29   Provisional Ballots

Contents

This chapter clarifies laws and procedures for officers issuing provisional ballots and for electoral boards determining which provisional ballots are counted. 42 USC 15482 (HAVA); § 24.2-653.

29.1   Before Election Day

The following tasks must be completed before the day of the election:

- **Give public notice of Provisional Ballots Meeting and Canvass**
  o Notice of the date, time, and location at which the provisional ballots meeting and the canvass will be held must be given by the electoral board at least three working days prior to the meeting date. *See* GREB 26, Virginia Freedom of Information Act (FOIA). It is recommended that the notice state that the board will go into closed session to consider the qualifications of provisional voters.
- **Instruct officers of election**
  o The instructional meeting for chief and assistant chief officers of election (required to be held not more than thirty nor less than three days prior to the election) must include the procedures that officers of election are to follow when a provisional vote must be cast by a voter. § 24.2-115. The general registrar should be present at any such instructional meeting since the exact procedure to be followed when a voter not listed within the pollbook appears at the polls will hinge on communication between the officers and the general registrar. The *What If*, Provisional Vote Envelope, Provisional Vote Envelope – ID ONLY, Precinct Provisional Ballots Log and 1A Envelope are the basic documents to be used when training officers of election on the proper procedures. This Chapter provides additional details focused on the responsibilities of registrars and electoral board members in administering provisional voting.
- **Supplies for Polling Places; Training Chiefs and Assistant Chiefs**
  o Each polling place must be stocked with sufficient ballots, a provisional ballots log, provisional ballot envelopes (both regular and ID ONLY), HAVA-5 Provisional Voter Notice forms, and Provisional Voter Notice – Identification SBE-643 forms. All precinct chiefs and assistant chiefs must be trained on the current procedures for (i) offering provisional voting to the fullest extent possible, (ii) securing additional ballots or envelopes when needed, and (iii) emergency procedures. *See* GREB 18 and 27 on Election Day and Emergency Procedures, respectively.

29.2 On Election Day: Quick Reference Charts -- Provisional Ballot Procedures by Envelope Reason Number

The chart below is a quick guide to the procedures for each reason on the provisional vote envelope (PVE). All situations regarding voter identification are addressed in 29.2.1.

The columns in this chart address the following questions, based on the voter's reason for voting a provisional ballot:

- Is this voter listed on the pollbook in the precinct? Are there any special notations on the pollbook?
- Are there additional steps for the officers of election, depending on the voter's reason? (Officers should primarily rely on the *What If* for detailed instructions.)
- What research should be done by the registrar or electoral board before the electoral board decides the validity of the ballot? Is there information/research the voter can present to help his/her ballot count?
- What else does the electoral board need to know in order to count the ballot if the provisional ballot envelope (or absentee envelope, #3 AB below) is
  - **completed and signed**, and
  - **the ballot was cast in the voter's legal precinct**, and
  - **the voter is otherwise qualified to vote** (not a felon, etc.)?

Key to terms in chart below:

1A - Large envelope to convey voted provisional ballots cast during normal voting hours
1B - Large envelope to convey voted provisional ballots cast after normal voting hours when court orders voting hours extended
COB - Close of Books
HAVA - Help America Vote Act of 2002 (federal law)
OE - Officer of Election
PV - Provisional Vote
PVE - Provisional Vote Envelope (with Statement of Voter)
PVEID – Provisional Vote Envelope – ID (with Statement of Voter)
LOG - Precinct Provisional Ballots Log
NVRA - National Voter Registration Act of 1993 ("Motor Voter") (federal law)

Quick Reference Chart
Provisional Ballot Procedures by Envelope Reason Number

Voter's Reason on Provi- sional Vote Envelope	Is Voter's name listed on Pollbook?	Additional Instructions for Officers of Election	GR/EB Research / Process before EB decision	EB must count if ballot completed, signed and cast in voter's legal precinct AND voter qualified to vote AND:
1 or 2 -- Voter's name not on pollbook	No, or EPB is inaccessible	- Unable to contact registrar, or registrar unable to confirm that voter IS registered. - Voter must claim to be a registered voter in the precinct. (Check address or other lists to make sure voter is in correct precinct.) - Voter must attest to legal residence in precinct where PV is cast during allowed time period by **checking either reasons 1 OR 2**, as appropriate, on PVE. - Officer must give voter VA Voter Registration Application and inform voter that completing application at polls *may* affect whether PV is counted; otherwise will be used to register for future elections. - If EPB is down, allow voter to cast PB, but keep a written record of who casts a PB for this reason.	- Any record of a timely registration application? Search files and request SBE research if voter says he/she registered at DMV/other NVRA agency. - Voter may have timely agency registration receipt or present evidence cancellation was not proper. - Non-agency VR receipt is not "proof" but may help to find the application. - If there is record of timely application to a GR, DMV or another NVRA agency, process voter reg. app. from polls backdated to COB. - If voter should not have been cancelled, reinstate.	Count PV if voter **was or should have been** registered (see research).
3 -- Polling Hours Extended by Court Order	Yes or No (as other PV reasons may apply; follow procedures for each additional reason)	- Check regular pollbook to determine **whether voter is registered**, and voter's **ID status**, but **do not make any marks/entries** in regular pollbook. - Record all Reason #3 voters on a **separate Provisional Ballots LOG** (it will also serve as the extended hours pollbook). - Keep all reason #3 ballots and records *separate* from those used during normal voting hours (even if another reason also applies), and use **1B** envelope.	Normal research for reasons # 1, 2, 4, 5, or ID as appropriate.	-If court order has not been overturned, count normally, but separately from PVs cast during normal hours. - Count reason #3 ballots with *additional* reasons as appropriate for those reasons (still keeping separate from normal hours PVs/counts).

Voter's Reason on Provisional Vote Envelope	Is Voter's name listed on Poll-book?	Additional Instructions for Officers of Election	GR/EB Research / Process before EB decision	EB must count if ballot completed, signed and cast in voter's legal precinct AND voter qualified to vote AND:
4 -- Voter on AB list appears at regular polling place or CAP; says absentee ballot lost/ not received, or had previously returned unused ballot to EB.	Yes, with "AB"	-A voter who returned an unused ballot to the *electoral board* before Election Day must check the **"returned unused"** box under reason #4 and vote provisionally. *Note: if the person returns the unused ballot to an officer of election in their proper polling place or CAP they cast a regular ballot if otherwise qualified.* - Voter without ballot must attest that absentee ballot was not received or lost by checking *either* the **"never received"** or **"lost" box** under reason #4 on PVE. - A voter who has marked the ballot in any way or presents an otherwise unusable ballot to the officers of election must check **"spoiled"** or **"returned damaged"** under reason #4 on PVE.	Was a voted absentee ballot received and counted?	Count PV if a voted absentee ballot from this voter was not received and counted and voter is otherwise qualified.
5 –Voter shown in the pollbook as having already voted	Yes, and they are also shown to have cast a ballot already	-Check the pollbook to ensure that the voter has already been listed as having voted in this election before requiring the voter to vote a provisional ballot. A provisional ballot protects the voter against being charged with a felony.	Does the pollbook indicate that the voter already cast a ballot? Is the indication the result of an election official's error?	Count PV if there is evidence that an error occurred and the voter is not in fact attempting to vote twice in a single election. If evidence documents attempted multiple voting, do not count PV and refer to Commonwealth's attorney.
6 – Other	Yes	-Clearly state why the voter is being asked to cast a provisional ballot. If the electoral board may need further explanation, a separate sheet of paper may be attached to the outside of the envelope.	Varies	The electoral board has clarification that this voter is eligible to vote in the election.

