>Document preparation date</b>	June 10, 2014

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The State Board of Elections is proposing a new Chapter 45 to collect all of its regulations dealing with absent military and overseas voters. This structure follows 2012 legislation enacting a new Chapter 4.1 of Title 24.2 for Virginia's enactment of the Uniform Military and Overseas Voters Act. The recommendation to restructure the regulations results from the periodic reviews of Chapters 40 and 70. Two federal form references are updated.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

The State Board Elections at its meeting on June 10, 2014, approved new Chapter 45 of its regulations titled Chapter 45 Absent Military and Overseas Voters.

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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None.

DRAFT



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

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# Approve Periodic Review Chapter 40

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BOARD WORKING PAPERS  
Presented by Martha Brissette  
SBE Policy Analyst

Memorandum

**To:** Members of the State Board of Elections  
**From:** Martha Brissette, Policy Analyst  
**Date:** 6/10/2014  
**Subject:** Proposed Final Amendments to Conclude 2013 Periodic Review of Chapter 40  
Voter Registration Regulations

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**Suggested motion for a Board member to make:**

I move that the Board approve the proposed changes to Chapter 40, Voter Registration, in the Town Hall action titled 2013 Periodic Review Voter Registration, to be effective on filing with the Register of Regulations.

**Affected Regulations:** 1 VAC 20-40-50, 20-40-70, 20-40-80

**Applicable Code Sections:** Va. Code §24.2-103

**Attachments:**

- May 30, 2014 Office of Attorney General Letter of Assurance
- Proposed amendments to Chapter 40 Voter Registration Regulations
- Draft Agency Statement for Final Stage
- Office of Attorney General Letter of Assurance for Periodic Review

**Background:**

As requested by the Board at its meeting on April 23, 2014, staff is again presenting recommended regulation changes to conclude the 2013 periodic reviews of Chapters 40 and 70 of its regulations simultaneous with an action to invite public comment on the regulation dealing with material omissions from absentee envelope B.

The Board approved publishing the proposed changes to Chapter 40 for public comment at its meeting on December 2, 2013. No comments on the proposed changes were received during the public comment period December 30, 2013, through January 13, 2014.

Staff is again recommending the Board adopt proposed amendments to its regulations on voter registration to conclude its periodic review announced May 15, 2013, pursuant to 1 VAC 20-10-120. These voter registration regulations were adopted before 2012 so this is their first periodic review. The objectives of this periodic review are similar to those set forth in Executive Order 14 for all executive agencies—effectiveness, efficiency, necessity, clarity and cost of compliance. An initial comment period for Chapter 40 opened on June 3, 2013, and closed June 24, 2013. At its meeting on December 2, 2013, the Board directed a second public comment period on proposed changes to the regulations in Chapter 40 based

on the comments received. The second public comment period opened December 30, 2013, and closed January 13, 2014, with no comments received.

The proposed changes include clarifying language related to application signature and determining residency, removing a requirement for the registrar to seek information not material to the application, updating referenced forms and moving provisions related to absent military and overseas voters to a new Chapter 45.

The application signature requirement language is changed to clarify that an assistant's name and address are required according to the instructions on the voter registration form when a voter is unable to sign the form themselves due to a physical disability.

Registrars are no longer required to seek information not material to the application to cut down on the administrative costs of voter registration.

Provisions related to absent military and overseas voters have been moved to a new Chapter 45 to make these provisions easier to find.

Attorney General certification for the proposed changes to conclude the periodic review will be requested as part of the Town Hall filing of the final stage and submission to the Register of Regulations.



# COMMONWEALTH of VIRGINIA

Office of the Attorney General  
Richmond 23219

Mark R. Herring  
Attorney General

900 East Main Street  
Richmond, Virginia 23219  
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804 - 371 - 8946 TDD

## MEMORANDUM

**To:** Mr. Donald Palmer  
Secretary  
State Board of Elections

**From:** Kristina Perry Stoney  
Senior Assistant Attorney General

**Date:** May 30, 2014

**Subject:** Letter of Assurance for proposed changes to 1 VAC 20-40-50, 1 VAC 20-40-70, 1 VAC 20-40-80. Voter Registration

I have reviewed the State Board of Election's proposed amendments to its Regulations, particularly 1 VAC 20-40-50, 1 VAC 20-40-70, and 1 VAC 20-40-80 that were most recently posted on the Virginia Regulatory Town Hall on December 17, 2013. In my view, as counsel to the State Board of Elections, these regulations may be promulgated pursuant to Title 24.2 of the *Code of Virginia*. Moreover, this regulatory action is exempt from the Administrative Process Act pursuant to §2.2-4002-B.8 as it relates to the conduct of elections. The proposed amendments to the regulations do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect.

This memorandum addresses legal matters only and is not intended to serve, nor should it be construed, as a comment for or against the merits of the proposed regulations.



## Proposed Text

**Action:** 2013 Periodic Review Voter Registration

**Stage:** Proposed

12/17/13 10:04 AM [latest]

1VAC20-40-50

1VAC20-40-50. Supplemental questions.

When warranted by the situations described in 1VAC20-40-40 C and where any other information on the voter registration application is unclear, the general registrar shall ask the following questions on a form prescribed by the board after notifying the applicant that any response he makes is subject to the same oath he took to sign the application:

1. Are you currently registered to vote at another address? The general registrar shall not ask this question unless the applicant failed to provide the information on the voter registration application.
  - a. If yes to subdivision 1 of this section, what is that address, and in what county, city, or state is that address located?
  - b. If yes to subdivision 1 of this section or as indicated on the voter registration application, do you wish to cancel your registration in that county, city, or state and register and establish residence in this county or city in Virginia?
2. Do you have a specific plan to move away from this county or city at a fixed date in the future? If so, when?

1VAC20-40-70

1VAC20-40-70. Applications for voter registration; affirmation of United States citizenship.

A. Form and signature.

1. Applications for voter registration shall be on a form approved by the State Board of Elections or appropriate federal agency.
2. Applications for voter registration must be signed by the applicant ~~or the name and address of the assistant entered on the signature line for an applicant with.~~ If the applicant is unable to sign due to a physical disability, the name and address of the person assisting the voter shall be entered on the application according to the form instructions.

B. Material omissions on applications for voter registration in general. The following omissions are not material if any of the following, or combination thereof, exists:

1. Daytime telephone number;
2. Description of a rural address;
3. Mailing address different from residence address;
4. Date of the application;
5. Whether the applicant is interested in working as an election official;
6. Whether the applicant requests to have his residence address excluded from

published lists;

7. Whether the applicant has a disability that requires accommodation in order to vote; or

8. Gender.

~~G. Material omissions from applications for voter registration on a Federal Post Card Application or Federal Write-in Absentee Ballot. The following omissions are not material:~~

~~1. Service identification number, rank, grade, or rate on an application that declares active duty military status.~~

~~2. Employer name and address on an application that declares temporary overseas residence with no date of last residence.~~

~~3. Employer name and address on an application that declares temporary overseas residence with a date of last residence. If practicable, the general registrar should inform the applicant that eligibility for full ballots requires providing the name and address of an employer outside the United States.~~

~~4. Date of last residence on an application that declares indefinite overseas residence. The date of last residence for an application declaring indefinite overseas residence without indicating a date of last residence in the United States shall be the date the application is signed.~~

~~D. C.~~ Middle name may be material to determining eligibility to vote. If the applicant does not include a middle name the registrar shall:

1. As far as practical, attempt to contact the applicant and obtain his middle name or lack thereof to determine if the application is complete.

~~2. a.~~ If the applicant indicates that he has no middle name, the registrar shall process the application.

~~3. b.~~ If the applicant indicates that he has a middle name, the registrar shall inform the applicant that the middle name is required, deny the application, and send the applicant a new application.

~~4. 2.~~ If the registrar is unable to contact the applicant and therefore unable to determine if the application is incomplete, he shall give the benefit of doubt to the applicant and process the application.

~~E. Except for gender, the general registrar, if practicable, shall attempt to contact the applicant and obtain the missing information requested on an application for voter registration that is not material to determining eligibility to vote. If the general registrar obtains any missing information, he shall write the information, his name, and the date on the reverse side of the application for voter registration to indicate that the alteration was made by the general registrar.~~

~~F. D.~~ A general registrar shall not change information provided by an applicant on an application for voter registration without written authorization signed by the applicant.

~~G. E.~~ Persons identified as noncitizens in reports from the Department of Motor Vehicles shall have the opportunity to affirm United States citizenship status using any approved voter registration application or other form containing the required affirmation. The State Board of Elections shall automate the process for requesting affirmation of United States citizenship prior to cancellation.

~~H. F.~~ For cases not covered by this section, the general registrar in consultation with the electoral board and State Board of Elections staff shall determine materiality on a case-by-case basis that may result in further amendment of this

regulation.

