

General Registrar / Electoral Board Workgroup

A Review of Duties and Responsibilities of Electoral Boards and General Registrars

Summary of initial actions and continuing recommendations

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Interim Report,

General Registrar/Electoral Board Workgroup:

Introduction:

Two study resolutions requested by the Voter Registrar's Association of Virginia (VRAV) and Virginia Electoral Board Association (VEBA) were introduced in the 2014 Session of the Virginia General Assembly [HJ22(Minchew), HJ24 (Webert)]. Each of these proposed studies noted that more than 20 years had passed since the last comprehensive Joint Legislative Audit and Review Commission (JLARC) study of General Registrar (GR) duties in 1992. The House Rules Committee, citing overload at JLARC, asked that these studies be referred to the State Board of Elections (SBE). In May 2014, the State Board of Elections tasked the General Registrar/ Electoral Board workgroup with reviewing the Duties and Responsibilities of the Commonwealth's 133 Electoral Boards (EB) and General Registrars and developing suggestions and changes to recommend to the Virginia General Assembly

The initial 10 areas the study was to address are as follows:

- 1) Analysis of voter registration data of the 133 localities, to include the associated costs at both the local and state levels.
- 2) Gather data from the four year election cycle in order to identify workloads and costs associated with each type of election.
- 3) Examine the duties of General Registrars and Electoral Board members required by the Code of Virginia and VAC.
- 4) Compare the statutory and regulatory duties to the duties currently undertaken by the GR's and EB's.
- 5) Identify those duties statutorily belonging to the EB's that are routinely undertaken by the GR's.
- 6) Evaluate the effects on local offices of increases and shifts in the overall number of registered voters in the Commonwealth.
- 7) Analyze the impact on the workload of the GR's and EB's caused by changes in which votes are cast on and preceding Election Day.
- 8) Review the educational requirements, qualifications and training of GR's and EB's, and compensation schedules associated with those offices.
- 9) Identify efficiencies that may be achieved by uniform application of advances in technology utilized for voter registration and election administration.
- 10) Seek out "best practices" within the Commonwealth and, beyond that, offer improvements in the elections process.

This section of the report summarizes the initial ten goals with a brief explanation, relevant discussion and resulting recommendations.

Establishment of Workgroup:

The group was formed based upon recommendations from both the Virginia Electoral Board Association and the Voter Registrar's Association of Virginia.

Membership of the group was established in the summer of 2014. The GR/EB Workgroup began meeting on a monthly basis as of September 2014. The first report of the workgroup was presented in the form of a resolution to the State Board of Elections on November 24, 2014.

This report includes a summary of actions from the initial meeting, actions of the Virginia General Assembly based upon recommendations of the workgroup through the State Board of Elections and the Department of Elections, and ongoing work and further recommendations of the group.

Special thanks are offered on behalf of the members of the workgroup to the co-chairs former Lieutenant Governor John Hager and former Secretary Jean Jensen for their enthusiastic and genuine leadership and hard work.

Special thanks also to SBE Chairman, Charlie Judd and Vice-Chairman Clara Belle Wheeler for their willingness to proceed in securing the resources and legislative actions to keep Virginia elections at the forefront of representative democracy.

Membership and affiliation of the GR/EB Workgroup:

Honorable Charlie Judd, Chairman of the State Board of Elections

Honorable Clara Bell Wheeler, Vice Chair State Board of Elections, (appointed in 2015)

Honorable John Hager, former Lieutenant Governor of Virginia, Co-chair of workgroup

Honorable Jean Jensen, former Secretary of the State Board of Elections, Co-Chair of workgroup

Renee Andrews, Falls Church City, VEBA representative

Bill Thomas, Richmond City, VEBA representative

Bill Bell, Isle of Wight County, VEBA representative

Robin Lind, Goochland County, VEBA representative

Larry Haake, Chesterfield County, VRAV representative

Barbara Gunter, Bedford County, VRAV representative

Tracy Howard, Radford City, VRAV representative

Special thanks also to ELECT support staff

Martha Brissette, elections uniformity, Department of Elections

Rose Mansfield, administration, Department of Elections

Executive summary

Elections in the Commonwealth are governed by §24.2 of the Code of Virginia, 1950 as amended.

§24.2 charges the State Board of Elections oversight of the Virginia Department of Elections and the 133 local offices of Election. The State Board's statutory duties include establishing uniform processing and methods for the localities to follow in the execution of election duties. The local Electoral Boards are charged with administration of elections and appointment of the General Registrar, who is tasked with maintenance of voter rolls.