29.2.1   Quick Reference: Provisional Ballot Procedures for Identification

The chart below is a quick guide for those situations where a voter fails to provide the proper identification. Whenever a voter is asked to cast a provisional ballot solely because they lack proper identification, that ballot is placed in a Provisional Vote Envelope - ID ONLY. If there are multiple reasons requiring the voter to cast a provisional ballot, the normal Provisional Vote Envelope is to be used. Identification must be provided to the electoral board by *noon on the 3rd day following the election* (Friday).

OFFICER OF ELECTION: Use this envelope only when a voter whose name IS on the pollbook does not have the required identification. For voters who registered by mail without providing identification, if this is their first time voting in a federal election they must present an identification document containing either their photograph or both their name and address (*Social Security cards do not fulfill this requirement*). If any issue other than identification applies to this voter, a regular provisional ballot envelope must be used. Have voter complete the top portion. Read the statement below to the voter and have the voter verify the information and sign. You also must sign. Voter must vote a paper ballot and seal the voted ballot in this envelope. Enter voter's information in Precinct Provisional Ballots Log. Do NOT mark pollbook. Electoral Board will determine voter qualification. If voter returns with proper identification, check the box in bottom section, sign, date, and attach a copy of the document.

STATEMENT OF VOTER – I hereby state, subject to felony penalties, that I am qualified and registered to vote in this precinct; to the best of my knowledge, I am not disqualified from voting by the Constitution and laws of this Commonwealth, and my registration is not subject to cancellation. The information given on the reverse side of this document is true and correct, and I have not voted and will not vote in this election at any other time or place.

WARNING: INTENTIONALLY MAKING A MATERIALLY FALSE STATEMENT ON THIS FORM CONSTITUTES THE CRIME OF ELECTION FRAUD, WHICH IS PUNISHABLE UNDER VIRGINIA LAW AS A FELONY. VIOLATORS MAY BE SENTENCED TO UP TO 10 YEARS IN PRISON, OR UP TO 12 MONTHS IN JAIL AND/OR FINED UP TO $2,500.

SIGNATURE OF OFFICER OF ELECTION _____ SIGNATURE OF VOTER _____

DATE _____ _____

☐ **Voter later provided a copy of identification** (attach copy)

SIGNATURE OF ELECTIONS OFFICIAL _____ DATE _____

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Voter's ID deficiency	Is Voter's name listed on Poll-book?	Which ID requirement applies, normal or HAVA? (See *What If*)	Additional Instructions for Officers of Election	GR/EB Research / Process before EB decision	EB must count if ballot completed, signed and cast in voter's legal precinct AND voter qualified to vote AND:
Voter does not present acceptable ID at the polls	Yes, and there is no "**H**" by the voter's name	Normal	Complete PVEID	None. Alert EB whether voter later provided ID by noon on 3rd day following the election	Voter later provided the required VA ID.
3 -- HAVA ID required / not shown; voting at polls	Yes, with "**H**"	**Federal Elections Only**: HAVA ID required; if no ID, must vote provisional ballot. **If no federal office on ballot**: Normal ID.	Complete PVEID. Write a conspicuous "**H**" on envelope to alert elections officials that the voter must use HAVA ID.	None. Simply report whether the voter has provided the necessary ID prior to noon on the 3rd day following the election	Voter provided an ID meeting the HAVA standard (see SBE website for detailed list).

3 (AB) -- HAVA ID required / copy not sent with absentee ballot	Yes, with "**H**"	**Federal Elections Only**: HAVA ID required; if no ID, must be *treated* as provisional	If copy of HAVA ID not returned with voted absentee ballot, refer voter's *resealed* (OE sign/date) AB envelopes and *uncounted* ballot to EB in **1A envelope** with any other provisional ballots. The AB envelope should be placed inside a PVEID	None.	Voter provided an ID meeting the HAVA standard (SBE website for detailed list).

29.3 On Election Day: Details on Specific Provisional Ballot Reasons

29.3.1 Reasons # 1 or # 2 - Voter's name not on pollbook; Voter says he/she is registered to vote in that precinct

- If the name of a voter does not appear on the precinct pollbook, the voter must be given a provisional ballot to vote if
  - o the general registrar cannot be reached, or
  - o the general registrar is unable to determine that a voter is registered to vote, AND
  - o the voter states he or she is a registered voter in the precinct.
- An officer of election should ask the voter for correct spelling of name or if there has been a recent name change.
- An officer of election should check for the voter's name at the end of the alphabetical section or on any separate listing provided by the registrar.
- An officer of election should ask when and where the voter registered to vote and last voted. If the voter advises he or she registered at a DMV or other NVRA agency, ask if he or she knows the date, or approximate date, and location of the DMV or NVRA agency. This information may be used by the registrar to help locate the citizen's registration documents. § 24.2-444. Contact SBE's Voter Registration Coordinator if help is needed to identify NVRA agencies.
- An officer of election should obtain the voter's full legal name, address, and social security number before calling the registrar's office. The officer should explain that providing the information is optional and requested in order to look up the voter's record.
- An officer of election should check the street file records, alpha roster, electronic pollbooks, other such materials provided, or information from the general registrar to determine if the voter is in the correct precinct. If the voter is found to be in the incorrect precinct, advise him or her of the correct precinct in which he or she is registered and advise that he or she can only vote in that precinct in order to have his or her ballot counted.
  - o Exception: If proof is found that the person attempted to register (or transfer/update his or her registration) at DMV or another NVRA agency before the registration deadline, and the person completes a voter registration form *at the polls*, that application will be accepted or rejected as if it had been received on time. If the voter is found qualified to be registered, the provisional ballot must have been cast in the precinct in which the voter would have been registered.
- The chief officer of election (or an officer designated by the chief) must take the voter aside and contact the general registrar. Consider that voters may be embarrassed by having attention drawn to them and take precautions to protect the privacy of all personal information. The general registrar will advise the officer whether the person in question has been erroneously deleted from the pollbook and explain the necessary procedure.
  - o At this point, two situations may exist:

- The registrar informs the officer that the voter was erroneously deleted from the pollbook.
- The registrar informs the officer that the voter was not erroneously deleted from the pollbook, or the registrar is unavailable.

29.3.1.1   Voter cannot be found in the pollbook

2011 legislation specifically requires provisional voting if electronic pollbooks become inaccessible or inoperable at a precinct, and no alternate list or pollbook is available. The officers of election at the location must keep a written list of those who cast provisional ballots due to this occurrence.

The officer of election *must* inform the individual of his or her right to cast a provisional ballot if the individual believes he or she should be legally registered to vote in the precinct, and the individual signs the Provisional Ballot Envelope under felony penalty for making false statements that he or she is a registered voter of the precinct. The provisional ballot envelope collects important individually identifiable information including social security number and full date of birth. It must be handled securely and not be made visible to others.