1VAC20-40-80

~~1VAC20-40-80. Application for registration on Federal Post Card Application (FPCA). (Repealed.)~~

~~An applicant eligible for registration who applies for registration simultaneously with a request for an absentee ballot on a Federal Post Card Application (FPCA) as authorized by § 24.2-703 of the Code of Virginia may apply for registration as well as request an absentee ballot by facsimile transmission or scanned email attachment. An electronically submitted FPCA shall be sufficient to apply for registration and request an absentee ballot if signed and otherwise complete.~~

1VAC20-40-9998

FORMS (1VAC20-40)

~~Virginia Voter Registration Application Form, VA-NVRA-1 (rev. 02/10)~~

~~**Virginia Voter Registration Application Form, SBE-416.2 (rev.7/13)**~~

~~**National Voter Registration Application Form, Register to Vote in Your State by Using this Postcard Form and Guide (rev. 3/06)**~~

~~**Federal Post Card Application (FPCA), Voter Registration and Absentee Ballot Request, Standard Form 76 (rev. 08/11)**~~

~~**Federal Write In Absentee Ballot (FWAB), Voter's Declaration/Affirmation, Standard Form 186 (rev. 08/11)**~~



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Elections
<b>Virginia Administrative Code (VAC) citation</b>	1 VAC 20-40-50, 20-40-70, 20-40-80, Forms
<b>Regulation title</b>	2013 Periodic Review Voter Registration
<b>Action title</b>	2014 Periodic Review Voter Registration
<b>Final agency action date</b>	June 10, 2014
<b>Document preparation date</b>	June 10, 2014

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

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The State Board of Elections is proposing amendments to conclude the 2013 periodic review of its regulations on voter registration announced May 15, 2013, pursuant to 1 VAC 20-10-120. The comment period for Chapter 70 opened on June 3, 2013, and closed June 24, 2013. The staff presented comments received and proposed changes to the regulations to the Board at its meeting on December 2, 2013. The Board approved inviting comments on the proposed changes through the Town Hall for a comment period December 30, 2013, through January 13, 2014. No comments were received. The proposed changes include clarifying language related to application signature and determining residency, removing a requirement for the registrar to seek information not material to the application, updating referenced forms and moving provisions related to absent military and overseas voters to a new Chapter 45.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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The State Board Elections at its meeting on June 10, 2014, approved the amendments to Chapter 40 of its regulations titled 2013 Periodic Review Voter Registration.

**Family impact**

Assess the impact of this regulatory action on the institution of the family and family stability.

None.

**Periodic review**

If this final regulation is not the result of a periodic review of the regulation, please delete this entire section. If this final regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulations in Chapter 40 as amended meet the criteria set out in Executive Order 14 (2010). The regulations are necessary for administering elections, clearly written and easily understandable.

Commenter	Regulation	Comment	Agency Response
Project Vote	20-40-20	<p>Comment to 1 VAC 20-40-20. Required intent for voter registration.</p> <p><i>Comment to Subsection B.4:</i></p> <ul style="list-style-type: none"> <li>In this section, in order to add clarity, we would recommend adding “solely by fact of their registration” to the end of paragraph four as follows:</li> </ul> <p><i>4. A person who applies to register to vote in a precinct for the primary purpose of registering to vote or voting in that precinct has not established the intent to establish domicile there solely by fact of their registration.</i></p>	No regulation change appears needed at this time.
W.T. Latham	20-40-40	<p><b>Amending 1 VAC 20-40-40</b></p> <p>In 1 VAC 20-40-40(C), there is lack of clarity. One part of the paragraph says that the "general registrar shall request the information in writing on a form prescribed by the board and the applicant shall respond in writing." Later in the same paragraph, if the applicant does not provide the information by the last day to register, "and the general registrar is unable to determine the applicant's residency through any other means," then the registrar is to deny the application. There are at least a couple of issues created by the wording of paragraph (C):</p> <ul style="list-style-type: none"> <li>What does "any other means" mean, and how does this mesh with the requirement that the applicant must respond in writing?</li> <li>What happens when the application is received</li> </ul>	No regulation change appears needed at this time.

		<p>so near the close of books that it is impossible, or at best impractical, for the registrar to mail a form to the applicant requesting information that would allow the application to be accepted?</p>	
Project Vote	20-40-40	<p>Comment to 1 VAC 20-40-40. Review of application.</p> <p>The process and timeline for applicants to supplement voter registration applications should be revised to be more voter-friendly and to prevent penalizing applicants who file timely applications.</p> <p>First, there is no justification for applicants to be required to file a completely new application solely because of inadvertent missing information or potential discrepancies that could be clarified. In the event of missing information, applicants should be able to easily supplement their original applications, provide any such missing information, and correct any errors.</p> <p>Second, after submitting an initial form before the deadline, applicants should be able to provide missing information, clarify any discrepancies, and correct any errors after the deadline has passed up through Election Day, including at the polls. Instead of denying applications that require supplemental information, those applications should be held open pending receipt of the information. This would allow an applicant who submitted an application by the deadline to register to correct any perceived problems with the application including at the polls. These voters could be flagged at the polls and offered the opportunity to provide the information, and, if appropriate, complete the supplemental questionnaire. If applicants do so, they should be allowed to vote. Applications that have not been supplemented or corrected by the end of the next general election could then be denied.</p> <p>If for any reason a voter's eligibility cannot be confirmed immediately at the polls, for example, through showing the identification required by HAVA, at minimum voters should be able to cast a provisional ballot and those ballots should be counted as long as the initial voter registration application was submitted before the registration deadline.</p>	No regulation change appears needed at this time.
W.T. Latham	20-40-50	<p><b>Amending 1 VAC 20-40-50</b></p> <p>I recommend adding, after the question "Do you have a specific plan to move away from this county or city at a fixed date in the future?" the following question: "If so, when?"</p> <p>The purpose in adding this question would be to allow the voter to explain whether the departure is based on a future contingency (which would allow the application to be accepted). See 1 VAC 20-40-20(B)(2). The voter's additional information would allow the registrar to make a better-informed judgment about the applicant's "specific plan" to move away from the county or city.</p>	Amend regulation.

		If this section of the Administrative Code is amended, then the letter would also need to be amended.	
W.T. Latham	20-40-60 and 20-40-40	<p><b>Harmonizing 1 VAC 20-40-60 and 1 VAC 20-40-40</b></p> <p>1 VAC 20-40-60(D) requires that the applicant's answers to the supplemental questions "must be in writing and must be returned before the last day to register as established in 24.2-416 of the Code of Virginia." 1 VAC 20-40-40(C) allows the registrar to use "any other means" to establish the applicant's residency.</p> <p>Accordingly, a couple of issues are presented:</p> <ul style="list-style-type: none"> <li>• 20-40-60(D) and 20-40-40(C) appear to be contradictory.</li> <li>• The requirement that the form should be returned before the last day to register should probably be worded such that the form should be returned before the close of books. I think that latter is what was intended, but that's not exactly what the words say.</li> </ul>	No regulation change appears needed at this time.
Project Vote	20-40-60	<p>Comment to 1 VAC 20-40-60. Review of supplemental questions.</p> <p><i>Comment to Subsection D:</i></p> <ul style="list-style-type: none"> <li>• Registrars should not deny applications due to missing information or information requiring clarification until the election has been completed.</li> </ul> <p>As recommended in our comments to 1 VAC 20-40-40 above, applicants should be able to provide the supplemental questionnaire after the deadline including at the polls and then vote, as long as the initial voter registration application was submitted by the registration deadline.</p>	No regulation change appears needed at this time.
W.T. Latham	20-40-70	<p><b>Amending 1 VAC 20-40-70</b></p> <p>1 VAC 20-40-70(A)(2) states that "[a]pplications for voter registration must be signed by the applicant or the name and address of the assistant entered on the signature line for an applicant with physical disability." On the application, however, the instructions are as follows: "If applicant is unable to sign due to a physical disability, write the name/address of person who assisted. (Required)." The line referred to in these instructions is not the signature line.</p> <p>I suggest changing the wording of 20-40-70(A)(2) to reflect that the instructions on the form must be followed. At this time, the person assisting the disabled voter is not being instructed to put anything on the signature line.</p>	Amend regulation to clarify.
W.T. Latham	20-40-70	<p><b>Amending 1 VAC 20-40-70 (Part 2)</b></p> <p>Additional recommended changes to 1 VAC 20-40-70:</p> <ul style="list-style-type: none"> <li>• Indent 20-40-70(D)(2) and 20-40-70(D)(3) and make them "a" and "b," respectively, under 1 VAC 20-40-70(D)(1).</li> <li>• In 20-40-70(E), registrars are required, "if practicable," to attempt to contact the applicant and obtain the missing information requested on an</li> </ul>	Amend regulation.

		<p>application for voter registration that is not material to determining eligibility to vote." First, this is not practicable. Second, the pieces of information listed in 20-40-70(B) as being nonmaterial are not necessarily beneficial to processing an application, and the Administrative Code should not place such an unnecessary burden on scarce registration and election resources</p>	
W.T. Latham	20-40-70	<p><b>Amending 1 VAC 20-40-70 (Part 3)</b></p> <p>I inadvertently left off my final recommendation for 1 VAC 20-40-70 in my previous post. Here it is: Delete the word "signed" in 20-40-70(F). This would allow the voter to update the information by email.</p>	No regulation change appears needed at this time.
Project Vote	20-40-70	<p>Comment to 1 VAC 20-40-70. Applications for voter registration; affirmation of United States citizenship</p> <p><i>Comment to Subsection D:</i></p> <ul style="list-style-type: none"> <li>• Applicants should be able to verbally authorize the registrar to add their middle name to an application.</li> </ul> <p><i>Comment to Subsection G:</i></p> <ul style="list-style-type: none"> <li>• Any systematic programs designed to remove noncitizens from the voter rolls could result in wrongful cancellation of the registrations of eligible voters: such systematic programs cannot be conducted within 90 days of a federal election. <i>See</i> 42 U.S.C. 1973gg-6(c)(2)(A). Further, any systematic program to remove the names of ineligible voters (including non-citizens) from the official lists of eligible voters must be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.), as amended, see 42 U.S.C. 1973gg-6(b).</li> <li>• Any “matching” programs done for the purpose of maintaining accurate and complete voter registration programs should match a sufficient number and selection of fields to maximize the accuracy of those programs. This is particularly important because a large number of individuals share a last name, first name, and birth date. <i>See, e.g.</i>, Minutes of Virginia State Board of Elections Meeting, April 3, 2013, lines 118-132 (additional criteria of last four digits of Social Security number cut numbers of potential duplicate registrations nearly in half); <i>see also</i> Probability and the Birthday Paradox, <i>Scientific American</i> (March 29, 2012), <a href="http://www.scientificamerican.com/article.cfm?id=bring-sciencehome-probability-birthday-paradox">http://www.scientificamerican.com/article.cfm?id=bring-sciencehome-probability-birthday-paradox</a> (last visited June 23, 2013) (there is a 50-50 chance that 2 people will share the same birthday in a group of only 23 people). Inaccurate match programs endanger the votes of eligible citizens.</li> </ul>	No regulation change indicated at this time.