Over the course of time as SBE administration changed and the offices of election evolved, the statutory line in the divisions of duties blurred. The body of law under which elections are regulated has more than doubled in volume in the last 20 years, and federal regulations have further added to the obligations of the SBE, ELECT, and the local offices. Agency regulations are now the norm and have increased significantly since their inception in 2009.

The State Board of Elections, at the urging of the Virginia Electoral Board Association (VEBA) and the Voter Registrar's Association of Virginia (VRAV), and recommendation of the Rules Committee of the Virginia House of Delegates, recognized the immense transformation of elections. SBE voted to establish a working group to address and recommend potential changes and to support increased funding of elections infrastructure at both the state and local levels.

The Workgroup appointed by the stakeholders is comprised of experienced election officials. The three VRAV representatives alone comprised over 50 years of election experience. The total workgroup comprised experience at all levels of state and local governments, varied populations and bi-partisan mix of political ideology.

The Workgroup used available data from the Department of Elections website which contains data from 100% of the Commonwealth's 133 Counties and Cities.

The Workgroup developed and analyzed several surveys, and received first hand empirical data from up to 99 of 133 of the Elections offices responding.

All recommendations are based on first time empirical data utilizing a full index of statutory duties, workload, division of statutory duties, and local staffing surveys.

While some of the initial goals were combined as the resulting discussions and recommendations lent themselves to this arrangement, all ten of the initial goals included in the State Board of Election's establishment of the General Registrar/Electoral Board Work group are outlined within this report section. The summaries included here address several issues that are immediately pressing as we approach the 2016 Presidential election year.

Recommendations are outlined at the end of each numerical section.

Summary of actions and accomplishments of the initial charge:

1) Analysis of voter registration data of the 133 localities, to include the associated costs at both the local and state levels.

2) Gather data from the four year election cycle in order to identify workloads and costs associated with each type of election.

Increases in population and costs

The study group utilized the existing data available from the Department of Elections and the Weldon Cooper Center for Public Service to establish that the population of Virginia has grown in the previous two decades by 23% from **6,696,100** in 1995 to approx. **8,260,405** in 2013. The number of registered voters in that same time frame has increased by 72% from **3,038,394** to **5,240,286**. (Attachment 1)

The associated costs for these elections and the increasing number of elections for the same time period were examined. A survey was sent to all General Registrars. While the survey did indicate that the number of elections had indeed risen in the comparative time periods, and the relative costs to localities had risen exponentially, the survey numbers indicated that among the 133 localities each local government maintained very different means of financing and tracking expenditures. The 89 responses were averaged as total costs overall for the most recent complete four year cycle of 2009-2012 inclusively.

2009: total costs of all respondent elections: \$3,034,348 holding 196 separate elections.

2010: total costs of all respondents: \$2,916,200 holding 207 separate elections

2011 total costs of all respondents: \$3,288,545 holding 156 separate elections

2012 total costs of all respondents: \$5,106,473 holding 348 separate elections

In this four year period, the total number of elections held in the Commonwealth numbered 907 separate elections, including all federal, state, and local general, special and primary elections.

In an earlier four year period, from 1996-1999 inclusively, that number was 687, representing a 32% increase.

INCREASES IN ABSENTEE VOTING:

While the overall population of the Commonwealth as a whole has continued to expand, not all localities have grown. However, because of the increasing volume of registrations, absentee voters, and number of elections held, the workgroup found that even in those localities with neutral or negative growth, the workload and costs associated with elections continued to increase and expand.

Absentee voting over the same time period has, due to statutory expansion for eligible voters, relaxing of previously stringent regulations within the Code of Virginia, and the concerted efforts of political parties and third party groups, increased by much greater margins. In 1996 Absentee ballot use in Virginia numbered 116,606 registered voters. Absentee voting reached a high of 506,672 registered voters in the 2008 presidential election, a 335% increase. (Attachment 2)

Continuing evaluation and recommendations:

- i. Data analysis of the surveys is ongoing, and will be utilized to further disseminate areas needing to be addressed in respect to uniformity and integrity of the Virginia Election process.
- ii. The Workgroup expects to be able to make significant recommendations of changes to §24.2 to further align code with the reality of the local Election Offices.
- iii. Sampling of survey results from large, medium, and small localities concerning workload, registrations, and associated costs of elections, will be utilized to reinforce to the Governor and Virginia General Assembly the need for expedited support of election infrastructure and services.

3) Examine the duties of General Registrars and Electoral Board members required by the Code of Virginia and VAC.

4) Compare the statutory and regulatory duties to the duties currently undertaken by the GR's and EB's.

5) Identify those duties statutorily belonging to the EB's that are routinely undertaken by the GR's.