Officers of election must also provide a voter registration application to any voter voting a provisional ballot because his or her name was not listed on the pollbook. The officers should have the voters fill out the applications in the polling place so that the officers may deliver the completed applications to the general registrar after the polls close. These applications may be used to determine the voters' qualifications and to have the provisional ballots counted by the electoral board. Explain to the voter that completing this application may affect, but does not ensure, the voter's qualifications to have the provisional ballot counted and will be used to register the applicant for future elections if he or she is determined to meet the qualifications to register to vote. § 24.2-653. Applications must also be handled securely without exposing sensitive personal information to others.

If the voter or SBE indicates the person submitted an application at DMV or other NVRA agency *prior* to the close of books, the voter submitted a completed application on Election Day, and the registrar determined the voter was qualified from the application submitted at the polls, the provisional ballot must be counted by the electoral board. § 24.2-653(B). The officer of election will have asked the voter for the date and location of the DMV or other NVRA agency at which the voter submitted a voter registration application. The general registrar working with SBE to search the DMV or NVRA agency record will determine if there are any records pertaining to the registration. If there are records from DMV or another NVRA agency, there are two possible scenarios that should be considered:

- No timely application appears: The DMV audit shows that the voter indicated a "no" when asked if he or she would like to register to vote or update registration information (or "yes" but after the close of books for the election). In this case, if there are no other timely records available from the registrar or the SBE, the voter did not register to vote and the provisional ballot should not be counted. § 24.2-401.

- Timely application documented. The voter either has an acknowledgment form from DMV or the DMV audit shows the voter indicated a "yes" when asked to register or update registration information **before the close of books,** or another NVRA agency may indicate the voter submitted a timely application through the agency. In the absence of any records from the general registrar or SBE concerning this registration application, the only records available indicate the voter made his or her best effort to register to vote or update his registration record and the administrative system in place failed to deliver the information to the registrar in a timely manner.
  - o The general registrar must use the registration application completed when casting the provisional ballot to determine the applicant's eligibility to register; and if qualified, the registrar must register the voter **retroactively to be effective as of the deadline for close of books for the election**. § 24.2-653.
  - o If the general registrar determines the voter was qualified from the application completed at the polls, and the voter has a timely registration receipt from DMV or another NVRA agency, or SBE indicates the voter had submitted an application prior to the close of books, the electoral board must count the voter's provisional ballot. § 24.2-653.

29.3.2 Reason # 3 -- Polling Hours Extended by Court Order

When a court order extends the hours the polls are to be open, any voter offering to vote after the normal polling hours, and who was not in line when the polls would have closed, must vote by a provisional ballot. **Other provisional voting reasons may also apply**. 42 USC 15483 (HAVA); §§ 24.2-643, 24.2-653.

All provisional ballots cast after the normal polling hours must be kept **separate** from other ballots and recorded in a separate provisional ballots pollbook, not the regular pollbook. The Provisional Ballots Log, rev. 07/12, will serve as the pollbook for these ballots. The officers should start a new Log page and not mix these entries with those for provisional voters during normal hours.

Why must they be separate? A higher court might reverse the order extending hours; if ballots and counts are not kept separate, it would be impossible to later determine which were cast during regular hours and which were cast during the extended hours.

The voter should provide one form of required ID based on the voter's pollbook listing (regular or "H"), or check "Voter ALSO did not present required identification" on the Provisional Vote Envelope if such ID is not provided.

The officer must ensure that each voter checks reason 3 and any other pertinent reasons on the provisional ballot envelope.

29.3.3   Reason # 4 - Voter on AB list appears at regular polling place or CAP; Voter says ballot lost, not received or returned spoiled, damaged or unused before Election Day

The procedure below applies at the polls when a voter on the AB list appears at his assigned polling place or CAP. This appearance could be a basis to question the veracity of the absentee application.   The officers of election must check the final absentee applicant list to determine whether the voter has returned an absentee ballot. The absentee list will be marked to indicate if a ballot was returned either marked or unmarked.

- **No returned ballot:** If the absentee applicant list contains no notation that a ballot was returned either marked or unmarked, the voter must be offered a provisional ballot. [§§ 24.2-653.1](), [24.2-708](), [24.2-711](). The provisional ballot envelope (Reason # 4) includes the required statutory statement of non-receipt or loss.
- **Ballot returned**[1]**:**
  - o If the ballot was **returned unmarked** to the *electoral board* before Election Day, the voter must be allowed to vote a provisional ballot.
  - o If the ballot was **returned unmarked** to the *officers of election at the correct polling place or CAP*, the voter must be allowed to vote normally on the voting equipment in his or her precinct.
  - o If the ballot was **returned marked and unfit for voting** to the *electoral board or general registrar before Election Day* the voter must be allowed to vote a provisional ballot at his correct precinct polling place or the CAP.
  - o If the ballot was **returned marked and unfit for voting** to the *officers of election at the correct polling place or CAP*, the voter must be allowed to vote normally on the voting equipment in his or her precinct.
- The voter should provide one form of required ID based on the voter's pollbook listing (normal or "H"). If ID is not provided, the checkbox stating "Voter ALSO did not present required identification" should be marked.
- The officer must ensure the **voter indicates under reason # 4 whether the ballot was not received, or was lost if applicable.**
- This provisional ballot is counted if voter is still a qualified voter, and it is verified by the electoral board that the voter *did not also* have a voted absentee ballot *counted*.

Best practice: The electoral board may want to require that precinct officers alert the general registrar and electoral board whenever an absentee voter appears at the polls to vote.

29.3.4   Reason # 5 – The voter is listed in the pollbook as having already voted

A person who attempts to vote but is listed in the pollbook as having already voted *must* be given a provisional ballot to vote.

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[1] These provisions were changed in 2012 to require provisional voting unless an unused or spoiled ballot is returned to an officer of election at the voter's proper polling place or CAP on Election Day.

The provisional ballot will only be counted if there is evidence that the voter had not in fact already voted. This situation most often arises when two persons bear the same name and have the same address (i.e. Zebediah Rutherford Jackson and Zebediah Rutherford Jackson Jr.), but it does also happen in other instances. The provisional ballot should count only if:
- If an officer of election is able to attest to the fact that they marked the wrong voter, AND
- no evidence exists that either person attempted to actually vote twice
  - most likely, at close of polls the person who voted earlier will not be marked in the pollbook as having voted

29.3.5   Reason #6 – There is another reason for the voter casting a provisional ballot that is not on the list

This reason is used in instances where an unforeseen circumstance or emergency causes either a regular ballot to be unavailable or it is not clear that the voter should be allowed to cast a regular ballot. Some of the situations that can arise include electronic pollbook failure, registration equipment malfunctions, an unavailable registrar, or lack of regular ballots.

The ballot is to be counted if the voter should have been entitled to cast a regular ballot when they attempted to vote on Election Day.

29.3.6   Identification – The voter fails to provide proper ID[2]

A voter ID law passed in 2012 requires all persons attempting to vote in-person to present proper identification before being issued a regular ballot. Any person failing to present the required ID must be given the opportunity to cast a provisional ballot. Proper ID includes:
- Voter registration card
- Social Security card
- Valid[3] Virginia driver's license
- ID card issued by a government agency
- Valid student ID card issued by an institute of higher education located in Virginia
- Valid employee photo ID card issued in the regular course of business
- Copy of a current[4] utility bill, bank statement, government check or paycheck
  - must have the name and address of the voter

In addition, if a voter is designated in the pollbook with an "H" by their name, they must meet the HAVA standard for ID as well (see next section below).