<p>W.T. Latham</p>	<p>20-40-80</p>	<p><b>Amending 1 VAC 20-40-80</b></p> <p>I suggest making 20-40-80 apply to the Federal Write-in Absentee Ballot (FWAB) as well as the Federal Post Card Application (FPCA). Such a change would make it clear that, while the ballot portion of an emailed or faxed FWAB could not be counted (because ballots cannot be emailed or faxed back to electoral boards), the registration portion of the FWAB could be accepted and processed as a voter registration.</p>	<p>Update Handbook for General Registrars and Electoral Board Members Chapter 11 to clarify that the registration portion of the FWAB still must be processed even if the ballot cannot be accepted.</p>
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DRAFT



# **COMMONWEALTH of VIRGINIA**

*Office of the Attorney General*

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7-1-1

## **MEMORANDUM**

**To:** Mr. Donald Palmer  
Secretary  
State Board of Elections

**From:** Joshua N. Lief  
Senior Assistant Attorney General

**Date:** July 26, 2013

**Subject:** Letter of Assurance - Periodic Review of 1VAC20-40: Voter Registration

I have conducted a periodic review of the State Board of Election's regulations, in particular Chapter 40, 1VAC20-40-10 through 1VAC20-40-80: Voter Registration. In my view, as counsel to the State Board of Elections, the promulgation of these regulations was within the statutory authority of the State Board of Elections pursuant to Title 24.2 of the *Code of Virginia*. Moreover, the regulations do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect.

This memorandum addresses legal matters only and is not intended to serve, nor should it be construed, as a comment for or against the merits of the regulations.



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

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# Approve Periodic Review Chapter 70

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BOARD WORKING PAPERS  
Presented by Martha Brissette  
SBE Policy Analyst



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

## Memorandum

To: Members of the State Board of Elections  
From: Martha Brissette  
Date: June 10, 2014  
Subject: Proposed Final Amendments to Conclude 2013 Periodic Review Absentee Chapter 70

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**Suggested motion for a Board member to make:** I move that the Board approve the proposed changes to Chapter 70, Absentee Voting, in the Town Hall action titled 2013 Periodic Review Absentee, to be effective on filing with the Register of Regulations.

**Affected Regulations:** 1 VAC 20-70-10, 20-70-30, Forms

**Applicable Code Sections:** Va. Code §§24.2-419, 24.2-701, 24.2-702.1, 24.2-706

### Board Materials:

- May 30, 2014 Office of Attorney General Letter of Assurance
- Proposed amendments to 1 VAC 20-70-10, 20-70-30 and Forms on file with Town Hall
- Draft Agency Statement for Final Stage
- Office of Attorney General Letter of Assurance for Periodic Review

### Background:

As requested by the Board at its meeting on April 23, 2014, staff is again presenting Recommended regulation changes to conclude the 2013 periodic reviews of Chapters 40 and 70 of its regulations simultaneous with an action to invite public comment on the regulation dealing with material omissions from absentee envelope B.

The Board approved publishing the proposed changes to Chapter 70 for public comment at its meeting on December 2, 2013. No comments on the proposed changes were received during the public comment period December 30, 2013, through January 13, 2014.

Staff is again recommending these proposed regulations to conclude the periodic review announced May 15, 2013, pursuant to 1 VAC 20-10-120 calling for a review of all regulations after each presidential election. This was the first periodic review of the regulations comprising Chapter 70 adopted beginning in 2011 with amendments in 2012 and 2013. The objectives of the periodic review are similar to those set forth in Executive Order 14 for all executive agencies—effectiveness, efficiency, necessity, clarity and cost of compliance. An initial comment period for Chapter 70 opened on June 3, 2013, and closed June 24, 2013. At its meeting on December 2, 2013, the Board directed a second public comment period on

proposed changes to the regulations in Chapter 70 based on the comments received. The second public comment period opened December 30, 2013, and closed January 13, 2014, with no comments received.

The proposed changes update referenced forms and move provisions related to absent military and overseas voters to a new Chapter 45. Consistent with the Board's directive on April 23, 2014, a simultaneous regulatory action is proposed to reopen the controversial issue of material omissions from Envelope B that drew over 500 comments in the Town Hall forum in 2011. Several bills from the 2014 session effective July 1, 2014, require regulatory amendments. This new regulatory action will allow for public comment on the regulations addressing material omissions from absentee ballots.

Attorney General certification for the proposed changes to conclude the periodic review will be requested as part of the Town Hall filing of the final stage and submission to the Register of Regulations.



# COMMONWEALTH of VIRGINIA

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Richmond 23219

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## MEMORANDUM

**To:** Mr. Donald Palmer  
Secretary  
State Board of Elections

**From:** Kristina Perry Stoney  
Senior Assistant Attorney General

**Date:** May 30, 2014

**Subject:** Letter of Assurance for proposed changes to 1 VAC 20-70-10 through 1 VAC 20-70-50. Absentee Voting

I have reviewed the State Board of Election's proposed amendments to its Regulations, particularly 1 VAC 20-70-10 through 1 VAC 20-70-50 that were most recently posted on the Virginia Regulatory Town Hall on December 17, 2013. In my view, as counsel to the State Board of Elections, these regulations may be promulgated pursuant to Title 24.2 of the *Code of Virginia*. Moreover, this regulatory action is exempt from the Administrative Process Act pursuant to §2.2-4002-B.8 as it relates to the conduct of elections. The proposed amendments to the regulations do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect.

This memorandum addresses legal matters only and is not intended to serve, nor should it be construed, as a comment for or against the merits of the proposed regulations.



## Proposed Text

**Action:** 2013 Periodic Review Absentee

**Stage:** Proposed

12/17/13 10:04 AM [latest]

1VAC20-70-10

1VAC20-70-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Application for an absentee ballot" means an application for an absentee ballot submitted on any form approved for that purpose according to federal and state laws. The term includes a Virginia Absentee Ballot Application (SBE-701); and a Virginia Annual Absentee Ballot Application (SBE-703.1); ~~and a Federal Post Card Application (SF-76A). A Federal Write-In Absentee Ballot (SF-186A) is an absentee ballot application only for the voted ballot being submitted and is not an application for future elections.~~

"Envelope B" means the envelope required by § 24.2-706 of the Code of Virginia which identifies the voter.

~~"Federal only ballot overseas voter" means a United States citizen residing outside the United States indefinitely who has not provided his last date of residence in Virginia. The date the applicant has provided next to his affirmation will serve as his last date of residence.~~

1VAC20-70-30

1VAC20-70-30. ~~Material omissions from Federal Write-In Absentee Ballots. (Repealed.)~~

~~A. Pursuant to the requirements of §§ 24.2-702.1 and 24.2-706 of the Code of Virginia, a timely received write-in absentee ballot on a Federal Write-In Absentee Ballot (FWAB) (Form SF-186A) should not be rendered invalid if it contains an error or omission not material to determining the eligibility of the applicant to vote in the election in which he offers to vote.~~

~~B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline. Section 24.2-419 of the Code of Virginia extends the mail registration deadline for certain military applicants. All applicants are subject to the absentee application deadline in § 24.2-701 of the Code of Virginia.~~

~~C. The following omissions are always material and any FWAB containing such omissions should be rendered invalid if any of the following, or combination thereof, exists:~~

- ~~1. The applicant has omitted the signature of the voter or the notation of an assistant in the voter signature box that the voter is unable to sign;~~
- ~~2. The applicant has omitted the signature of the witness;~~
- ~~3. The applicant did not include the declaration/affirmation page; or~~
- ~~4. The applicant omitted from the declaration/affirmation information required by § 24.2-702.1 of the Code of Virginia needed to determine eligibility including, but~~

~~not limited to, current military or overseas address:~~

~~D. The ballot should not be rendered invalid if on the FWAB any of the following, or combination thereof, exists:~~

- ~~1. The applicant has not listed the names specifically in the order of last, first, and middle name;~~
- ~~2. The applicant has listed a middle initial or maiden name, instead of the full middle name;~~
- ~~3. The applicant has omitted the street identifier, such as the term "road" or "street" when filling in the legal residence;~~
- ~~4. The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;~~
- ~~5. The applicant has omitted the zip code;~~
- ~~6. The applicant has omitted the date of the signature of the voter;~~
- ~~7. The applicant has omitted the address of the witness;~~
- ~~8. The applicant has omitted the date of signature of the witness;~~
- ~~9. The applicant did not seal the ballot within the security envelope, provided there is substantial compliance with the requirement that the ballot be accompanied by the required voter statement; or~~
- ~~10. The applicant has submitted a ballot containing offices or issues for which he is not eligible.~~

~~1VAC20-70-9998  
FORMS (1VAC20-70)~~

~~Absentee Ballot Application Form, SBE-701 (rev. 7/10)~~

~~Annual Absentee Ballot Application, SBE-703.1 (rev. 1/10)~~

~~Federal Post Card Application (FPGA), Voter Registration and Absentee Ballot Request, Standard Form 76 (rev. 08/11)~~

~~Federal Write-in Absentee Ballot (FWAB), Voter's Declaration/Affirmation, Standard Form 186 (rev. 08/11)~~

~~Envelope B for Statement of UOCAVA Absentee Voter, 42 USC 1973ff-1(b) (rev. 5/04)~~