From the first meeting of the GR/EB Workgroup, there was a desire to clearly identify the distribution and delegation of duties of the Electoral Board to General Registrars. The Department of Elections had previously enumerated the various code required duties (Attachments 4 and 5). A second survey was sent to all General Registrars and Secretaries of Electoral Board for responses from the two groups to the same questions. This survey contained 97 questions of the duties of the Electoral Boards and asked whether these duties were carried out by the EB, the GR or shared by both.

The 133 localities of Virginia divide these duties in myriad ways. So diverse was the division of the carrying out of duties of the Electoral Boards and General Registrars that the workgroup trained their focus on those duties that statutorily belonged to the Electoral Boards, but were universally delegated or performed by the General Registrars.

This survey (attachment 6) received 99 of 133 General Registrar responses and 67 of 133 Secretary responses.

This survey showed conclusively that the duties most delegated to the General Registrars related to Absentee Voting and Campaign Finance. The results of this survey prompted a resolution reporting the initial results of the GR/EB workgroup, dated November 17, 2014 and presented to the State Board of Elections at the November 24, 2014 meeting.

During that meeting Secretary Palmer moved that, *“the Board Members accept the first report and resolution from the GREB Workgroup and forward this to the office of the governor, speaker of the house, and president of the senate, chairs and members of the privileges and elections committees with the recommendation that with the Code of Virginia be amended to include the following; (i) The General Registrar should be designated as “Director of Elections” for the locality being served, (ii) The General Registrar should be reassign duties associated with absentee voting and campaign finance, (iii) establishing a compensation program for the General Registrar’s equal to the position of Treasurer and (iv) that the recommendations have the full endorsement of the Virginia State Board of Election. Additionally, the GREB Workgroup should continue to explore the other areas identified in the resolution”* (SBE minutes, 11/24/2014).

The resulting actions included HB1433 (Cole) and SB1092 (Vogel) being overwhelmingly adopted by the Virginia General Assembly and signed into law by Governor McAuliffe, establishing the title of Director of Elections for General Registrar’s who carry out delegated statutory Electoral Board duties. These bills also transferred the statutory duties of chapters 7 and 9 of §24.2 of the Code of Virginia from the Electoral Boards to the General Registrars.

Continuing evaluation and recommendations:

- i. Due to underwhelming budgetary outlook in 2015, the third recommendation concerning compensation reflecting that of the local treasurer was removed from Senator Vogel's introduced bill. It is hoped that this recommendation will be considered during the 2016 Session, ideally through its inclusion as base general registrar salaries in the proposed budget for the Department of Elections.
- ii. The examination of EB and GR duties will continue for the lifetime of the workgroup, and as the 2016 General Assembly session approaches, the workgroup plans to further evaluate and recommend uniform alignment of statutory duties, VAC duties and local duties.
- iii. The work group has recommended a prescribed "job description" of the judicially-appointed Electoral Boards.
- iv. Recommend required
- v. distribution of an abbreviated description of duties and primary statutory qualifications be distributed to the various party chairs at the locality level so those persons appointed to their local Electoral Board will have a better understanding of the duties required and expectations.
- vi. The Workgroup also recommends a guidance document to the Supreme Court of Virginia to be included in the Circuit Court Judges Handbook, outlining statutory qualifications and expectations of the Electoral Board members.

6) Evaluate the effects on local offices of increases and shifts in the overall number of registered voters in the Commonwealth.

As the population of the Commonwealth increases and the voter registration rolls approach 6 million in 2016 the workgroup has placed an emphasis on staffing of local offices.

Current §24.2-112 requires localities with populations of 15,500 or more to employ at least one assistant registrar who shall work at least one day a week. Those localities of fewer than 15,500 shall have a “substitute registrar” able to intervene when needed.

The workgroup found this code section to be archaic and unable to meet the current needs of Virginia’s voters and election processes.

Compounding the limitations of understaffing are 16 localities that employ part-time General Registrars. These GR’s are limited to 3 days a week during the months of January through August, and as a result are compensated 60% of the minimum population salary bracket.

The part-time GR’s are a result of the budget of the Commonwealth. Salary brackets and days of service are set out in the Appropriations Act as part of the Department of Elections biennial budget. The part-time status of the GR’s of these 16 counties leaves the Commonwealth ripe for litigation on grounds of equal access. Those citizens of the localities who wish to run for office are also at a disadvantage, only being able to file paper work or campaign finance documentation only on specific workdays.

§24.2-112 requires assistant registrars to be employed by the General Registrar, based upon the number determined by the Electoral Board, §24.2-112 further states that the local governing body shall pay the salary of any assistants and that salary may be no less than the Federal minimum wage.