Voters failing to show proper ID should fill out and sign the Provisional Vote Envelope –ID ONLY unless there is another deficiency which would force the voter to vote provisionally. If

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[2] A bill was passed during the 2013 General Assembly that will change the ID standards. It does not go into effect until 2014, and thus the changes within the legislation are not mentioned in this edition of the GREBook.
[3] Any ID stating that it must be "valid" must not be expired.
[4] Any ID stating that it must be "current" must have been issued within the previous 30 days

there is another reason, the voter should fill out the normal Provisional Vote Envelope and "Voter ALSO did not present required identification" should be checked. If the voter fails to meet the HAVA standard, an "H" should be written on the envelope so that the registrar is aware that the voter must provide ID meeting the federal standard. With all provisional ballots cast due to lack of ID the ballot will only be counted if the voter submits a copy of the necessary ID prior to noon on the third day following the election. A voter may submit the required document by USPS or commercial mail delivery, fax, e-mail, or in person.

29.3.6.1   HAVA ID required / ID not presented at the polls

A person who is listed on the pollbook for a federal election with an H (for HAVA) next to his or her name, who is not able to produce one of the following forms of identification, *must* be given a provisional ballot to vote:

- a current and valid photo identification
- a copy of a current utility bill, bank statement, or paycheck
- government check or other government document that shows the name and address of the voter (42 USC 15483 (HAVA); § 24.2-643)[5]

Federal and Virginia laws require that HAVA voters (marked with "H" on the pollbook) who do not show one of the specified IDs may only vote by provisional ballot. Federal law leaves it to the states to decide whether these will be counted. Under Virginia law, the electoral board is only instructed to count the ballot if the voter provides the proper ID prior to noon on the third day following the election. 42 USC 15482(a)(4); §§ 24.2-643, 24 .2-653, 24.2-701(B), and 24.2-706(4).

29.3.6.2   Reason # 3 (AB) -- HAVA ID required / ID copy not sent with absentee ballot

An absentee ballot returned by a voter who is listed on VERIS, the pollbook, or the final absentee applicant list with a HAVA ID requirement that does not contain a photocopy of one of these ID's must be *treated* as if it were a provisional ballot. 42 USC 15483 (HAVA); §§ 24.2-643, 24.2-653, 24.2-706.

As with the no ID HAVA voter at the polls, Virginia law states that all voters must provide proper identification if their vote is to be counted. Therefore, the electoral board is only instructed to count the ballot if the voter provides the proper ID prior to noon on the third day following the election. 42 USC 15482(a)(4); §§ 24.2-643, 24.2-653, 24.2-701(B), and 24.2-706(4).

The voter was instructed not to seal the ID copy inside the oath envelope containing the voted ballot. The officer must check to see if a copy of a HAVA ID is enclosed with the ballot in the B security envelope (but without fully opening the envelope or looking at the ballot).

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[5] SBE's website clarifies that the paycheck need not be from a "government," whereas the "other document that shows the name and address of voter" must be a "government" document. Va. Code § 24.2-643 implements 42 USC 15483.

If no HAVA ID is returned, the officers should reseal the envelopes from the voter (signing and dating the seal) and place the set in the large **1A** envelope to transmit to the electoral board.

The only absentee ballots transmitted as provisional ballots are those lacking HAVA ID, but the officers may want to attach a note to the outside of the voter's envelope stating "No HAVA ID." The voter is not present, so the smaller Provisional Ballot Envelope with the voter's statement is not used. 42 USC 15483 (HAVA); §§ 24.2-653, 24.2-706.

29.3.7   On Election Day: General Provisional Ballot Procedures at Polls

A provisional ballot must be cast in the precinct in which the voter would legally be eligible to vote or there is no possibility that it will be counted. If the voter is ineligible in the precinct, the officers of election should direct the voter to the proper precinct so that the regular or provisional ballot can be cast.

A voter who moves within Virginia may return to *vote normally* on voting equipment in his or her former precinct under either of the following scenarios **unless his or her registration has been transferred or cancelled:**

- The voter moved from one precinct to another within the State since the last November general election.
- The voter moved since the second previous federal general election, and the voter moved within the same locality and within the same congressional district. VA Const. II, 1; § 24.2-401.
    - **NOTE:** A move within the precinct does not affect the voter's ability to vote in that precinct provided that the voter is still registered. *See* Problems 3 – 7 in *What If* for procedures.

29.3.8   Completion of the Provisional Vote Envelope and Ballot

For both the Provisional Vote Envelope and the Provisional Vote Envelope – ID ONLY the officer of election fills in the number/name of the precinct in the top right corner, then gives this envelope to the voter and explains that the voter must enter all required information on the front of the envelope. The officer must verify that the voter has provided all information requested and have the voter fill in any missing information. The officer should request that the voter complete the envelope front before giving the ballot to the voter.

> Voter completes all information on front of envelope. Officer verifies completion.

> Officer enters precinct number/name.

PROVISIONAL VOTE
[PLACE VOTED BALLOT IN THIS ENVELOPE]   NUMBER/NAME OF PRECINCT
PRINT VOTER INFORMATION BELOW. ALL INFORMATION MUST BE GIVEN.

☐ None   ☐ None
FIRST NAME   FULL MIDDLE, OR MAIDEN, OR ANY PRIOR LEGAL NAME   LAST NAME   SUFFIX, IF ANY

COMPLETE RESIDENCE ADDRESS [INCLUDING ZIP CODE]   DATE MOVED HERE

IF ONE, RESIDENCE POST OFFICE BOX OR UNIFORMED SERVICES ADDRESS [INCLUDING ZIP CODE]

☐ Male ☐ Female
SOCIAL SECURITY NUMBER   GENDER   BIRTHDATE   AREA CODE   DAYTIME TELEPHONE NUMBER, IF ONE

Privacy Act Notice: This form requires your Social Security number for identification and to prevent fraud. Your application will be denied if you fail to provide your Social Security number or any other information necessary to determine your qualification to vote. Federal law (the Privacy Act and Help America Vote Act) and state law (the Virginia Constitution, Article II, § 2; Title 24.2 of the Code of Virginia; and the Virginia Government Data Collection and Dissemination Support Act) authorize collecting this information and restrict its use to official purposes only.
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29.3.8.1   ID Requirement:

A person voting a provisional ballot, like all other voters, must produce the appropriate identification. For all provisional voters other than those voting provisionally *solely* due to lack of ID, the officer *must* ask the voter to present one of the forms of identification normally required. *See* page 2, *What If*. This ID requirement also applies to all voters voting provisionally because they are not listed on the pollbook.

If the person who is casting a provisional ballot for Reasons 1-6 is also missing a proper identification document, "Voter ALSO did not present required identification" should be checked on the Provisional Vote Envelope. § 24.2-643.

If a provisional voter is casting a ballot solely due to lack of ID, they must fill out the *Provisional Vote Envelope – ID ONLY*. § 24.2-653.

If the voter listed with "H" on the pollbook is unable to show ID, see section 29.3.6 – *Identification.*

Next, the officer of election gives the provisional vote envelope and the ballot (or ballot set) to the voter, instructs the voter to place the voted ballot(s) inside the envelope, seal the envelope and return the sealed envelope to the officer.