~~Envelope B for Statement of Absentee Voter, SBE-706-2 (rev. 7/03)~~

~~**Annual Absentee Ballot Application, SBE-703.1 (rev. 7/13)**~~

~~**Virginia Absentee Ballot Application Form, SBE-701 (rev. 7/13)**~~

~~**Envelope B - Ballot - Statement of Absentee Voter, (undated)**~~



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	State Board of Elections
<b>Virginia Administrative Code (VAC) citation</b>	1 VAC 20-70-10, 20-70-30, Forms
<b>Regulation title</b>	2013 Periodic Review Absentee
<b>Action title</b>	2013 Periodic Review Absentee
<b>Final agency action date</b>	06/10/2014
<b>Document preparation date</b>	06/10/2014

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The State Board of Elections is amending its regulations on absentee voting to implement recommendations received during its periodic review of Chapter 70 of its regulations announced May 15, 2013, pursuant to 1 VAC 20-10-120. The proposed changes consist of updating referenced forms and moving provisions related to absent military and overseas voters to a new Chapter 45. The comment period for Chapter 70 opened on June 3, 2013, and closed June 24, 2013. The staff presented the comments received and proposed changes to the regulations to the Board at its meeting on December 2, 2013. The Board approved inviting comments on the proposed changes through the Town Hall for a comment period starting December 30, 2013, through January 14, 2013. No comments were received

### Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The State Board Elections at its meeting on June 10, 2014, approved the amendments to Chapter 70 of its regulations titled 2013 Periodic Review Absentee.

**Family impact**

Assess the impact of this regulatory action on the institution of the family and family stability.

None.

**Periodic review**

If this final regulation is not the result of a periodic review of the regulation, please delete this entire section. If this final regulation is the result of a periodic review, please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and (2) indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulations in Chapter 70 as amended meet the criteria set out in Executive Order 14 (2010). The regulations are necessary for administering elections, clearly written and easily understandable.

Commenter	Regulation	Comment	Agency Response
Diana Dutton, Prince William County Voter Registration and Elections	20-70-20	<p><b>Substantial Compliance for Absentee Ballot Envelope B</b></p> <p>B7 Material omission on Envelope B is the date of the voter's signature</p> <p>C8 The ballot should not be rendered invalid if the voter omitted the year in date of the signature</p> <p>C9 The ballot should not be rendered invalid if the voter provides <i>the incorrect date</i> on Envelope B. What is an incorrect date? Unless the date is way off, how can one</p>	Legislation would be needed to make envelope B requirements more uniform across absentee voters.

		<p>determine if it is incorrect? Not a measurable value.</p> <p>Is the date a material omission that would affect the determination of how the voter wished to cast his vote?</p> <p>Since the absentee ballot from a domestic voter is returned in Envelope B in an envelope with a return address label attached showing the voter's return address, why should he have to repeat this information? UOCAVA voters do not have to provide the same information. These two classes of voters are being treated differently.</p> <p>B9 By striking this language, is it meant that there would be no Envelope B required? Or is it meant that the ballot is contained in an Envelope B but the envelope is not sealed?</p> <p>The problems created by the information required on Envelope B cause many AB ballots from senior citizens to be rejected</p>	
<p>W.T. Latham</p>	<p>20-70-20</p>	<p><b>Comments on 1 VAC 20-70-20</b></p> <p>My suggested amendments for 1 VAC 20-70-20 are as follows:</p> <ol style="list-style-type: none"> <li>1. Delete the requirement in (B)(7) that the voter "provide the date on which he signed Envelope B." This is unnecessary and does not appear to be required by Va. Code 24.2-707. While the statement in 24.2-706 indicates that there is to be a line for the date in the Statement of</li> </ol>	<p>Legislation would be needed to make envelope B requirements more uniform across absentee voters.</p>

		<p>Voter, 24.2-707 does not require that the date be included by the voter, while it does require that the voter and the witness sign the Statement of Voter on Envelope B. The absence in 24.2-707 is telling. This part of the regulation has real-life consequences: in the June 2013 primary, one voter's ballot was rejected solely because she had not dated the Envelope B. The ballot was otherwise fine.</p> <p>Deleting paragraph (B)(9) and adding proposed (C)(10) are good changes! The issue with sealing the ballot is especially problematic for UOCAVA voters who received their ballots by email. It can also be an issue for non-UOCAVA voters, as we have no way of determining if the voter sealed Envelope B and, because of faulty glue, it subsequently became unsealed. The proposed changes are good because they comply with the election laws of Virginia, and they err on the side of the voter.</p>	
<p>J. Kirk Showalter, General Registrar City of Richmond</p>	<p>20-70-40</p>	<p>Please accept the following comments on the proposed regulation 1 VAC20-70 regarding absentee ballot pre-processing:</p> <p>Item 1: This statement requires the general registrar's staff to "follow all previously prescribed instructions for processing and verifying absentee ballots." This requirement is broad and vague. As written, this would require us to follow any related procedure adopted at any time during the past, even those since superceded in law.</p>	<p>No regulatory action appears needed at this time. SBE in the Handbook for General Registrars and Electoral Board Members Chapter 16, Addendum 4 provides guidance on early processing. SBE may provide additional guidance addressing some issues in more detail.</p>

		<p>Item 2: The “principles of dual control and chain of custody” should be detailed so that all understand what is expected.</p> <p>Item 3: §24.2-709.1 of the Code of Virginia only require that officers of election be present if the sealed absentee ballot envelope is opened. Partial pre-processing (24.20709.1 (i)) does not require opening of the sealed ballot (vs. outer) envelope. The way that this section is written, however, election officers would have to be present for ALL steps of pre-processing. As such, it is suggested that this provision be re-written to clarify that it only applies if the pre-processing involves opening the sealed ballot envelope.</p> <p>Item 4: See comment under Item 3 regarding partial pre-processing. If only step (i) of pre-processing is done, is there a requirement that authorized representatives be allowed to view this step?</p>	
<p>W.T. Latham</p>	<p>20-70-30</p>	<p><b>Amending 1 VAC 20-70-30</b></p> <p>In 1 VAC 20-70-30(B), delete the last sentence. This sentence does not conform to Va. Code 24.2-702.1(B).</p> <p>Other requirements in the Code of Virginia are not listed in 20-70-30. It would be helpful if all of the requirements for processing FWABs, whether in the Code of Virginia or in the Administrative Code of Virginia, were listed in one place. The requirements from the Code that are not listed in 20-70-30 are as follows:</p> <ul style="list-style-type: none"> <li>702.1(B)(ii): Voter must provide his/her</li> </ul>	<p>Restructure regulation as suggested to pull in all statutory requisites including materiality issues for registration now dealt with in Chapter 4. Propose a new Chapter 40.1 [45] collecting UOCAVA specific provisions there. Defer proposing changes impacting materiality for further review in light of 2014 legislation.</p>

		<p>printed name. If it is the determination of the State Board of Elections that the absence of the printed name is not a material omission (and such a determination would make sense, as long as we could determine the name of the voter), this should be stated clearly in the Administrative Code.</p> <ul style="list-style-type: none"> <li>702.1(B)(iii): Voter must provide the county or city in which he or she is registered and offers to vote. This is explained as a nonmaterial omission later in 20-70-30---if it is left out and as long as the residence address provides information about the county/city--- but the requirements of 702.1 should be listed in paragraph (C) so that the section serves as a comprehensive guide to FWAB processing. The nonmateriality of omissions can then be explained in paragraph (D) of 20-70-30.</li> <li>702.1(B)(iv): Voter must provide the residence address at which he/she is, or desires to be, registered to vote.</li> </ul> <p>Finally, is the full name of the FWAB registration/absentee applicant required for voter registration?</p>	
<p>Diana Dutton, staff Prince William General Registrar</p>	<p>20-70-30</p>	<p><b>Material Omissions from Federal Write-In Absentee Ballots</b></p> <p>I submitted these comments last night; why are they not here?</p>	<p>Restructure regulation as suggested to pull in all statutory requisites including materiality issues for registration now dealt with in Chapter 4. Propose a new Chapter 40.1 [45] collecting UOCAVA specific provisions there. Defer proposing changes impacting materiality for further review in light of 2014</p>

		<p>B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline.  <b>However, Section 24.2-419 of the Code of Virginia extends the mail registration deadline to Election Day for a member of a uniformed service on active duty who is normally absent from the county or city of his residence and the spouse or dependent living with that person, so long as they are eligible to be registered.</b></p> <p>In the list of material omissions, add</p> <p>the voter's printed name (24.2-702.1 B ii)</p> <p>the voter's residence address at which he is registered to vote (24.2-702.1 B iv)</p> <p>C4 is not specific enough; it does not list the requirements in 24.2-702.1 B</p>	<p>legislation.</p>
<p>W. T. Latham</p>	<p>20-70-30</p>	<p><b>Amending 1 VAC 20-70-30</b></p> <p>The last sentence of paragraph (B) should be deleted, as it does not comply with Va. Code 24.2-702.1(B).</p>	<p>Restructure regulation as suggested to pull in all statutory requisites including materiality issues for registration now dealt with in Chapter 4. Propose a new Chapter 40.1 [45] collecting UOCAVA specific provisions there. Defer proposing changes impacting materiality for further review in light of 2014 legislation.</p>



# **COMMONWEALTH of VIRGINIA**

*Office of the Attorney General*

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7-1-1

## **MEMORANDUM**

**To:** Mr. Donald Palmer  
Secretary  
State Board of Elections

**From:** Joshua N. Lief  
Senior Assistant Attorney General

**Date:** July 26, 2013

**Subject:** Letter of Assurance - Periodic Review of 1VAC20-70: Absentee Voting

I have conducted a periodic review of the State Board of Election's regulations, in particular Chapter 70, 1VAC20-70-10 through 1VAC20-70-50: Absentee Voting. In my view, as counsel to the State Board of Elections, the promulgation of these regulations was within the statutory authority of the State Board of Elections pursuant to Title 24.2 of the *Code of Virginia*. Moreover, the regulations do not appear to conflict with the Constitution of the United States or the Constitution of the Commonwealth of Virginia, nor do they appear to conflict with any federal or state law currently in effect.

