

CHAPTER 16.1-05 ELECTION OFFICERS

16.1-05-01. Election officers.

At each primary, general, and special statewide or legislative district election, and at county elections, each polling place must have an election board in attendance. The election board must consist of an election inspector and at least two election judges. Counties utilizing polling places containing more than one precinct may choose to use one election board to supervise all precincts even if the precincts are within different legislative districts so long as each district chairman of each qualified political party is given the opportunity to have representation on the election board if desired.

1. The election inspector must be selected in the following manner:
 - a. Except as provided in subdivision b, in all precincts established by the governing body of an incorporated city pursuant to chapter 16.1-04, the governing body shall appoint the election inspectors for those precincts and fill all vacancies occurring in those offices.
 - b. In all multiprecinct polling locations containing both rural and city precincts, the county auditor, with the approval of the majority of the board of county commissioners, shall appoint the election inspectors and fill all vacancies occurring in those offices. The selection must be made on the basis of the inspector's knowledge of the election procedure.
 - c. The election inspector shall serve until a successor is named. If an inspector fails to appear for any training session without excuse, the office is deemed vacant and the auditor shall appoint an individual to fill the vacancy.

All appointments required to be made under this section must be made at least forty days preceding an election.

2. The election judges must be appointed in the following manner:
 - a. Except as provided in subdivision b:
 - (1) The election judges for each polling place must be appointed in writing by the district chairs representing the two parties that cast the largest number of votes in the state at the last general election. In polling places in which over one thousand votes are cast in any election, the county auditor may request each district party chair to appoint an additional election judge.
 - (2) The district party chair shall notify the county auditor of the counties in which the precincts are located of the appointment of the election judges at least forty days before the primary, general, or special election. If this notice is not received within the time specified in this section, the county auditor shall appoint the judges. If the county auditor has exhausted all practicable means to select judges from within the boundaries of the precincts within the polling place and vacancies still remain, the county auditor may select election judges who reside outside of the voting precinct but who reside within the polling place's legislative districts. If vacancies still remain, the county auditor may select election judges who reside outside of the legislative districts but who reside within the county.
 - b. For special elections involving only no-party offices, the election official responsible for the administration of the election with the approval of the majority of the members of the applicable governing body shall appoint the election judges for each polling location.
3. If at any time before or during an election, it appears to an election inspector, by the affidavit of two or more qualified electors of the precinct, that any election judge is disqualified under this chapter, the inspector shall remove that judge at once and shall fill the vacancy by appointing a qualified individual of the same political party as that of the judge removed. If the disqualified judge had taken the oath of office as prescribed in this chapter, the inspector shall place the oath or affidavit before the state's attorney of the county.

4. The election official responsible for the administration of the election, with the approval of the majority of the members of the applicable governing body, shall appoint the poll clerks for each polling place. However, no fewer than two poll clerks must be appointed for each polling place. Poll clerks must be appointed based on their knowledge of election matters, attention to detail, and on any necessary technical knowledge.

16.1-05-02. Qualifications of members of the board of election - Oath of office.

