

CHAPTER 16.1-13 GENERAL ELECTIONS

16.1-13-01. Date of general election. The general election must be held in all the election districts of this state on the first Tuesday after the first Monday in November of each even-numbered year.

16.1-13-02. Officers to be elected at general election. All elective state, district, and county officers, and the United States senators, and the members of the United States house of representatives, must be elected at the general election next preceding the expiration of the term of each such officer. In a year when a president and vice president of the United States are to be chosen, a number of presidential electors equal to the number of senators and representatives to which this state is entitled in the Congress of the United States must be elected at such general election.

16.1-13-03. Secretary of state to give notice to county auditor of officers to be elected. Not later than seventy days prior to the date of election, the secretary of state shall direct and cause to be delivered to the county auditor of each county a notice specifying each officer to be chosen at the next general election. The publication of the sample ballot by the county auditor constitutes the notice of the secretary of state in regard to the offices and candidates to be voted upon at the general election.

16.1-13-04. Candidates' names placed on official general election ballot. The names of all candidates of each political party or principle or no-party designation, who are shown to have been nominated for the several offices in accordance with the certificates of nomination filed in the secretary of state's office, must be placed by the secretary of state on the official ballot to be voted for at the next general election.

16.1-13-05. Notice of election - Contents - Publication with sample ballot. Notice of all general elections must be published by the county auditor in the official county newspaper at the same time as, and as a part of, the publication of the sample ballot preceding the election. The notice must be substantially as follows:

Notice is given that on Tuesday, November _____, ____, at the polling places in the various precincts in the county of _____, an election will be held for the election of state, district, and county officers, which election will be opened at _____ a.m. and will continue open until _____ p.m. of that day with the following exceptions:

Dated _____, _____

Signed _____

County Auditor

The county auditor shall publish a copy of the sample ballot of the general election once each week for two consecutive weeks before the election in the official county newspaper. If no newspaper is published in the county, the publication must be in a newspaper published in an adjoining county in the state. The form of the sample ballot as ordered and arranged by the county auditor must conform in all respects to the form prescribed by the secretary of state for the sample general election ballot. The county auditor shall publish the sample ballot in all forms appropriate for the method or methods of voting in the county. Absentee voter ballots may not be considered in determining which form of voting is used. Candidates from each legislative district which falls within the boundaries of the county must be listed in a separate box or category within the sample ballot by legislative district number to enable the voters in each legislative district to ascertain the legislative candidates in their specific district. Sample ballots used for publication purposes must be arranged using the rotation of the ballot in the precinct in the county which cast the highest total vote for governor at the last general election at which the

office of governor was filled. The notice must include a statement in substantially the following format:

The arrangement of candidate names appearing on ballots in your precinct may vary from the published sample ballots, depending upon the precinct and legislative district in which you reside.

16.1-13-06. Defeated primary candidate ineligible to have name printed on general ballot - Exception. Except to fill a vacancy occurring on the ballot, an individual who was a candidate for nomination by any party or a candidate for a no-party office at any primary election in any year and who was defeated for the nomination may not have that individual's name printed upon the official ballot at the ensuing general election for the same office.

16.1-13-07. Preparation, printing, distributing, canvassing, and returning of no-party ballot. The no-party ballot must be prepared, printed, distributed, canvassed, and returned in the same manner provided for other general election ballots.

16.1-13-08. Filling vacancy in office of United States senator. When a vacancy occurs in the office of United States senator from this state, the governor shall issue a writ of election to fill the vacancy at the next statewide primary or general election, whichever occurs first, and that occurs at least ninety days after the vacancy. However, if the next primary or general election at which the vacancy could be filled occurs in the year immediately preceding the expiration of the term, then no election may be held. The governor, by appointment, may fill the vacancy temporarily, but any person so appointed shall serve only until the vacancy is filled by election or until the term expires if no election can be held.

