

HOUSE BILL NO. 774

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Privileges and Elections

on February 5, 2026)

(Patron Prior to Substitute—Delegate Thornton)

*A BILL to amend and reenact §§ 24.2-653.01 and 24.2-709.1 of the Code of Virginia, relating to elections; absentee and provisional ballots; cure process.*

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

**1. That §§ 24.2-653.01 and 24.2-709.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 24.2-653.01. Provisional ballots; electoral boards to make determination as to validity.**

11 A. The electoral board shall meet on the day following the election and determine whether each person  
12 having submitted a provisional vote pursuant to § 24.2-653 was entitled to do so as a qualified voter in the  
13 precinct in which he offered the provisional vote. In the case of persons voting provisionally pursuant to  
14 § 24.2-653.3, the electoral board shall determine of which district the person is a qualified voter. At the  
15 meeting, the voter may request an extension of the determination of the provisional vote in order to provide  
16 information to prove that the voter is entitled to vote in the precinct pursuant to § 24.2-401. The electoral  
17 board shall have the authority to grant such extensions that it deems reasonable to determine the status of a  
18 provisional vote.

19 If the board is unable to determine the validity of all the provisional ballots offered in the election, or has  
20 granted any voter who has offered a provisional ballot an extension, the meeting shall stand adjourned, not to  
21 exceed 10 calendar days from the date of the election, until the board has determined the validity of all  
22 provisional ballots offered in the election.

23 B. The electoral board shall permit one authorized representative of each political party or independent  
24 candidate in a general or special election or one authorized representative of each candidate in a primary  
25 election to remain in the room in which the determination is being made as an observer so long as he does not  
26 participate in the proceedings and does not impede the orderly conduct of the determination. Each authorized  
27 representative shall be a qualified voter of any jurisdiction of the Commonwealth. Each representative, who is  
28 not himself a candidate or party chairman, shall present to the electoral board a written statement designating  
29 him to be a representative of the party or candidate and signed by the county or city chairman of his political  
30 party, the independent candidate, or the primary candidate, as appropriate. If the county or city chairman is

31 unavailable to sign such a written designation, such a designation may be made by the state or district  
32 chairman of the political party. However, no written designation made by a state or district chairman shall  
33 take precedence over a written designation made by the county or city chairman. Such statement, bearing the  
34 chairman's or candidate's original signature, may be photocopied and such photocopy shall be as valid as if  
35 the copy had been signed.

36 Notwithstanding the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.),  
37 attendance at meetings of the electoral board to determine the validity of provisional ballots shall be  
38 permitted only for the authorized representatives provided for in this subsection, for the persons whose  
39 provisional votes are being considered and their representative or legal counsel, and for appropriate staff and  
40 legal counsel for the electoral board.

41 C. If the electoral board determines that *such a person having submitted a provisional vote pursuant to*  
42 § 24.2-653 was not entitled to vote as a qualified voter in the precinct or district in which he offered the  
43 provisional vote, is unable to determine his right to vote, or has not been provided one of the forms of  
44 identification specified in subsection B of § 24.2-643, or the signed statement that the voter is the named  
45 registered voter he claims to be, the envelope containing his ballot shall not be opened and his vote shall not  
46 be counted. *If the electoral board determines that such person was not entitled to vote as a result of a*  
47 *material error or omission on the provisional ballot form, the registrar shall promptly notify the voter by*  
48 *telephone or by email, if available, of the error or omission and shall provide information to the voter on how*  
49 *to correct the issue so his ballot may be counted. The voter shall be entitled to make such necessary*  
50 *corrections before noon on the Monday after the election, and his ballot shall then be counted pursuant to the*  
51 *procedures set forth in this section if he is found to be entitled to vote.* The general registrar shall notify in  
52 writing pursuant to § 24.2-114 those persons found not properly registered or whose provisional vote was not  
53 counted.

54 The provisional vote shall be counted if (i) such person is entitled to vote in the precinct pursuant to  
55 § 24.2-401 or (ii) the Department of Elections or the voter presents proof that indicates the voter submitted an  
56 application for registration to a state-designated voter registration agency or the voter's information was  
57 transmitted by the Department of Motor Vehicles to the Department of Elections pursuant to § 24.2-411.3  
58 prior to the close of registration pursuant to § 24.2-416 and the registrar determines that the person was  
59 qualified for registration based upon the application for registration submitted by the person pursuant to  
60 subsection B of § 24.2-652.