This memorandum addresses legal matters only and is not intended to serve, nor should it be construed, as a comment for or against the merits of the regulations.



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

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# New Business

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BOARD WORKING PAPERS



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

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# Proposed Amendments to Regulations on Material Omissions

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BOARD WORKING PAPERS  
Presented by Martha Brissette  
SBE Policy Analyst

Memorandum

**To:** Members of the State Board of Elections  
**From:** Martha Brissette, Policy Analyst  
**Date:** 6/10/2014  
**Subject:** Proposed Amendments to Conform Absentee Ballot Regulations to 2014 Legislation

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**Suggested motion for a Board member to make:**

I move that the Board seek public comment on the proposed amendments to its regulations addressing material omissions from absentee ballots at 1VAC-20-70-20 and 20-70-30 [20-45-40] to implement recently enacted legislation effective July 1, 2014.

**Affected Regulations:** 1 VAC 20-70-20, 20-70-30 [20-45-40]

**Applicable Code Sections:** Va. Code §§ 24.2-103, 24.2-467, 24.2-702.1, 24.2-706; 42 USC §§ 1971, 1973ff-2

**Attachments:**

- Proposed amendments to Regulations 1VAC 20-70-20 and 20-70-30 [20-45-40]
- 2014 HBs 669, 670 (Herring), HB 838 (Keam), and SB 333 (Ebbin)

**Background:**

Va. Code § 24.2-103 grants the State Board of Elections the power to “make rules and regulations and issue instructions and provide information consistent with the election laws to the electoral boards and registrars to promote the proper administration of election laws.”

Using this authority, the Board in 2012 adopted regulations to help officers of election determine what constitutes a material omission requiring rejection of an absentee ballot. The regulation dealing with Envelope B proved controversial and drew over 500 comments in the Town Hall. The regulation dealing with Federal Write In Absentee Ballots or FWABs was adopted without controversy and foreshadowed 2012 legislation prohibiting rejection of FWABs for nonsubstantive requirements. In 2013, the Board adopted regulations formalizing guidance provided in the presidential election about sealing the ballot envelope.

Legislation enacted in the 2014 session adjusts the balance the Board struck in applying the strict requirements of Va. Code §§ 24.2-706 and 24.2-707. Two regulations need to be amended to conform to the legislative changes. First, the regulation dealing with material omissions from Envelope B needs to be revised to allow omission of date and middle name or initial so long as first and last names are provided. This regulation also needs to be

adjusted to clarify that a sealed outer envelope allows accepting a voted ballot not fully sealed inside Envelope B. The FWAB regulation is adjusted to provide the same standard.

If possible, the proposed regulation will be submitted by tomorrow's noon deadline for publication June 30 and a comment forum through Monday July 21 for presentation of a final regulation to the Board at its next meeting.

# VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

## CHAPTER 574

*An Act to amend and reenact §§ 24.2-707 and 24.2-711 of the Code of Virginia, relating to absentee ballots; date requirement.*

[H 669]

Approved April 4, 2014

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

**1. That §§ 24.2-707 and 24.2-711 of the Code of Virginia are amended and reenacted as follows:**

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

On receipt of a mailed absentee ballot, the voter shall, in the presence of a witness, (i) open the sealed envelope marked "ballot within" and (ii) mark and refold the ballot, as provided in §§ 24.2-644 and 24.2-646 without assistance and without making known how he marked the ballot, except as provided by § 24.2-704.

After the voter has marked his absentee ballot, he shall (a) enclose the ballot in the envelope provided for that purpose, (b) seal the envelope, (c) fill in and sign the statement printed on the back of the envelope in the presence of a witness, who shall sign the same envelope, (d) enclose the ballot envelope and any required assistance form within the envelope directed to the electoral board, and (e) seal that envelope and mail it to the office of the electoral board or deliver it personally to the electoral board or the general registrar. *A voter's failure to provide the date, or any part of the date, including the year, on which he signed the statement printed on the back of the envelope shall not be considered a material omission and shall not render his ballot void.* For purposes of this chapter, "mail" shall include delivery by a commercial delivery service, but shall not include delivery by a personal courier service or another individual except as provided by §§ 24.2-703.2 and 24.2-705.

An applicant who makes his application to vote in person at a time when the printed ballots for the election are available shall follow the same procedure set forth above except that he may complete the procedure in person in the office of the general registrar or secretary of the electoral board, or at another location or locations in the county or city approved by the electoral board, before a registrar or a member of the electoral board, or, if a ballot is cast at that time, before the officers of election appointed by the electoral board. Any such location shall be in a public building owned or leased by the city, the county, or a town within the county, with adequate facilities for the protection of all records concerning the absentee voters, the absentee ballots, both voted and unvoted, and any voting equipment in use at the location. Such location may be in a facility owned or leased by the Commonwealth and used as a location for Department of Motor Vehicles facilities and for an office of the general registrar. Such location shall be deemed the equivalent of the office of the general registrar or secretary of the electoral board for the purpose of completing the application for an absentee ballot in person pursuant to §§ 24.2-701 and 24.2-706. On the request of the applicant, made no later than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote, the general registrar or the secretary may send the items set forth in subdivisions 1 through 4 of § 24.2-706 to the applicant by mail, obtaining a certificate of mailing.

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

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

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

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

Before the polls open, the officers of election at each precinct shall mark, for each person on the absentee voter applicant list, the letters "AB" (meaning absentee ballot) in the voting record column on the pollbook. The pollbook may be so marked prior to election day by the general registrar, the secretary of the electoral board, or staff under the direction of the general registrar or the secretary, or

when the pollbook is produced by the State Board pursuant to § 24.2-404. If the pollbook has been marked prior to election day, before the polls open the officers of election at each precinct shall check the marks for accuracy and make any additions or corrections required.

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

If a voter, whose name appears on the absentee voter applicant list, has not returned an unused ballot and offers to vote in his precinct, the officers of election in the precinct shall determine the matter pursuant to §§ 24.2-653.1 and 24.2-708.

Immediately after the close of the polls, the container of absentee ballots shall be opened by the officers of election. As each ballot envelope is removed from the container, the name of the voter shall be called and checked as if the voter were voting in person. If the voter is found entitled to vote, an officer shall mark the voter's name on the pollbook with the first or next consecutive number from the voter count form, or shall enter that the voter has voted if the pollbook is in electronic form. The ballot envelope shall then be opened, and the ballot deposited in the ballot container without being unfolded or examined. If the voter is found not entitled to vote, the unopened envelope shall be rejected. *An unopened envelope shall not be rejected on the sole basis of a voter's failure to provide the date, or any part of the date, including the year, on which he signed the statement printed on the back of the envelope.* A majority of the officers shall write and sign a statement of the cause for rejection on the envelope or on an attachment to the envelope.

When all ballots have been accounted for and either voted or rejected, the officers shall place the empty ballot envelopes, the return envelopes, and any rejected ballot envelopes, in one envelope provided for the purpose and seal and deliver it with the ballots cast at the election as provided in this title.

# VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

## CHAPTER 575

*An Act to amend and reenact §§ 24.2-707 and 24.2-711 of the Code of Virginia, relating to absentee ballots; name and signature of voter.*

[H 670]

Approved April 4, 2014

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

**1. That §§ 24.2-707 and 24.2-711 of the Code of Virginia are amended and reenacted as follows:**

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

On receipt of a mailed absentee ballot, the voter shall, in the presence of a witness, (i) open the sealed envelope marked "ballot within" and (ii) mark and refold the ballot, as provided in §§ 24.2-644 and 24.2-646 without assistance and without making known how he marked the ballot, except as provided by § 24.2-704.

After the voter has marked his absentee ballot, he shall (a) enclose the ballot in the envelope provided for that purpose, (b) seal the envelope, (c) fill in and sign the statement printed on the back of the envelope in the presence of a witness, who shall sign the same envelope, (d) enclose the ballot envelope and any required assistance form within the envelope directed to the electoral board, and (e) seal that envelope and mail it to the office of the electoral board or deliver it personally to the electoral board or the general registrar. *A voter's failure to provide in the statement on the back of the envelope his full middle name or his middle initial shall not be a material omission, rendering his ballot void, unless the voter failed to provide in the statement on the back of the envelope his full first and last name.* For purposes of this chapter, "mail" shall include delivery by a commercial delivery service, but shall not include delivery by a personal courier service or another individual except as provided by §§ 24.2-703.2 and 24.2-705.

An applicant who makes his application to vote in person at a time when the printed ballots for the election are available shall follow the same procedure set forth above except that he may complete the procedure in person in the office of the general registrar or secretary of the electoral board, or at another location or locations in the county or city approved by the electoral board, before a registrar or a member of the electoral board, or, if a ballot is cast at that time, before the officers of election appointed by the electoral board. Any such location shall be in a public building owned or leased by the city, the county, or a town within the county, with adequate facilities for the protection of all records concerning the absentee voters, the absentee ballots, both voted and unvoted, and any voting equipment in use at the location. Such location may be in a facility owned or leased by the Commonwealth and used as a location for Department of Motor Vehicles facilities and for an office of the general registrar. Such location shall be deemed the equivalent of the office of the general registrar or secretary of the electoral board for the purpose of completing the application for an absentee ballot in person pursuant to §§ 24.2-701 and 24.2-706. On the request of the applicant, made no later than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote, the general registrar or the secretary may send the items set forth in subdivisions 1 through 4 of § 24.2-706 to the applicant by mail, obtaining a certificate of mailing.