The compounded issues of minimum assistance requirements, severability of the three local authorities involved, and the unfunded mandate of local fiscal responsibility of assistant registrars appears to have given local governing bodies a disincentive in many cases to adequately staff the Elections Offices. General Registrars must then recruit volunteers, or work additional uncompensated hours to maintain statutory requirements.

A survey of all localities was done to determine Election Office staffing levels at three levels: prior to the National Voter registration Act of 1996, immediately post NVRA 1997 and current levels. (attachment 6)

Staffing for all respondents was broken down into full-time equivalents and compared at the three time intervals.

In this timeframe (1996-2014), all 133 Virginia localities experienced significant positive growth in the number of registered voters. While staffing has increased in some localities, it is woefully inadequate in many.

Continuing evaluation and recommendations:

- i. Remove statutory minimums from §24.2-112, replacing those minimums with language to compel the Electoral Boards and localities to provide, based upon recommendation from the GR, sufficient staffing to maintain office continuity and maintenance of training, as well as sufficient seasonal employees.
- ii. Add to ELECT's biennium budget sufficient amounts to allow the 16 part-time GR's, at the option of the localities Electoral Board or Director of Elections, full time status.

Addendum : Attorney General Mark Herring has opined that the GR has the statutory authority to hire seasonal and other part time employees and the locality has a statutory responsibility to pay those employees. See AG opinion 14-046 to the King William County Electoral Board of October 2014.

(Discourage the use of unpaid/volunteer office personnel? This is based on the theory that if the locality doesn't have to pay, they won't. No other core government service must do core office work by begging for free labor!)

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7) Analyze the impact on the workload of the General Registrars and Electoral Boards caused by changes in which votes are cast on and preceding Election Day.

In 2004 the voting equipment used by most localities in the Commonwealth was deemed unfit for service due to the federal "Help America Vote Act of 2002." All mechanical voting machines were replaced using HAVA funds to either Direct Recording Electronic (DRE) or Optical Scan machines. Now a decade later, that equipment is reaching the end of its useful life span. The decertification of the Win-Vote machine in April 2015, and the certain decertification of other DREs, has and will continue, to place significant financial burdens on the localities.

After the implementation of HAVA, most localities were compelled to establish a Central Absentee Precinct (CAP). This precinct accepts, records, casts and counts all of the localities' absentee ballots, and is required by Code to begin accepting ballots 45 days prior to all elections.

The legal burden of preparation of ballots, setting up the CAP, voting absentee applicants, and preparing the voted ballots for the Officers of Election for counting on Election Day, now falls entirely to the General Registrar and staff.

For instance, Code section §24.2-701, Application for absentee ballot has been the subject of 32 separate Acts of Assembly since recodification of §24.1 in 1992. Further changes were made at the 2015 General Assembly session and more will surely come in future sessions. Every change made requires new forms and procedural changes within the Elections Office.

The effects of continued amendment to the Absentee Code section by the General Assembly, the federal Uniformed and Overseas Citizens Voting Act (UOCAVA), The Military and Overseas Voter Empowerment Act (MOVE), and electronic distribution and potential receipt of absentee ballots via e-mail, have all added to the difficulty of absentee voting.

Within the past five years most localities have adopted the use of Electronic Poll Books (EPB) at the behest of the General Assembly. However the use of laptops has proven problematic in some localities, prompting General Registrars to print paper back-up poll books to go to the polls with the EPBs.

While the EPBs provide some after-election relief of entering voter credit and can be utilized in a number of ways to provide voter service, their upkeep and replacement is costly. The poll book program originally supported by SBE, is no longer being supported and the original vendor is defunct. This creates additional burden on the localities and ELECT by varying the pollbook programs in use and the maintenance and software fees. Now the original EPB laptops are also nearing the end of their useful life.

Continuing evaluation and recommendations:

- i. Foster understanding among the members of the Virginia General Assembly that each action related to §24.2 has impacts and consequences to ELECT and all 133 Election Offices in particular.
- ii. Work with ELECT and SBE to find ways to create efficiencies in Code and Agency Regulation that reduces local impact but maintains uniformity and expected high levels of service.
- iii. Continue to amend archaic sections of §24.2 to reflect the reality of current office practices, while reinforcing the concepts of checks and balances among Electoral Boards, General Registrars, and ELECT.
- iv. Introduce a continuing procedure for updates, replacement, and maintenance of software and electronic voting equipment, and poll books. ELECT must work with the election offices within each locality to emphasize to their respective local governing body the need to create a standardized update/replacement schedule as with any other local infrastructure.

8) Review the educational requirements, qualifications and training of GR's and EB's and compensation schedules associated with those offices.