61 If the electoral board determines that such person was entitled to vote, the name of the voter shall be

62 entered in a provisional votes pollbook and marked as having voted, the envelope shall be opened, and the  
63 ballot shall be placed in a ballot container without any inspection further than that provided for in § 24.2-646.

64 D. On completion of its determination, the electoral board shall proceed to count such ballots and certify  
65 the results of its count. Its certified results shall be added to those found pursuant to § 24.2-671. No  
66 adjustment shall be made to the statement of results for the precinct in which the person offered to vote.  
67 However, any voter who cast a provisional ballot and is determined by the electoral board to have been  
68 entitled to vote shall have his name included on the list of persons who voted that is submitted to the  
69 Department of Elections pursuant to § 24.2-406.

70 E. The certification of the results of the count together with all ballots and envelopes, whether open or  
71 unopened, and other related material shall be delivered by the electoral board to the clerk of the circuit court  
72 and retained by him as provided for in §§ 24.2-668 and 24.2-669.

73 **§ 24.2-709.1. Processing returned absentee ballots before election day; cure process.**

74 A. On receipt of an absentee ballot returned in person or by mail to the office of the general registrar or to  
75 a drop-off location before election day, the general registrar shall mark the date of receipt in the voter's record  
76 and shall examine the ballot envelope to verify completion of the required voter affirmation. A voter  
77 affirmation statement shall not be deemed to be incomplete on the sole basis of the voter's failure to provide  
78 (i) his full name or his middle initial, as long as the voter provided his full first and last name, or (ii) the date,  
79 or any part of the date, including the year, on which he signed the statement.

80 B. If the voter affirmation has been completed as required, the general registrar may open the sealed ballot  
81 envelope and insert the ballot in optical scan counting equipment or other secure ballot container without  
82 initiating any ballot count totals. If a general registrar does not choose to do so, the sealed ballot envelope  
83 shall be deposited into a secure container provided for such purpose, in which it shall remain until the general  
84 registrar initiates the process of opening the sealed ballot envelopes deposited into the secure container and  
85 inserting such ballots into optical scan counting equipment without initiating any ballot count totals. Such  
86 process shall be at the general registrar's discretion at any time prior to the seventh day immediately  
87 preceding the election but shall be mandatory beginning on the seventh day immediately preceding the  
88 election.

89 At least two officers of election, one representing each political party, shall be present during all hours  
90 when sealed ballot envelopes are opened as authorized in or required by this subsection. No person present  
91 while sealed ballot envelopes are opened and ballots are inserted into counting equipment shall disclose any

92 information concerning the ballots.

93 In the event that circumstances prevent a general registrar from complying with the provisions of this  
94 subsection, such failure shall not be grounds for contesting the election pursuant to Article 2 (§ 24.2-803 et  
95 seq.) of Chapter 8 and shall not invalidate the absentee ballots.

96 C. For any absentee ballot received by the Friday immediately preceding the day of the election, if the  
97 general registrar finds during the examination of the ballot envelope that the required voter affirmation was  
98 not correctly or completely filled out or that a procedure required by § 24.2-707 was not properly followed,  
99 and such error or failure would render the ballot void by law, the general registrar shall enter into the voter's  
100 record in the voter registration system that the absentee ballot has an issue requiring correction in order for it  
101 to be counted. This information shall be included on any absentee voter applicant list provided pursuant to  
102 subsection C of § 24.2-710.

103 Within three days of such finding, the registrar shall notify the voter in writing or by email of the error or  
104 failure and shall provide information to the voter on how to correct the issue so his ballot may be counted.  
105 The voter shall be entitled to make such necessary corrections before noon on the ~~third day~~ Monday after the  
106 election, and his ballot shall then be counted pursuant to the procedures set forth in this chapter if he is found  
107 to be entitled to vote. No absentee ballot needing correction shall be delivered to the officers of election at the  
108 appropriate precinct until the voter is provided the opportunity to make the necessary corrections pursuant to  
109 this subsection.

110 The general registrar may issue a new absentee ballot to the voter if necessary and shall preserve the first  
111 ballot with other spoiled ballots.

112 **2. That the Department of Elections shall issue guidance to local election officials on the uniform  
113 processing and counting of provisional ballots, including any provisional ballot cast by a person  
114 submitting a registration application on the same day as the election pursuant to § 24.2-420.1 of the  
115 Code of Virginia. The guidance shall include direction to treat all provisional ballots the same for the  
116 purposes of reviewing, curing, and adjudicating the validity of such provisional ballots.**