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

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

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

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

Before the polls open, the officers of election at each precinct shall mark, for each person on the absentee voter applicant list, the letters "AB" (meaning absentee ballot) in the voting record column on the pollbook. The pollbook may be so marked prior to election day by the general registrar, the

secretary of the electoral board, or staff under the direction of the general registrar or the secretary, or when the pollbook is produced by the State Board pursuant to § 24.2-404. If the pollbook has been marked prior to election day, before the polls open the officers of election at each precinct shall check the marks for accuracy and make any additions or corrections required.

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

If a voter, whose name appears on the absentee voter applicant list, has not returned an unused ballot and offers to vote in his precinct, the officers of election in the precinct shall determine the matter pursuant to §§ 24.2-653.1 and 24.2-708.

Immediately after the close of the polls, the container of absentee ballots shall be opened by the officers of election. As each ballot envelope is removed from the container, the name of the voter shall be called and checked as if the voter were voting in person. If the voter is found entitled to vote, an officer shall mark the voter's name on the pollbook with the first or next consecutive number from the voter count form, or shall enter that the voter has voted if the pollbook is in electronic form. The ballot envelope shall then be opened, and the ballot deposited in the ballot container without being unfolded or examined. If the voter is found not entitled to vote, the unopened envelope shall be rejected. *An unopened envelope shall not be rejected on the sole basis of a voter's failure to provide in the statement on the back of the unopened envelope his full middle name or his middle initial, unless the voter also failed to provide his full first and last name.* A majority of the officers shall write and sign a statement of the cause for rejection on the envelope or on an attachment to the envelope.

When all ballots have been accounted for and either voted or rejected, the officers shall place the empty ballot envelopes, the return envelopes, and any rejected ballot envelopes, in one envelope provided for the purpose and seal and deliver it with the ballots cast at the election as provided in this title.

# VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

## CHAPTER 580

*An Act to amend and reenact § 24.2-709 of the Code of Virginia, relating to elections; return of absentee ballots.*

Approved April 4, 2014

[H 838]

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

**1. That § 24.2-709 of the Code of Virginia is amended and reenacted as follows:**

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

A. Any ballot returned to the office of the electoral board or general registrar in any manner except as prescribed by law shall be void. Absentee ballots shall be returned to the electoral board or general registrar before the closing of the polls. The board member or registrar receiving the ballot shall (i) seal the ballot in an envelope with the statement or declaration of the voter, or both, attached to the outside and (ii) mark on each envelope the date, time, and manner of delivery. For all ballots returned by the general registrar to the electoral board, the board shall give to the general registrar a receipt showing the time and date of the return. *No returned absentee ballot shall be deemed void because the inner envelope containing the voted ballot is imperfectly sealed so long as the outside envelope containing the ballot envelope is sealed.*

B. Notwithstanding the provisions of subsection A, absentee ballots (i) received after the close of the polls on any election day, (ii) received before 5:00 p.m. on the second business day before the State Board meets to ascertain the results of the election pursuant to this title, (iii) requested on or before but not sent by the deadline for making absentee ballots available under § 24.2-612, and (iv) cast by an absentee voter who is eligible for an absentee ballot under subdivision 2 of § 24.2-700 shall be counted pursuant to the procedures set forth in this chapter and, if the voter is found entitled to vote, included in the election returns. The electoral board shall prepare an amended certified abstract, which shall include the results of such ballots, and shall deliver such abstract to the State Board by the business day prior to its meeting pursuant to this title, and shall deliver a copy of such abstract to the general registrar to be available for inspection when his office is open for business.

C. Notwithstanding the provisions of clause (i) of subsection B of § 24.2-427, an absentee ballot returned by a voter in compliance with § 24.2-707 and this section who dies prior to the counting of absentee ballots on election day shall be counted pursuant to the procedures set forth in this chapter if the voter is found to have been entitled to vote at the time that he returned the ballot.

# VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

## CHAPTER 453

*An Act to amend and reenact §§ 24.2-707 and 24.2-711 of the Code of Virginia, relating to absentee ballots; name and signature of voter.*

[S 333]

Approved March 31, 2014

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

**1. That §§ 24.2-707 and 24.2-711 of the Code of Virginia are amended and reenacted as follows:**

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

On receipt of a mailed absentee ballot, the voter shall, in the presence of a witness, (i) open the sealed envelope marked "ballot within" and (ii) mark and refold the ballot, as provided in §§ 24.2-644 and 24.2-646 without assistance and without making known how he marked the ballot, except as provided by § 24.2-704.

After the voter has marked his absentee ballot, he shall (a) enclose the ballot in the envelope provided for that purpose, (b) seal the envelope, (c) fill in and sign the statement printed on the back of the envelope in the presence of a witness, who shall sign the same envelope, (d) enclose the ballot envelope and any required assistance form within the envelope directed to the electoral board, and (e) seal that envelope and mail it to the office of the electoral board or deliver it personally to the electoral board or the general registrar. *A voter's failure to provide in the statement on the back of the envelope his full middle name or his middle initial shall not be a material omission, rendering his ballot void, unless the voter failed to provide in the statement on the back of the envelope his full first and last name.* For purposes of this chapter, "mail" shall include delivery by a commercial delivery service, but shall not include delivery by a personal courier service or another individual except as provided by §§ 24.2-703.2 and 24.2-705.

An applicant who makes his application to vote in person at a time when the printed ballots for the election are available shall follow the same procedure set forth above except that he may complete the procedure in person in the office of the general registrar or secretary of the electoral board, or at another location or locations in the county or city approved by the electoral board, before a registrar or a member of the electoral board, or, if a ballot is cast at that time, before the officers of election appointed by the electoral board. Any such location shall be in a public building owned or leased by the city, the county, or a town within the county, with adequate facilities for the protection of all records concerning the absentee voters, the absentee ballots, both voted and unvoted, and any voting equipment in use at the location. Such location may be in a facility owned or leased by the Commonwealth and used as a location for Department of Motor Vehicles facilities and for an office of the general registrar. Such location shall be deemed the equivalent of the office of the general registrar or secretary of the electoral board for the purpose of completing the application for an absentee ballot in person pursuant to §§ 24.2-701 and 24.2-706. On the request of the applicant, made no later than 5:00 p.m. on the seventh day prior to the election in which the applicant offers to vote, the general registrar or the secretary may send the items set forth in subdivisions 1 through 4 of § 24.2-706 to the applicant by mail, obtaining a certificate of mailing.

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

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

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

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

Before the polls open, the officers of election at each precinct shall mark, for each person on the absentee voter applicant list, the letters "AB" (meaning absentee ballot) in the voting record column on the pollbook. The pollbook may be so marked prior to election day by the general registrar, the

secretary of the electoral board, or staff under the direction of the general registrar or the secretary, or when the pollbook is produced by the State Board pursuant to § 24.2-404. If the pollbook has been marked prior to election day, before the polls open the officers of election at each precinct shall check the marks for accuracy and make any additions or corrections required.

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

If a voter, whose name appears on the absentee voter applicant list, has not returned an unused ballot and offers to vote in his precinct, the officers of election in the precinct shall determine the matter pursuant to §§ 24.2-653.1 and 24.2-708.

Immediately after the close of the polls, the container of absentee ballots shall be opened by the officers of election. As each ballot envelope is removed from the container, the name of the voter shall be called and checked as if the voter were voting in person. If the voter is found entitled to vote, an officer shall mark the voter's name on the pollbook with the first or next consecutive number from the voter count form, or shall enter that the voter has voted if the pollbook is in electronic form. The ballot envelope shall then be opened, and the ballot deposited in the ballot container without being unfolded or examined. If the voter is found not entitled to vote, the unopened envelope shall be rejected. *An unopened envelope shall not be rejected on the sole basis of a voter's failure to provide in the statement on the back of the unopened envelope his full middle name or his middle initial, unless the voter also failed to provide his full first and last name.* A majority of the officers shall write and sign a statement of the cause for rejection on the envelope or on an attachment to the envelope.

When all ballots have been accounted for and either voted or rejected, the officers shall place the empty ballot envelopes, the return envelopes, and any rejected ballot envelopes, in one envelope provided for the purpose and seal and deliver it with the ballots cast at the election as provided in this title.

**STATE BOARD OF ELECTIONS**  
**2014 Absentee Material Omissions**

**1VAC20-70-20. Material omissions from absentee ballots.**

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B shall not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions shall be rendered invalid if any of the following exists:

1. Except as provided in subdivisions C 2 and 3 of this section, the voter did not include his full first name;
2. The voter did not provide his last name;
- ~~3. If the voter has a legal middle name, the voter did not provide at least a middle initial;~~
- 4.3. The voter did not provide his house number and street name or his rural route address;
- ~~5~~4. The voter did not provide either his city or zip code;
- ~~6~~5. The voter did not sign Envelope B; or
- ~~7. The voter did not provide the date on which he signed Envelope B; or~~
- ~~8~~6. The voter's witness did not sign Envelope B.

C. The ballot shall not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";
2. The voter used his first initial instead of his first full name, so long as the voter provided his full middle name;
3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");
4. If the voter provided his first name and last name, the voter did not provide a middle name or a middle initial;
- ~~4~~5. The voter did not provide his generational suffix;
- ~~5~~6. The voter did not provide his residential street identifier (Street, Drive, etc.);
- ~~6~~7. The voter did not provide a zip code, so long as the voter provided his city;
- ~~7~~8. The voter did not provide his city, so long as the voter provided his zip code;
- ~~8~~9. The voter omitted the year in the date, or provided an incorrect or incomplete date on which he signed Envelope B; or
- ~~9. The voter provided the incorrect date on which he signed Envelope B; or~~
10. The ballot is imperfectly sealed within Envelope B, provided that ~~the ballot is contained within Envelope B, there is evidence that a good faith effort was made to seal the envelope,~~ the outer envelope with Envelope B and the ballot arrived sealed, ~~and the circumstances create no reason to suspect fraud.~~
11. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

D. For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.

~~E. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.~~

F. Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present.