When the voter returns the sealed envelope to the officer, the officer must read the statement on the back of the provisional vote envelope to the voter and have the voter check the appropriate reason(s) the voter is casting a provisional ballot. After the statement is read, the voter must sign the envelope. The officer also must sign and date the envelope. If the voter is listed with an "H" by their name on the pollbook, a large "H" should be written on the Provisional Vote Envelope-ID ONLY to notify the general registrar and the electoral board that this voter is required to present and ID that meets the HAVA standard.

Officer reads statement to voter, has voter check appropriate reasons then sign/date. Officer signs last and indicates if voter also did not provide ID.

OFFICER OF ELECTION: Use this ~~ pollbook but voter meets conditions 3 – 6 below.~~ ~~Have voter complete the top portion. Read the statement~~ voted ballot in this envelope. Enter voter's information in Precinct Provisional Ballots Log. Do NOT mark poll~~ ~~al Registrar or the General Registrar authorizes its use or (B) the voter's name IS on the~~ ~~the voter verify the information and sign. You also must sign. Voter must vote a paper ballot and seal the~~ ~~ll determine voter qualification.~~

STATEMENT OF VOTER – I hereby make the following statement, subject to felony pe~~___~~ **am qualified and registered to vote in this precinct, and [check box(es) that apply]:**
A. VOTER'S NAME IS NOT ON POLLBOOK
1. ☐ I am now or have been an actual resident of this precinct at some time since the November general election last year; OR
2. ☐ I have been an actual resident of this precinct at some time since the second preceding general federal election, I am now an actual resident of this county or city, and my present residence is in the same congressional district as this precinct.
B. OTHER REASON(S) STATED BELOW (MULTIPLE REASONS MAY APPLY)
3. ☐ I am voting after the normal poll closing time due to a court order extending the time established by state law for closing the polls; OR
4. ☐ I applied for an absentee ballot but do not have it with me for the following reason: ☐ never received ☐ lost ☐ returned unused ☐ spoiled OR ☐ returned damaged; OR
5. ☐ I am shown in the pollbook as having already voted; OR
6. ☐ Other: _____

To the best of my knowledge, I am not disqualified from voting by the Constitution and laws of this Commonwealth and my registration is not subject to cancellation. The information given on the reverse side of this document is true and correct, and I have not voted and will not vote in this election at any other time or place.
WARNING: INTENTIONALLY MAKING A MATERIALLY FALSE STATEMENT ON THIS FORM CONSTITUTES THE CRIME OF ELECTION FRAUD, WHICH IS PUNISHABLE UNDER VIRGINIA LAW AS A FELONY. VIOLATORS MAY BE SENTENCED TO UP TO 10 YEARS IN PRISON, OR UP TO 12 MONTHS IN JAIL AND/OR FINED UP TO $2,500.

☐ Voter ALSO did not present required identification   For Office Use: ☐ Voter later provided required identification (attach copy). Initials of Election Official_____ Date_____
SIGNATURE OF OFFICER OF ELECTION _____   SIGNATURE OF VOTER _____
DATE _____

Officer signs here

Voter signs/dates

Officer reads statement to voter, has voter check appropriate reasons then sign/date. Officer signs last and indicates if voter also did not provide ID.

OFFICER OF ELECTION: Use this envelope only when a voter ... pollbook does not have the required identification. For voters who registered by mail without providing identification, if this is their first time voting in a federal election they must p... on document containing either their photograph or both their name and address (*Social Security cards do not fulfill this requirement*). If any issue other than identification applies to ... lar provisional ballot envelope must be used. Have voter complete the top portion. Read the statement below to the voter and have the voter verify the information and sign. You also m... er must vote a paper ballot and seal the voted ballot in this envelope. Enter voter's information in Precinct Provisional Ballots Log. Do NOT mark pollbook. Electoral Board will det... oter qualification. If voter returns with proper identification, check the box in bottom section, sign, date, and attach a copy of the document.

STATEMENT OF VOTER – I hereby state, subject to felony penalties, that I am qualified and registered to vote in this precinct; to the best of my knowledge, I am not disqualified from voting by the Constitution and laws of this Commonwealth, and my registration is not subject to cancellation. The information given on the reverse side of this document is true and correct, and I have not voted and will not vote in this election at any other time or place.

WARNING: INTENTIONALLY MAKING A MATERIALLY FALSE STATEMENT ON THIS FORM CONSTITUTES THE CRIME OF ELECTION FRAUD, WHICH IS PUNISHABLE UNDER VIRGINIA LAW AS A FELONY. VIOLATORS MAY BE SENTENCED TO UP TO 10 YEARS IN PRISON, OR UP TO 12 MONTHS IN JAIL AND/OR FINED UP TO $2,500.

SIGNATURE OF OFFICER OF ELECTION _____ SIGNATURE OF VOTER _____

DATE _____

☐ **Voter later provided a copy of identification (attach copy)**

SIGNATURE OF ELECTIONS OFFICIAL _____

Officer signs here

Voter signs/dates

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29.3.9   No Pollbook Entries for Omitted Voters

The names of provisional voters *not* listed in the pollbook must not be added to the pollbook and are listed *only* in the Precinct Provisional Ballots Log.

29.3.10   Notification to Voter at the Polls

The officer of election must provide certain information to each person who casts a provisional ballot. A supply of Form HAVA-5, Provisional Voter Notice; and SBE-643N, Provisional Voter Notice – Identification, must be provided to each precinct, and should be preprinted with all the required information:

- The time, date and location the electoral board will meet to consider provisional ballots
- The voter's right to request a one day extension of time to provide information to the board on issues other than ID and the noon Friday deadline for ID
- The toll free number the voter may call to determine the status of his or her ballot and the locality code for the city or county.
- The email address, fax number, and mailing address of the office which will accept ID submissions (Provisional Voter Notice – Identification only)

The officer must also check the appropriate reason(s) the ballot was voted provisionally. 42 USC 15482 (HAVA); § 24.2-653.1.

All voters failing to present the required identification should be supplied with the Provisional Voter Notice – ID ONLY form (SBE-643). This form alerts the voter to the fact their ballot will not be counted unless a copy of the required identification is submitted to the electoral board by noon on the third day following the election, and gives detailed instructions on how to make such a submission.

29.3.11   Precinct Provisional Ballots Log

The officer must fill out the Precinct Provisional Ballots Log, available from SBE, with all the requested information, marking the box under the number(s) corresponding to the reason(s) the provisional ballot was issued.

Other specifics that should be included are

- the person said he or she submitted an application at a DMV location, or submitted a change of address to the registrar's office
- the date and method the voter submitted a registration application
- any other information the registrar instructs to help research the voter's registration status

If the voter claims to have submitted an application at a DMV or other NVRA designated agency, the officers must include the agency name, location and the voter's estimate of the date of submission to enable SBE to look up the voter's record. If the voter has a receipt for his or her registration from DMV or the agency, that should also be noted.

Totals of the reason codes should be tabulated at the bottom of each side of the log. This total aggregate number of provisional ballots cast in each precinct and the total number cast for each reason must be reported to SBE.