16.1-13-08.1. Special election to fill a vacancy in the United States House of Representatives due to a catastrophic circumstance. If a vacancy occurs in the office of representative in Congress due to a catastrophic circumstance in which one hundred or more representatives across the United States are no longer able to serve and the next regular or special election is more than seventy-five days in the future, the governor shall immediately issue a writ of election calling a special election to fill the vacancy. The date of the election shall be forty-nine days from the date of the proclamation and the following deadlines shall apply:

1. Certificate of endorsement as described in section 16.1-11-09, affidavits of candidacy described in section 16.1-11-10, and statements of interest described in section 16.1-09-03 for those candidates nominated by political parties currently established in the state shall be filed with the secretary of state by four p.m. on the fortieth day before the election.
2. If the election occurs in an election year, the precincts previously established by the county shall be utilized.
3. If the election occurs in a year without a scheduled election, the board of county commissioners must establish the precinct boundaries by the fortieth day before the election.
4. The secretary of state shall certify to the county auditors the names of the candidates for the election on the thirty-ninth day before the election.
5. Absentee ballots shall be made available to qualified electors by the thirtieth day before the election.

16.1-13-09. Resignation of members of legislative assembly after certificate of election. Any person who receives a certificate of election as a member of the legislative assembly may resign such office although the person may not have entered upon the execution of the duties thereof nor taken the requisite oath of office.

16.1-13-10. Vacancy existing in office of member of legislative assembly.

1. If a vacancy in the office of a member of the legislative assembly occurs, the county auditor of the county in which the former member resides or resided shall notify the chairman of the legislative management of the vacancy. The county auditor need not notify the chairman of the legislative management of the resignation of a member of the legislative assembly when the resignation was made under section 44-02-02. Upon receiving notification of a vacancy, the chairman of the legislative management shall notify the district committee of the political party that the former member represented in the district in which the vacancy exists. The district committee shall hold a meeting within twenty-one days after receiving the notification and select an individual to fill the vacancy. If the former member was elected as an independent candidate or if the district committee does not make an appointment within twenty-one days after receiving the notice from the chairman of the legislative management, the chairman of the legislative management shall appoint a resident of the district to fill the vacancy. Except as provided in subsection 2, if eight hundred twenty-eight days or more remain until the expiration of the term of office for that office, the individual appointed to fill the vacancy shall serve until a successor is elected at and qualified following the next general election or special election called by the governor according to subsection 2 to serve for the remainder of the term of office for that office.
2. The qualified electors of a legislative district in which a vacancy in the legislative assembly occurs may petition for a special election to be called by the governor to fill the vacancy. The petition must include the signatures of qualified electors equal in number to four percent of the resident population of the legislative district as determined by the last federal decennial census and must be presented to the secretary of state within thirty days following an appointment being made according to subsection 1. If the secretary of state determines the petition contains the required number of signatures of qualified electors of the affected legislative district, the secretary of state shall notify the governor that a special election is required to be called to fill the vacancy. Upon receiving such notice, the governor shall issue a writ of election directed to the county auditor of each affected county commanding the county auditor to hold a special election to fill the vacancy at a time designated by the governor. A special election under this section must conform to the applicable election deadlines found in this title and may be called to coincide with a regularly scheduled primary or general election provided the special election is called by the fifteenth day before the deadline for candidates to file for office before a regularly scheduled primary or general election. A special election under this section may not be scheduled to occur during the time from a general election through eighty days following the adjournment of the next ensuing regular session of the legislative assembly.
3. The secretary of state must be notified of an appointment made by a district committee or the chairman of the legislative management according to this section. Upon notification, the secretary of state shall issue the appointee a certificate of appointment and an oath of office for the appointee to complete and file with the secretary of state.

16.1-13-11. Vacancy occurring in legislative assembly during session - Duty of governor. Repealed by S.L. 2001, ch. 209, § 3.

16.1-13-12. Notice of special election. A notice of a special election and the copy of the sample ballot must be issued and published in substantially the form and manner prescribed by section 16.1-13-05.

16.1-13-13. Canvassing and returning votes cast at elections to fill vacancies. Votes cast at special elections must be canvassed and returned as provided for primary and general elections, and the county auditor within eight days shall forward to the secretary of state the abstracts of the same.