Statutory Authority

§ 24.2-103 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 17, eff. April 3, 2012; amended, Virginia Register Volume 29, Issue 23, eff. June 26, 2013.

### **1VAC20-70-30. Material omissions from Federal Write-In Absentee Ballots.**

A. Pursuant to the requirements of §§ 24.2-702.1 and 24.2-706 of the Code of Virginia, a timely received write-in absentee ballot on a Federal Write-In Absentee Ballot (FWAB) (Form SF-186A) should not be rendered invalid if it contains an error or omission not material to determining the eligibility of the applicant to vote in the election in which he offers to vote.

B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline. Section 24.2-419 of the Code of Virginia extends the mail registration deadline for certain military applicants. All applicants are subject to the absentee application deadline in § 24.2-701 of the Code of Virginia.

C. The following omissions are always material and any FWAB containing such omissions should be rendered invalid if any of the following, or combination thereof, exists:

1. The applicant has omitted the signature of the voter or the notation of an assistant in the voter signature box that the voter is unable to sign;
2. The applicant has omitted the signature of the witness;
3. The applicant did not include the declaration/affirmation page; or
4. The applicant omitted from the declaration/affirmation information required by § 24.2-702.1 of the Code of Virginia needed to determine eligibility including, but not limited to, current military or overseas address.

D. The ballot should not be rendered invalid if on the FWAB any of the following, or combination thereof, exists:

1. The applicant has not listed the names specifically in the order of last, first, and middle name;
2. The applicant has listed a middle initial or maiden name, instead of the full middle name;
3. The applicant has omitted the street identifier, such as the term "road" or "street" when filling in the legal residence;
4. The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;
5. The applicant has omitted the zip code;
6. The applicant has omitted the date of the signature of the voter;
7. The applicant has omitted the address of the witness;
8. The applicant has omitted the date of signature of the witness;
9. The applicant did not seal the ballot within the security envelope, ~~provided there is substantial compliance with the requirement that the ballot be accompanied by the~~

required voter statement so long as the outside envelope containing the ballot and the voter's declaration/affirmation page arrived sealed; or

10. The applicant has submitted a ballot containing offices or issues for which he is not eligible.

Statutory Authority

§ 24.2-103 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 27, Issue 16, eff. March 28, 2011; amended, Virginia Register Volume 29, Issue 23, eff. June 26, 2013.



Form: TH-08

# Virginia Regulatory Town Hall

townhall.virginia.gov

## Exempt Action Proposed Regulation Agency Background Document

<b>Agency name</b>	State Board of Elections
<b>Virginia Administrative Code (VAC) citation</b>	1 VAC 20-70-20, 20-70-30 [20-45-40]
<b>Regulation title</b>	Material Omissions from Absentee Ballots
<b>Action title</b>	Material Omissions from Absentee Ballots
<b>Document preparation date</b>	June 11, 2014

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of The Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

These amendments conforms existing regulations to 2014 legislative changes regarding the sealing of envelopes and completion of prescribed statutory statement that identifies absentee voters by mail under Va. Code § 24.2-706. The legislative amendments allow counting the ballot if the outer envelope is sealed and specify that neither omission of the date nor middle name or initial require rejecting the ballot if first and last names are provided.

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*  
None.

## Town Hall Agency Background Document Form: TH-08

### Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

The agency is seeking comments on the proposed regulatory action, including but not limited to improving clarity and utility to voters and election officials.

Anyone wishing to submit comments may do so **at the public hearing to be scheduled. Interested persons are encouraged to submit comments online using the** Regulatory Town Hall website from June 30 through July 21, 2014, [www.townhall.virginia.gov](http://www.townhall.virginia.gov) or by mail, email, or fax to Martha Brissette, Policy Analyst, 1100 Bank St., Richmond, VA 23219, 804.864.8925, 804.371.0194 (fax), [martha.brissette@sbe.virginia.gov](mailto:martha.brissette@sbe.virginia.gov) Written comments must include the name and address of the commenter. In order to be considered, written comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

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# Proposed Amendments To Regulations on Photo Voter Identification Cards

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BOARD WORKING PAPERS  
Presented by Myron McClees  
SBE Policy Analyst

★VIRGINIA★  
STATE BOARD  
of ELECTIONS

## Memorandum

To: Members of the State Board of Elections

From: Myron McClees, Policy Analyst

Date: June 10, 2014

Re: Final adoption of Proposed Regulation for Voter Identification Card

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### **Suggested motion for a Board member to make:**

I move that the Board approve the proposed amendments to the Chapter 4 of its regulations on Voter Photo Identification Cards

**Applicable Code Sections:** §§ 24.2-404, 24.2-643

### **Attachments:**

Your Board materials include the following:

- Regulation 20-40-10 as written for comment
- Regulation 20-40-10 with staff recommendations and tracked changes
- Regulation 20-40-10 with staff recommendations
- Regulation 20-40-90 as written for comment
- Regulation 20-40-90 with staff recommendations and tracked changes
- Regulation 20-40-90 with staff recommendations

### **Background:**

The General Assembly passed legislation in 2013 (SB 1256) that requires all individuals voting in-person to show a photo identification document prior to casting a regular ballot. Concomitant with this requirement was the duty of the State Board of Elections to assist general registrars in providing free photo identification to voters that do not possess one of the requisite forms of identification. The bill included a delayed implementation date of July 1, 2014.

A proposed regulation was presented before the board during its April 2, 2014 meeting. It provided, *inter alia*, the situations where a voter could request the card and the requirements that one must meet prior to its issuance. The regulation gave general registrars the capability of soliciting applications for the ID outside of their general registrar's office, but did not require such action take place. It provided guidance for the issuance of a temporary identification document and for replacement cards. The

regulation also contained a provision stating that a person's inclusion in the Department of Motor Vehicle's database would not exclude such person from receiving a Voter Identification Card.

Statements received during the comment period were provided to the Board during its May 14, 2014 meeting in hopes of alerting its membership to public sentiment. Staff asked that the Board provide guidance as to suggested edits for the final version of the regulation.

The documents before the Board today reflect the wishes expressed during the May 14, 2014 meeting. It includes an expanded definition of a "valid" identification card and it also gives the Department of Elections the capability of processing voters' applications for a Photo Identification Card. In addition to changes recommended by the Board, staff has provided recommendations for consideration, including:

- The capability of an assistant to fill out the application for the voter (so long as the voter himself signs or marks the application);
- Expanded issuance of the temporary identification document during the absentee voting period;
- Issuance of temporary identification documents during the canvass period (only from the general registrar's office for locality where the voter resides);
- Applications must be offered and processed at all permanent satellite offices established within the localities;
- The application for a Voter Photo Identification Card is made available for public inspection after redaction of the social security number and month and day of birth.

Staff respectfully requests the board to consider the recommendations and adopt a finalized version of regulations 20-40-10 & 20-40-90.

Article 1  
General Provisions

**1VAC20-40-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Abode" or "place of abode" means a physical place where a person dwells. One may have multiple places of abode, such as a second home.

"Address" or "residence address" for purposes of voter registration and address confirmation means the address of residence in the precinct required for voter registration. An alternative mailing address may be included on a voter registration application when: (i) the residence address of the applicant cannot receive mail; or (ii) the voter is otherwise eligible by law to provide an alternative mailing address. Alternative mailing addresses must be sufficient to enable the delivery of mail by the United States Postal Service. The post office box for published lists may be provided either by the United States Postal Service or a commercial mail receiving agency (CMRA) described in the United States Postal Service Domestic Mail Manual.

"Domicile" means a person's primary home, the place where a person dwells and which he considers to be the center of his domestic, social, and civil life. Domicile is primarily a matter of intention, supported by an individual's factual circumstances. Once a person has established domicile, establishing a new domicile requires that he intentionally abandon his old domicile. For any applicant, the registrar shall presume that domicile is at the address of residence given by the person on the application. The registrar shall not solicit evidence to rebut this presumption if the application appears to be legitimate, except as provided in 1VAC20-40-40 B and C.

"Residence," "residency," or "resident" for all purposes of qualification to register and vote means and requires both domicile and a place of abode.

"Voter photo identification card" means the official voter registration card containing the voter's photograph and signature referenced in § 24.2-404 A 3 of the Code of Virginia.

Statutory Authority

§ 24.2-103 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 4, eff. October 13, 2011.

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"Authorized Personnel" means the designated individuals of a general registrar's office or the Department of Elections that are permitted to access the voter registration database and capture information necessary to generate photo identification cards.

"Domicile" means a person's primary home, the place where a person dwells and which he considers to be the center of his domestic, social, and civil life. Domicile is primarily a matter of intention, supported by an individual's factual circumstances. Once a person has established domicile, establishing a new domicile requires that he intentionally abandon his old domicile. For any applicant, the registrar shall presume that domicile is at the address of residence given by the person on the application. The

registrar shall not solicit evidence to rebut this presumption if the application appears to be legitimate, except as provided in 1VAC20-40-40 B and C.

"Residence," "residency," or "resident" for all purposes of qualification to register and vote means and requires both domicile and a place of abode.

"Valid" for all purposes related to voter identification shall mean documents appearing to be genuinely issued by the agency or issuing entity appearing upon the document where the bearer of the document reasonably appears to be the person whose photograph is contained thereon.

"Voter photo identification card" means the official voter registration card containing the voter's photograph and signature referenced in § 24.2-404 A 3 of the Code of Virginia.