The Precinct Provisional Ballots Log must be placed inside the #1A Envelope (and, if used, for a court-ordered extension of polling hours, the #1B) so that the registrar can use this information to research the claim made by the person offering the provisional ballot. This log will also be used in the days following the election by the electoral board to track the determination of all provisional ballots offered in the locality.

29.3.12   Completion of Envelope 1A (or 1B if used)

After the polls close and the provisional ballot envelopes are removed by the officers from the emergency ballot box, two officers of election representing different parties must complete this process:

- If polling hours were extended by court order, first separate any provisional ballots with Reason #3 checked (other reasons may also be checked), then double-check the sort (one stack of envelopes should have reason #3 checked on *all* the envelopes, and one stack should *not* have it checked on any).
- Count the number of sealed Provisional Votes (green envelopes) cast during normal hours (i.e. Reason #3 is NOT checked on any of the envelopes).
- Put those ballots (Reason #3 NOT checked) in the 1A envelope.
  - o Officers of election may wish to place a rubber band around those ballots cast in the Provisional Vote Envelope – ID ONLY to separate them. These ballots require no further investigation by the registrar.

- Put the Precinct Provisional Ballots Log for the provisional ballots cast during normal hours in the 1A envelope.
- Enter the number of green envelopes with ballots cast during normal hours on Line 1 on the back of the 1A envelope ("NONE" may be entered if applicable OR officers may be instructed to complete the Officer Certification to Reuse Empty Provisional Ballot Envelope 1A).
- Sign the certification on the back of the **1A** envelope (TWO OFFICERS).
- Seal the 1A envelope with a label, signing and dating the label (TWO OFFICERS).

1A Envelope - Certification of Officers:

AFTER THE POLLS CLOSE *AND* BEFORE SEALING THIS ENVELOPE...

TWO OFFICERS OF ELECTION [REPRESENTING DIFFERENT PARTIES]
- COUNT THE NUMBER OF SEALED PROVISIONAL VOTES (GREEN ENVELOPES) CAST DURING NORMAL VOTING HOURS THAT WERE REMOVED FROM THE EMERGENCY BALLOT BOX
- ENCLOSE INSIDE THIS ENVELOPE, THE SEALED GREEN PROVISIONAL VOTE ENVELOPES CAST DURING NORMAL VOTING HOURS;
- ENTER ON LINE 1 THE NUMBER OF SUCH GREEN ENVELOPES ENCLOSED; OR WRITE "NONE" IF APPLICABLE
- SIGN THE CERTIFICATION [TWO OFFICERS]
- SEAL THIS ENVELOPE WITH LABEL; SIGN AND DATE THE LABEL [TWO OFFICERS]

CERTIFICATION OF OFFICERS

1. GREEN ENVELOPES CONTAINING *PROVISIONAL* BALLOTS [CAST DURING NORMAL VOTING HOURS] .... NUMBER ENCLOSED:

SIGNATURE OF OFFICER OF ELECTION

SIGNATURE OF OFFICER OF ELECTION

If polling hours were extended by court order, TWO OFFICERS representing different parties must repeat the above procedures to count the green envelopes with Reason #3 checked (other reasons may also be checked), put those envelopes and the Precinct Provisional Ballots Log for the provisional ballots cast *after* normal hours in the 1B envelope and complete, sign and seal the 1B envelope.

29.4   After the Election: Electoral Board's Provisional Ballot Meeting

The procedures set forth below must be followed when provisional votes were cast in your county or city. Unless otherwise indicated, each procedure applies to all elections. § 24.2-671.

29.4.1   When to Meet

The Code requires the electoral board to meet on the day after the election but does not specify a time. SBE recommends that the meeting begin by noon on the day after the election to determine the qualifications of persons who cast provisional votes pursuant to § 24.2-653 before beginning the canvass. The time selected must be included in the required Provisional Voter Notice (HAVA-5) and Provisional Voter Notice – Identification (SBE 643) given to each provisional voter at the polls.

29.4.2   Where to Meet

This meeting must be held in either the general registrar's office or some other designated room in the courthouse. It is recommended that this meeting be held, if at all possible, in the general registrar's office as the general registrar must be present and must be able to consult his or her records in order to assist the electoral board in properly making its determination concerning voter qualifications. The location selected must be included in the required Provisional Voter Notice given to each provisional voter at the polls.

29.4.3   Who Should Attend

- All members of the electoral board should be present for this meeting and the canvass of the election. In the event one member is unable to attend, two members constitute a quorum and may proceed to determine the qualifications of persons who cast provisional votes.
- Should the secretary of the electoral board be unable to attend the meeting due to some extreme emergency, the two remaining Board members must decide who will serve as acting secretary. § 24.2-106. All official documents related to processing provisional votes and the canvass must be signed accordingly. Only those members of the board present during the entire process may legally sign any official document.
- Prior to the meeting, the electoral board must pick up from the general registrar or clerk of Circuit Court the #1A (and, if used, the #1B) provisional votes envelopes for all precincts.
- The general registrar must appear at the meeting with the pollbooks used at all precincts (having picked them up from the Clerk of Circuit Court if applicable).

29.4.4   Who May Also Attend

- Persons who cast provisional ballots who wish to present evidence or request a one day extension.

- Legal counsel and representatives of the person who cast the provisional ballot
- One authorized representative of each political party or independent candidate in a general or special election or one authorized representative of each candidate in a primary election who is a qualified voter of the locality must be allowed to attend the provisional meeting but cannot participate in the process. They solely serve as observers. Each such representative must present a written statement signed by the county or city party chair, the independent candidate, or the primary candidate as appropriate. Such chair or candidate may serve as his or her own representative, and may not be asked to submit a written statement authorizing himself or herself. § 24.2-653.
- Staff and legal counsel of the electoral board also may attend the meeting.

29.4.5   Conducting the Meeting

The entire canvass, including the provisional ballots meeting, is "a meeting" of the Electoral Board, and Virginia Freedom of Information Act (FOIA) procedures regarding meetings apply. Notice of the meeting should have been given at least three days prior to the meeting (probably along with the public notice for the canvass). FOIA. The election laws also require that a Provisional Voter notice be given to any voter who casts a provisional ballot before they leave the polling place (the HAVA-5 and SBE 643 forms).

- Every meeting is open to the public unless the law states that it can be closed. FOIA. **No part of the canvass, including the provisional ballots meeting, should be closed except on advice of legal counsel present at the meeting.**
- **All closed meetings must be surrounded (begun and ended) by an open meeting**. The board must convene the provisional ballots meeting in public. Minutes must be taken during the open meeting, and a record of the motions and votes preserved, including the motions to close the meeting and certify the closed meeting (below). All board votes must be taken in the open portion of the meeting. Board votes may not be by paper or secret ballot.
- After the provisional ballots meeting is convened as an open meeting, a member will make the following (sample) motion:
  o "I move that the Electoral Board of _____[locality name] convene in closed session pursuant to section § 24.2-653(B) of the Code of Virginia for the purpose of considering whether each person who submitted a provisional vote at the election was qualified to do so, and I also move that the general registrar and _____[specifically identify any other needed EB/GR staff] and any authorized representatives of candidates or political parties, as specified in section 24.2-653(B), be allowed to remain in the room during the closed meeting, and that any persons who cast provisional votes and who are present be allowed to enter the room while their qualifications are considered and to present any relevant information on their behalf to the board."
- After the motion is seconded and approved, all those not listed in the motion as allowed to remain in the room must leave, and the door must be closed. Minutes are not required during the closed meeting, and if taken, are exempt from public disclosure. § 2.2-3705.1(5).