§24.2 lists no requirements for the position of General Registrar or Electoral Board other than being a registered voter of the locality. The Code does maintain provisions which prohibit service in either office.

The workgroup recognizes that professional development, continuing education, and proper and continuous training is a necessary part of successful elections.

As the position of General Registrar has grown and the Code swelled, it has become increasingly apparent that the minimum standards for employment outlined in the code are not sufficient.

With the increases in code, federal law, and agency regulations, both the Electoral Boards and General Registrars require more training and education today than ever before. Appointments of General Registrars are set forth in Code as July 1st in the year prior to the presidential election year, and the learning curve for newly appointed GRs is very steep. Education, training, and professional development are paramount in maintaining elections and a registration system that is transparent, accurate, and thoroughly reliable.

In conjunction with the Election Center, The Voter Registrar's Association of Virginia has established a continuing education program (CERA), with the cooperation of the SBE and ELECT a Virginia specific certification, (VERO), And previously in conjunction with the Weldon –Cooper Center for public service at UVA, the Certified Professional General Registrar program (CPGR). These continuing education opportunities have been in existence for GRs for almost 20 years.

The General Assembly has never recognized any continuing education or certification in any meaningful way. While other constitutionally-required officers receive compensatory recognition for completion of continuing education, the General Registrars have been forced to remain in the 1971 "population only" pay brackets that are separate and much more widespread than all other local offices, with no opportunity for educational increases, scale increases, longevity increases, or merit increases.

Electoral Board annual evaluation was mandated for GRs in the 2004 General Assembly session as a tool to further the compensation of GRs, but to date has not been utilized for its original purpose.

The Electoral Boards have no professional development or certification classes and are limited in their official training to a mandatory one member, once a year, annual training by the Department of Elections. Electoral Board members may also take advantage of limited VEBA training. Unfortunately not all Electoral Board members take advantage of their association training and many are unable to attend, or simply fail to attend ELECTs training program.

In years past, the Electoral Boards were compensated for annual training by the Commonwealth; this practice was eliminated in the late 1990s.

Further, the Compensation for members of local Electoral Boards was decreased due to budgetary concerns in the 2012 budget year. The loss of the attendance stipend and the decrease in compensation

for these officials has created a distinct disincentive for members to take the necessary time to maintain the level of training necessary to fulfill their administrative election role.

Continuing evaluation and recommendations:

- i. Referring to State Board of Elections minutes of November 24, 2014: *(iii) establishing a compensation program for the General Registrar's equal to the position of Treasurer and (iv) that the recommendations have the full endorsement of the Virginia State Board of Election.*

This recommendation will align the population brackets with the article 7 Constitutional Officers, Establish the base salary of General Registrars to equal that of their locality's Treasurer, and compensate for the value of continuing education and training received by the General Registrars.

- ii. Increase local Electoral Board member compensation.
- iii. Establish compensatory continuing education and training for the members of local Electoral Boards.
- iv. Establish basic mandatory training for newly appointed Electoral Board members

9) Identify efficiencies that may be achieved by uniform application of advances in technology utilized for voter registration and election administration.

10) Seek out “best practices” within the Commonwealth and beyond, that offer improvements in the elections process.

Efficiencies in both training and office practices have been discussed and generally agreed upon by the Workgroup, however discussion has been limited, and the search for best practices and the extended use of technology will continue as an ongoing portion of this project, ELECT and SBE, and among the memberships of VRAV and VEBA.

Suggested means to seek out best practices have included awards conferred by both statewide associations for those officials who have identified creative and successful means to achieve excellence within their localities.

The workgroup has discussed further use of technology to promote training and uniformity in the form of online video training modules, such as the security video training recently developed by ELECT. The Department of Elections and the two associations should work in concurrence to develop such courses as basic office processes training, legal issues, Freedom of Information Act training, and other courses to enable the GRs and EBs the ability to access the modules at any time. The online training modules would benefit officials and the public, and could be maintained with cooperation of all stakeholders. The suggestion was made that with continued enhancement, on-line course work and testing would certainly enhance, and could replace the current “Annual Training.”

Also suggested was utilizing one or more of Virginia’s colleges or universities to create “Election Education courses,” by which continuing education credits may be obtained with the eventual possibility of accredited course work in the fields of elections.

Continuing evaluation and recommendations:

- i. Continue to seek ways to improve technological uses in the training and maintenance of training for all Election officials in the Commonwealth. Continue to seek creative means towards positive results and uniformity in practice and training.
- ii. Work with SBE, ELECT and the statewide associations to develop web based instructional modules for training and reference for GR’s, assistants and EB’s.

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