16.1-13-14. Special election to fill vacancies - Party committee to call convention to nominate - Individual nominations. If a special election is called to fill a vacancy in any office for which a party nomination may be made, the proper party committee shall call a convention to make a party nomination for such office, and the precinct committeemen of the district must be duly convened and shall elect the required number of delegates to such convention. Individual nominations for special elections must be made in accordance with the provisions of chapter 16.1-12.

16.1-13-15. Notice of holding convention for special election - Manner of giving. Public notice of such a nominating convention must be given at least six days before the holding of the convention by publication in the official newspaper in the county or counties in which the election will be held. Such nomination must be made by delivering to and leaving with the officer charged with directing the printing of the ballots upon which the name is to be placed, within the time prescribed in this title, a certificate of nomination for each candidate.

16.1-13-16. Basis of representation at convention - How determined. The basis of representation of delegates to a convention, unless otherwise provided by law, must be fixed and determined by the authorized district or state committee of each political party entitled by law to make nominations for office by delegate convention.

16.1-13-17. Certificate of nomination by convention - Contents - Delivery. All nominations made by a convention as provided in this chapter must be certified. The certificates of nomination must be in writing and must contain all of the following:

1. The name of each person nominated, that person's post-office address, telephone number, the office for which that person is nominated, the legislative district number if applicable, and whether the certificate is intended for an unexpired term of office if applicable.
2. A designation in not more than five words of the party or principle which the convention represents.
3. The signature, post-office address, and verification of the presiding officer and secretary of the convention.

The certificate as prescribed in this section must be delivered by the secretary or president of the convention by registered or certified mail or in person, without charge, to the secretary of state or the county auditor, as the case may be.

16.1-13-18. Two or more organizations filing certificates representing same party - Secretary of state to determine authorized organization - Review of determination. If two or more organizations claiming or purporting to represent the same political party shall file certificates of nomination under the same party designation, or if the certificates indicate that the nominations were made by any person or organization representing the same political party, the secretary of state, within the time prescribed by law for certifying state nominations to the county auditor, shall determine from the best available sources of information which organization filing the certificates is the legally authorized representative of the party. The decision of the secretary of state in determining which organization is the legally authorized representative of the party is subject to review by the district court in a proper action instituted for such purpose.

16.1-13-19. Election not to be held in room where alcoholic beverages sold. No election may be held in a room in which alcoholic beverages commonly are sold.

16.1-13-20. Examination of ballot box before opening of polls - Regulations for ballot box while polls are open. Before declaring the polls open, the inspector and the election judges shall inspect the ballot box to assure that it is empty. The ballot box must then be locked. While the polls are open, the ballot box must remain locked except as may be necessary to clear a ballot jam or to move voted ballots to a separate locked ballot box to make room for additional ballots.

16.1-13-21. Producing, opening, and delivering ballots on election day. Upon arrival at the poll of all election board members, or at the latest, upon the opening of the poll, the inspector of election shall produce the sealed package of official ballots and publicly open them.

16.1-13-22. Delivering ballot to elector - Initialing. The inspector or one of the election judges shall deliver ballots to the qualified electors. The inspector or judge delivering the paper ballot shall inform each elector that if the ballot is not initialed by an election official it will be invalidated and to protect the elector's right to vote the elector should verify that the ballot has been initialed. Before delivering any paper ballot to an elector, the inspector or judge shall initial the ballot. Failure to initial a paper ballot in the proper place does not invalidate the ballot, but a complete failure to initial a paper ballot does invalidate the ballot.

16.1-13-23. Preparation of ballot by elector - Depositing - Second-chance voting. Upon receipt of a ballot within the provided secrecy sleeve, the elector, forthwith and without leaving the polling place, shall retire alone to one of the voting booths or compartments to prepare the elector's ballot by darkening the oval opposite the name of each person for whom the elector wishes to vote. In the case of a ballot containing a constitutional amendment, an initiated or referred measure, or any other question to be submitted to a vote of the people, the elector shall darken the oval opposite the word or words expressing the elector's wish. After preparing the ballot, the elector shall place the ballot back in the provided secrecy sleeve so it is concealed and so the endorsement of the inspector or election judge may be seen. The elector then shall deposit the ballot in the optical scanning device and wait to determine if the ballot is deposited into the ballot box or if the optical scanning device has indicated a possibility for a second-chance voting condition. If a second-chance voting condition is indicated, a voter may spoil and receive up to two additional ballots. The voter's third ballot must be cast as is even if errors exist causing certain votes not to be counted.