- Provide for an area nearby for any provisional voters in attendance to wait, and provide for a staff member identified in the motion to let the registrar know (preferably by note listing voter name and precinct) whenever another provisional voter arrives.
- If a provisional voter is present during the meeting, every reasonable courtesy should be extended. For example, the voter's case can be taken up out of order so that he or she does not have to wait long, or the board can reexamine the voter's case if the meeting is still going on and the voter arrives after the board has first looked at his or her qualifications. The board can reconsider a provisional ballot which has already been reviewed (in the closed meeting) or rejected (by vote in the open portion of the meeting) if new information (e.g., copy of ID) is received while the provisional ballots meeting is still going on (or has been adjourned from day-to-day).
- Any provisional voter may ask that the meeting be extended to the next day to give him or her opportunity to provide evidence or information. The electoral board shall grant such extensions that it deems reasonable to determine the status of the provisional vote, and to adjourn the meeting from day-to-day, not to exceed seven calendar days from the date of the election. § 24.2-653.
- In the absence of provisional voters waiting in person to present their qualifications, take up the ballots one precinct at a time in the order specified on the Precinct Provisional Ballots Log. To facilitate consideration, the registrar should (1) verify that both the precinct number and page numbers have been entered on the Log sheets, then (2) make and distribute copies of the Log sheets to the electoral board members at the meeting. The registrar and board members can then refer to specific provisional voters in the reconvened public meeting, when the votes are taken on whether to count the ballots, without calling out their names. For example, Precinct 201's provisional voters would be 201, page 1 #1, and so forth. Upon request, the candidate/party representatives present in the closed meeting should be allowed to inspect a copy of the log.[6]
- If the provisional ballots meeting is to be continued day-to-day, the motion at the close of the meeting would be
  o "I move that the provisional ballots meeting of the Electoral Board of _____ [locality name] stand adjourned until _____ [time] tomorrow."
- If the provisional ballots meeting is adjourned from day-to-day because of voter requests, research needs, the statutory period to provide ID has not expired, or a large number of provisional voters, the canvass can still proceed on schedule. The canvass cannot be completed until the provisional ballots meeting is totally completed and adjourned. It is important to note that the provisional ballots meeting cannot be completed if the statutory period to provide the ID has not expired and there are still persons yet to submit a copy of their ID.
- Once the business for the day for the closed meeting is completed, the closed provisional ballots meeting must be reconvened as an open meeting. Open the doors and invite in anyone waiting outside. FOIA requires that the public body take a roll-call vote certifying the closed meeting. A sample motion would be
  o "I move that the Electoral Board of _____[locality name] certify that in the closed session just concluded the only matters discussed were the qualifications of

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[6] Representatives are allowed to inspect a copy of the log but may not obtain a copy for themselves. See Op. Va. Att'y Gen. 08-041; 42 USC 15482(a).

provisional voters, as directed by § 24.2-653 of the Code of Virginia, and as identified in the motion to close the meeting pursuant to the Virginia Freedom of Information Act."

- In the open meeting, the electoral board should then vote on the qualifications of the provisional voters whose qualifications were discussed in the closed meeting.
  o If the log sheets have been numbered, as suggested above, it will facilitate making the motions without reading names. The motions can group voters in similar circumstances, but if reconsideration of one voter's qualifications is later required, the entire motion would have to be reconsidered, that one voter's ballot pulled out for discussion, and the motion on the rest made and adopted again. The process can be adjusted depending on the volume of provisional ballots, and voting delayed on any ballots for which it is known that information is still being gathered.

29.5 After the Election: Electoral Board Determines Qualification of All Provisional Voters Before Opening Any Individual Envelopes

The SBE mandates that the electoral board determine the eligibility of all provisional voters before opening any of the provisional ballot envelopes for counting. SBE Policy 2009-006.

- The electoral board must open, one precinct at a time, the #1A envelope (and, if used, the #1B envelope) marked "provisional votes" and proceed to determine the qualifications, one by one, without opening the green envelopes, of each person who cast a ballot in a green provisional ballot envelope.
  o The first qualification is that the person be registered to vote.
  o Second, the person must have been legally eligible to vote in the precinct in which the vote was cast.

The general registrar will provide any information that he or she has available to determine if the voter casting a provisional ballot was legally eligible to vote in the precinct in which the voter cast the provisional ballot, and submitted a copy of the ID if required. (See chart near the beginning of this chapter.)

29.5.1 Person determined not qualified

- The green envelope remains sealed.
- After voting in open meeting to disqualify the ballot, the Electoral Board must
  o Write "disqualified" across the front of the unopened green envelope and explain why the ballot has been disqualified (for example: no record of registration found, registered after deadline, not qualified (felon, etc.), not legally eligible to vote in precinct, voter did not provide required ID).
  o Return the voter's sealed, green envelope to the 1A (or 1B, if used) envelope for that precinct marked "provisional votes."
- Note on the 1A (or 1B) envelope the number of green envelopes for disqualified persons remaining at the conclusion of the determination for that precinct.

The electoral board or general registrar must keep a detailed list of the provisional ballots counted and not counted in order to provide this information via the toll-free access system and to send correspondence to the voter whose provisional ballot was not counted, giving the reason the provisional ballot was not counted as required by both HAVA and the Code of Virginia. In addition, information on whether the provisional ballot was counted, and if not, the reason why, must be entered into VERIS in order to apply voting credit for the counted ballots and generate appropriate correspondence. The Precinct Provisional Ballots Log included in the #1A (and if used, #1B) "provisional votes" envelope completed on Election Day by the officers of election should be used for this purpose. The registrar should mark the original Log to indicate if the ballot was counted, and why or why not, and then make and retain *a copy* of the completed log in order to provide this information to those persons casting provisional ballots and to issue the required correspondence. The *original* Precinct Provisional Ballots Log must be returned to the 1A (and if used the 1B) envelope, to be sealed in the Clerk's office in the event of litigation. Whether a ballot *should have been* counted (or not) can be an issue in a contest but not in a recount. 42 USC 15482 (HAVA); §§ 24.2-653, 24.2-802(B). Enforcement action by the U.S. Department of Justice or plaintiffs asserting federally protected rights are other possible sources of litigation.

29.5.2   Person determined qualified

After voting in open meeting to qualify the ballot and after the decision on *all* provisional ballots is complete, the electoral board must do the following:

- Enter the name of the voters whose provisional ballots are to be counted in a separate pollbook (not the pollbook used on Election Day).
  - o One provisional vote pollbook is used for the city or county (and one for each town if town elections were held). The pollbook should be marked with the name of the city or county (or town) and the words "provisional votes."
  - o If the locality is split by congressional districts, in a statewide or federal election, the provisional ballots must be counted by congressional district, so there will be one provisional ballots pollbook and one ballot box for each congressional district.
  - o Special Procedures for Provisional Voting Reason #3 (Polling place hours extended by Court Order): The 1B envelopes should have been used if this reason is applicable. If that court order has not been overturned when the provisional ballots are otherwise ready to be counted, the provisional ballots counted from the 1B envelope must be entered in a separate pollbook marked with the county, city or town name (and congressional district if split) and "votes cast after normal voting hours." **Votes cast after normal voting hours (after-hours ballots) must be kept separate and cannot be mixed with ballots cast during normal voting hours**. Ballots cast during normal voting hours must be completed first. The electoral board should both verify that the ballot box is empty and seal the counted ballots cast during normal voting hours for delivery to the Clerk (below), before beginning to count the ballots cast after normal voting hours.