Statutory Authority

§ 24.2-103 of the Code of Virginia.

Historical Notes

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"Address" or "residence address" for purposes of voter registration and address confirmation means the address of residence in the precinct required for voter registration. An alternative mailing address may be included on a voter registration application when: (i) the residence address of the applicant cannot receive mail; or (ii) the voter is otherwise eligible by law to provide an alternative mailing address. Alternative mailing addresses must be sufficient to enable the delivery of mail by the United States Postal Service. The post office box for published lists may be provided either by the United States Postal Service or a commercial mail receiving agency (CMRA) described in the United States Postal Service Domestic Mail Manual.

"Authorized Personnel" means the designated individuals of a general registrar's office or the Department of Elections that are permitted to access the voter registration database and capture information necessary to generate photo identification cards.

"Domicile" means a person's primary home, the place where a person dwells and which he considers to be the center of his domestic, social, and civil life. Domicile is primarily a matter of intention, supported by an individual's factual circumstances. Once a person has established domicile, establishing a new domicile requires that he intentionally abandon his old domicile. For any applicant, the registrar shall presume that domicile is at the address of residence given by the person on the application. The

registrar shall not solicit evidence to rebut this presumption if the application appears to be legitimate, except as provided in 1VAC20-40-40 B and C.

"Residence," "residency," or "resident" for all purposes of qualification to register and vote means and requires both domicile and a place of abode.

"Valid" for all purposes related to voter identification shall mean documents appearing to be genuinely issued by the agency or issuing entity appearing upon the document where the bearer of the document reasonably appears to be the person whose photograph is contained thereon.

"Voter photo identification card" means the official voter registration card containing the voter's photograph and signature referenced in § 24.2-404 A 3 of the Code of Virginia.

Statutory Authority

§ 24.2-103 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume 28, Issue 4, eff. October 13, 2011.

**1VAC20-40-90. Voter photo identification cards.**

A. Pursuant to the requirements of § 24.2-404 of the Code of Virginia, a voter who does not have an acceptable form of identification listed in § 24.2-643 of the Code of Virginia may obtain a voter photo identification card free of charge through any general registrar's office if:

1. The voter completes and signs a voter identification card application form;
2. The voter's information is correct in the voter registration system;
3. A photograph of the voter is taken by the general registrar or the registrar's designated staff; and
4. The voter's signature is captured by the general registrar or the registrar's designated staff.

B. Any voter applying for the voter photo identification card whose record in the voter registration system is materially inaccurate or incomplete will be issued a card after the information has been corrected and updated within the system. Such voter may be provided with a temporary identification document if the voter's application for the voter photo identification card is made after the deadline for registering to vote in the next most proximate election in which the voter is eligible to vote. The temporary identification document shall be considered an acceptable form of identification and is valid for 30 days after its issuance.

C. A person who is unregistered may apply for a voter photo identification card, and will be provided with the card upon approval of the submitted application for voter registration. A person who is unregistered may not be provided with a temporary identification document.

D. General registrars may solicit applicants for voter photo identification cards at locations other than their offices. No general registrar shall be required to offer this service.

E. A voter's inclusion in the Department of Motor Vehicle's database will not exclude such person from being eligible to receive a voter photo identification card so long as the person affirms he is not in possession of the identification document.

F. A voter may request a replacement voter photo identification card if (i) the original card is damaged, lost, or stolen; (ii) the voter's appearance has changed substantially; or (iii) eight years have elapsed since the issuance date upon the card.

G. Applications for voter photo identification cards shall be (i) considered "registration records," as defined in § 24.2-101 of the Code of Virginia; (ii) unavailable for public inspection as provided in § 24.2-444 C of the Code of Virginia; and (iii) retained by the registrar as provided by subdivision 8 of § 24.2-114 and the applicable Library of Virginia retention schedule for local election records.

Statutory Authority

§ 24.2-404 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume , Issue , eff. Month dd, yyyy.

**1VAC20-40-90. Voter photo identification cards.**

A. Pursuant to the requirements of § 24.2-404 of the Code of Virginia, a voter who does not have an acceptable form of identification listed in § 24.2-643 of the Code of Virginia may obtain a voter photo identification card free of charge through any general registrar's office, or the Department of Elections, if:

1. ~~The voter completes and signs a voter identification card application form~~ The voter signs a completed Voter Photo Identification Card Application;
2. The voter's information is correct in the voter registration system;
3. A photograph of the voter is taken by ~~the~~ a general registrar or ~~the registrar's designated staff~~ authorized personnel; and
4. The voter's signature is captured by ~~the~~ a general registrar or ~~the registrar's designated staff~~ authorized personnel.

B. Any voter applying for the voter photo identification card whose record in the voter registration system is materially inaccurate or incomplete will be issued a card after the information has been corrected and updated within the system. ~~Such voter may be provided with a temporary identification document if the voter's application for the voter photo identification card is made after the deadline for registering to vote in the next most proximate election in which the voter is eligible to vote.~~

C. A general registrar's office shall provide a temporary identification document to any eligible voter whose application is received during the absentee voting period through election day for the next most proximate election. A temporary identification document may only be issued by the general registrar's office in the locality where the voter is registered for any voter whose application is received after election day and through the conclusion of the period to submit a copy of an identification card provided within § 24.2-653(A) of the Code of Virginia. The temporary identification document

shall be considered an acceptable form of identification and is valid for ~~30~~ 45 days after its issuance.

~~CD.~~ A person who is unregistered may apply for a voter photo identification card, and will be provided with the card upon approval of the submitted application for voter registration. A person who is unregistered ~~may~~ shall not be provided with a temporary identification document.

~~DE.~~ General registrars and the Department of Elections may solicit applicants for voter photo identification cards at locations other than their offices. General registrars shall accept applications and produce temporary identification documents at all permanent satellite offices established within their locality. ~~No general registrar shall be required to offer this service.~~

~~EF.~~ A voter's inclusion in the Department of Motor Vehicle's database will not exclude such person from being eligible to receive a voter photo identification card so long as the person affirms he is not in possession of the identification document. A voter's signature upon the Voter Photo Identification Card Application shall be considered sufficient affirmation.

~~FG.~~ A voter may request a replacement voter photo identification card if (i) the original card is damaged, lost, or stolen; (ii) the voter's appearance has changed substantially; or (iii) eight years have elapsed since the issuance date upon the card.

~~GH.~~ Applications for voter photo identification cards shall be (i) considered "registration records," as defined in § 24.2-101 of the Code of Virginia; (ii) ~~unavailable~~ only available for public inspection as provided in § 24.2-444 C of the Code of Virginia after redaction of the social security number and day and month of the birth date; and (iii) retained by the registrar as provided by subdivision 8 of § 24.2-114 and the applicable Library of Virginia retention schedule for local election records.

Statutory Authority

§ 24.2-404 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume , Issue , eff. Month dd, yyyy.

**1VAC20-40-90. Voter photo identification cards.**

A. Pursuant to the requirements of § 24.2-404 of the Code of Virginia, a voter who does not have an acceptable form of identification listed in § 24.2-643 of the Code of Virginia may obtain a voter photo identification card free of charge through any general registrar's office, or the Department of Elections, if:

1. The voter signs a completed Voter Photo Identification Card Application.
2. The voter's information is correct in the voter registration system;
3. A photograph of the voter is taken by a general registrar or authorized personnel; and
4. The voter's signature is captured by a general registrar or authorized personnel

B. Any voter applying for the voter photo identification card whose record in the voter registration system is materially inaccurate or incomplete will be issued a card after the information has been corrected and updated within the system.

C. A general registrar's office shall provide a temporary identification document to any eligible voter whose application is received during the absentee voting period through election day for the next most proximate election. A temporary identification document may only be issued by the general registrar's office in the locality where the voter is registered for any voter whose application is received after election day and through the conclusion of the period to submit a copy of an identification card provided within § 24.2-653(A) of the Code of Virginia. The temporary identification document shall be considered an acceptable form of identification and is valid for 45 days after its issuance.

D. A person who is unregistered may apply for a voter photo identification card, and will be provided with the card upon approval of the submitted application for voter

registration. A person who is unregistered shall not be provided with a temporary identification document.

E. General registrars and the Department of Elections may solicit applicants for voter photo identification cards at locations other than their offices. General registrars shall accept applications and produce temporary identification documents at all permanent satellite offices established within their locality.

F. A voter's inclusion in the Department of Motor Vehicle's database will not exclude such person from being eligible to receive a voter photo identification card so long as the person affirms he is not in possession of the identification document. A voter's signature upon the Voter Photo Identification Card Application shall be considered sufficient affirmation.

G. A voter may request a replacement voter photo identification card if (i) the original card is damaged, lost, or stolen; (ii) the voter's appearance has changed substantially; or (iii) eight years have elapsed since the issuance date upon the card.

H. Applications for voter photo identification cards shall be (i) considered "registration records," as defined in § 24.2-101 of the Code of Virginia; (ii) only available for public inspection as provided in § 24.2-444 C of the Code of Virginia after redaction of the social security number and day and month of the birth date; and (iii) retained by the registrar as provided by subdivision 8 of § 24.2-114 and the applicable Library of Virginia retention schedule for local election records.

Statutory Authority

§ 24.2-404 of the Code of Virginia.

Historical Notes

Derived from Virginia Register Volume , Issue , eff. Month dd, yyyy.



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# Experian Presentation

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BOARD WORKING PAPERS



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# Other Business & Public Comment

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# Good of the Order

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# Adjournment

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BOARD WORKING PAPERS



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# BOARD MEETING

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Wednesday, June 11, 2014  
General Assembly Building  
Room C  
10:00 AM

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BOARD WORKING PAPERS  
Master Copy  
Prepared by; Rose Mansfield  
Executive Assistant to the Board