16.1-13-24. Voting on electronic voting system devices. Except as provided in this section, voting procedures for electronic voting systems must be similar or as close as practicable to regular paper ballot voting. Voting procedures on direct-recording electronic voting system devices must follow as close as practicable the procedures for voting by paper ballot, with the exception of voting on a ballot display provided by electro-optical devices which shows the names and candidates and the questions to be voted on and which allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device.

16.1-13-25. Elector may write name on ballot - Counting. The provisions of this title do not prevent any elector from writing on the paper ballot, or in the case of direct-recording electronic voting system devices, entering by touchscreen or other data entry device, the name of any person for whom the elector desires to vote, and such vote must be counted according to the provisions for the counting of write-in votes found in section 16.1-12-02.2.

16.1-13-26. Name written or pasted on ballot evidence of vote without marking X.
Repealed by S.L. 2005, ch. 184, § 18.

16.1-13-27. Assistance to elector - Polling place accessibility. Any elector may receive the assistance of any person of the elector's choice, other than the elector's employer, officer or agent of the elector's union, a candidate running in that election, or a relative of a candidate as provided in subsection 2 of section 16.1-05-02, in marking the elector's ballot. If the elector requests the assistance of a member of the election board, however, the elector shall receive the assistance of both election judges in the marking of the elector's ballot. No one assisting any elector in marking a ballot under this chapter may give information regarding the ballot. No elector, other than one who requests assistance, may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote, nor ask, nor receive the assistance of any person within the polling place to mark the elector's ballot. Parking facilities at polling places must be accessible to the elderly and the physically disabled and must be clearly marked.

16.1-13-28. Penalty for requesting voter to vote in certain manner. Any person chosen to assist a voter who shall request the voter the person is assisting to vote for or against any person or any issue is guilty of a class B misdemeanor.

16.1-13-29. Election booths or compartments - Number required - Expense. The inspector of elections shall provide a sufficient number of voting booths or compartments in the inspector's polling place, which must be designed to enable the elector to mark, or in the case of direct-recording electronic voting system devices, enter by touchscreen or other data entry device, the elector's ballot screened from observation. The number of booths or compartments in precincts may not be less than one for each one hundred fifty electors or fraction thereof in the precinct. The expense of providing the booths or compartments must be paid in the same manner as other election expenses. One electronic voting system device must be provided in each precinct.

16.1-13-30. One person to occupy booth - Time limit in booth. Not more than one person may be permitted to occupy any one voting booth or compartment at one time except when providing lawful assistance. A person may not remain in or occupy a booth or compartment longer than necessary to prepare the person's ballot.

16.1-13-31. Removal of ballot from polling place before closing of polls - Prohibited. No person may take or remove any ballot from the polling place before the close of the polls.

16.1-13-32. Securing new ballot upon spoiling of others. If any elector spoils a ballot, the elector may obtain others successively, one at a time, not exceeding three in all, upon returning each spoiled ballot. Each paper ballot returned must be canceled immediately and, together with those not distributed to the electors, must be preserved and secured in sealed packages and returned to the county recorder.

16.1-13-33. Electronic voting systems - Election laws apply. All provisions of law relating to the conduct of elections apply as closely as possible to elections at which electronic voting systems are used.

16.1-13-34. Voters casting ballots after regular poll closings - Provisional ballots. An individual who votes after the regular poll closing time in an election in which a federal office appears as a result of a federal or state court order or any other order extending the time established for closing the polls under state law in effect ten days before the date of that election may only vote in that election by casting a provisional ballot. The ballot must be marked as a provisional ballot and must be separated and held apart from other ballots cast by those not affected by the order. The secretary of state shall approve the form of any provisional ballot and may prescribe any procedures the secretary of state determines to be necessary to facilitate the casting, secrecy, and counting of provisional ballots.