- Enter the number of the city, county, or town precinct (as shown on the pollbook) in the column immediately to the left of the voter's name, and enter the voter's name and address only.
- Open the green envelope of the voter determined to be qualified.
  - Remove the ballot therein.
  - Place the ballot in the appropriate ballot box (see above) without any inspection further than to assure that only a single ballot or ballot set has been tendered and that the ballot is a genuine ballot by inspecting the official seal upon the back of the ballot, without looking at the printed inside of the ballot.
  - Place the *opened, empty* green envelopes for each precinct in the 1A (or 1B, if used) envelope for that precinct.
  - Note on the envelope the number of green envelopes contained therein for persons determined to be qualified.
  - After all ballots from qualified voters have been removed, and all empty envelopes from qualified voters and sealed envelopes from persons not qualified have been returned to the 1A (or 1B, if used) envelope, and the *original* Precinct Provisional Ballots Log has been returned to the envelope (with the registrar keeping a copy), reseal the envelope by placing a label across the flap. Electoral board members should sign and date the label and return the resealed envelope to the Clerk of Circuit Court.
  - The resealed 1A (or 1B, if used) envelopes will remain in the Clerk's office. § 24.2-669.

1A Envelope - Certification of Electoral Board:

ELECTORAL BOARD MEMBERS: ON THE DAY AFTER THE ELECTION

- Follow directions in the General Registrar and Electoral Board Manual (Chapter 15), for instructions on counting provisional votes CAST DURING NORMAL VOTING HOURS
- Enclose inside this envelope the opened green envelopes [voters qualified]

AND

The green envelopes not opened [persons not qualified]
- Enter the number of envelopes on Lines 2, 3 and 4
- Sign the CERTIFICATION [Secretary]
- Reseal Envelope 1A before returning it to the Clerk of Circuit Court

CERTIFICATION OF ELECTORAL BOARD

		Number Enclosed
2. ENVELOPES OPENED [Voters qualified to vote]		
3. ENVELOPES NOT OPENED [Persons not qualified to vote]		
4. TOTAL ENVELOPES ENCLOSED [Must be same number listed on Line 1]		

_____
SIGNATURE OF SECRETARY OF ELECTORAL BOARD

1A REV 3/05

29.6   After the Election: Ascertainment of Results

When a determination has been made of the qualifications of *all* persons in the city, county or town that cast a ballot pursuant to § 24.2-653, the electoral board, in counting the provisional ballots, must do the following:

- Proceed to ascertain the number of provisional votes cast for each person and for and against each question by those found to be qualified by hand counting the provisional ballots in the ballot box (following all standard procedures for counting paper ballots including the Ballot Examples for Hand Counts and Recounts).
- If separate provisional ballots pollbooks and ballot boxes are required for different congressional districts or for town elections, a separate statement of results should be prepared for each.
- Complete two copies of the "Statement of Results" and place one copy with the provisional ballots pollbook. Retain the second copy as usual.
- Place the voted and counted ballot(s) in a **NEW** #3, "counted ballots" envelope and enter "Provisional Ballots" as the name of the precinct (and the town or congressional district if applicable; see above).
- Seal the envelope by placing a label across the flap. Electoral board members should sign and date the label and deliver the sealed #3 envelope to the Clerk of Circuit Court.

29.6.1   Abstract of Votes and County/City Results Report

When the electoral board meets to determine the results of the election and complete the "Abstracts of Votes," the **total votes received by each candidate entered on the abstract must include any provisional votes received** by the candidate. § 24.2-675. Add to the total vote from all the precincts for each candidate the number of provisional votes received. (Total vote from all precincts + provisional votes = total votes for candidate.) The same procedure is followed for votes cast for and against each issue on the ballot.

On the "County/City Results Report" this information is entered, as appropriate, on the line labeled "Provisional Vote." The total number of persons whose provisional votes were cast by the board is entered on the "Provisional Votes" line in the "Number Voting" column in the "Registered Voters" section of this report. This information is *not* included in the data reported for the precinct in which this provisional voter resides.

29.7   After the Election: Provisional Ballot Data Entry and Notification to Persons Not Qualified

After the determination of all provisional ballots by the electoral board, the registrar must enter all provisional ballot information into VERIS election night reporting (and for individual voters)

in order to apply voting credit and issue correspondence to voters whose provisional ballots were not counted.

29.8.1 Entry of Results

The total number of provisional ballots counted as valid votes by the electoral board must be entered as a separate "Provisional Votes" precinct. The registrar must enter the provisional votes by selecting to report the election results "By Office" and entering the total votes for each candidate in the "Provisional Votes" precinct. In addition, the total provisional votes cast for the office must be entered here. Total provisional votes cast is defined as all provisional ballots voted in the election, both counted and not counted. If the locality is split by congressional districts, the provisional votes counted and cast must be entered by congressional district for statewide and federal offices.

29.7.1   Entry of Individual Voter Information

The registrar must search for each voter who voted a provisional ballot.

If the voter does exist and is registered in VERIS the registrar must either apply manual voting credit or enter that the ballot was not counted and the reason why the ballot was not counted. If the ballot was not counted, the system will automatically generate the necessary correspondence to be issued to the voter, which will include the reason entered for why the ballot was not counted.

If the voter is a registered voter of another locality, the provisional ballot could not be counted. A registrar may only enter that a ballot was not counted and the reason why for this voter in order to generate the necessary correspondence.

If the provisional voter is not in the system at all, the registrar should process the voter registration application that was required to be provided to the voter on Election Day. After entering the voter application into VERIS, the registrar should enter whether the provisional ballot was counted or not, and issue the appropriate correspondence. If the voter did not submit a registration application at the polling place or the application was incomplete (and the person is not known to be disqualified from registering), a voter registration application should be included with the written notice which should also advise the person to complete the application and return it to the registrar's office before the close of books for the next election in the county or city if he or she wishes to be eligible to vote. If the application was denied because the person was not qualified, the appropriate denial should be sent as well as the notice explaining that their ballot was not counted.

If the voter is on VERIS but had been cancelled, the registrar must first uncancel, then enter the provisional voting information (counted or not) and any changes to the information (new address, or new registration application, for example).

If this voter should remain cancelled, then the registrar should again cancel and manually pull this second cancellation letter from the day's printed letters before mailing. If the voter had been inactive, entry of provisional voting information (counted or not) will change the status to active. When a previously inactive voter should remain cancelled for some other reason (e.g., felony conviction), the voter's status is returned to inactive before reconciling. The voter must be sent notice that the provisional ballot was not counted and the reason why, and a registration form if the voter has not already been determined to be disqualified from voting.

For any person who is not in the system and who did not submit a voter registration application at the polls, the registrar will need to issue a notice to inform the person that the provisional ballot was not counted and the reason why.