1.
 - a. Except as provided in subdivisions b and d, every member of the election board and each poll clerk must be a qualified elector of a precinct within the polling place boundaries in which the individual is assigned to work and must be eligible to vote at the polling place to which the individual is assigned unless the county auditor has exhausted all means to appoint election judges and clerks from within the voting precinct under subsection 2 of section 16.1-05-01.
 - b. A student enrolled in a high school or college in this state who has attained the age of sixteen is eligible to be appointed as a poll clerk if the student possesses the following qualifications:
 - (1) Is a United States citizen or will be a citizen at the time of the election at which the student will be serving as a member of an election board;
 - (2) Is a resident of this state and has resided in the precinct at least thirty days before the election; and
 - (3) Is a student in good standing attending a secondary or higher education institution.
 - c. A student appointed as a poll clerk may be excused from school attendance during the hours that the student is serving as a poll clerk, including training sessions, if the student submits a written request to be absent from school signed and approved by the student's parent or guardian and by the school administrator and a certification from the county auditor stating the hours during which the student will serve. A student excused from school attendance under this subdivision may not be recorded as being absent on any date for which the excuse is operative. No more than two students may serve as poll clerks on an election board.
 - d. An individual who has attained the age of sixteen and has graduated from high school or obtained a general education degree from an accredited educational institution is eligible to be appointed as a poll clerk if the individual meets the qualifications of paragraphs 1 and 2 of subdivision b.
2. An individual may not serve as a member of the election board or as a poll clerk if the individual:
 - a. Has anything of value bet or wagered on the result of an election.
 - b. Is a candidate in that election.
 - c. Is the husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, son-in-law, daughter-in-law, brother, or sister, whether by birth or marriage, of the whole or the half-blood, of any candidate in that election.
3. Before assuming the duties, each member of the election board and each poll clerk severally shall take and subscribe an oath in substantially the following form:

I do solemnly swear (or affirm as the case may be), that I will perform the duties of inspector, judge, or clerk (as the case may be) according to law and to the best of my ability, and that I will studiously endeavor to prevent fraud, deceit, and abuse in conducting the same.

The oath may be taken before any officer authorized by law to administer oaths, and in case no such officer is present at the opening of the polls, the inspector or election judges shall administer the oath to each other and to the poll clerks. The individual administering the oath shall cause an entry thereof to be made and subscribed by that individual and prefixed to each pollbook.
4. An individual serving as a member of the election board, before each election, shall attend a period of instruction conducted by the county auditor or the county auditor's

designated representative, provided that the period of instruction has been conducted since the appointment of the election judges or election inspector.

5. If any member of the election board fails to appear at the hour appointed for the opening of the polls, the remainder of the board shall select an individual to serve in the absent individual's place. In filling a vacancy in the office of election judge, the remainder of the board shall select an individual of the absent individual's political party if such an individual is reasonably available. The office of election inspector or clerk may be filled by any qualified individual without regard to political affiliation. If no members of the election board appear at the hour appointed for opening the polls, the qualified electors present shall call the county auditor, city auditor, or school business manager, as appropriate, for instructions and then orally elect a board as nearly as possible in conformity with this section.

16.1-05-03. Secretary of state and county auditors to distribute election information - County auditor to provide instruction.

1. Not less than thirty days before any primary, general, or special election, the secretary of state shall provide an instruction manual approved by the attorney general, which in layman's terms presents in detail the responsibilities of each election official. The secretary of state shall forward sufficient copies of this manual to each county auditor who shall distribute the manuals to each member of all the election boards in the county.
2. Before each primary and general election, each county auditor or the auditor's designated representative shall conduct training sessions on election laws and election procedures for election officials in the county and may conduct training sessions before any special statewide or legislative district election. The session or sessions must be conducted at such place or places throughout the county as the county auditor determines to be necessary. Attendance at the session is mandatory for members of the election board and for poll clerks. The county auditor shall notify the members of the election boards, poll clerks, and the state's attorney of the time and place of the session. The state's attorney shall attend all sessions to give advice on election laws. The county auditor shall invite the district chairman in that county representing any political party casting at least five percent of the total votes cast for governor at the last election to attend the session at the chairman's own expense. On the date of the course or courses, the county auditor may deliver to all election inspectors at the meeting the official ballots and all other materials as provided in chapter 16.1-06. Except as otherwise provided in this section, each person attending the course or courses must be compensated as provided in section 16.1-05-05.
3. An election official, at the option of the county auditor, may be excused from attending a third training session on election laws within a twelve-month period. If an election official has attended a training session within the six months preceding a special election, the election official must be compensated at the pay appropriate for those having attended a training session, as provided in section 16.1-05-05, for that election.

16.1-05-04. Duties of the members of the election board during polling hours.

1. The election inspector shall supervise the conduct of the election to ensure all election officials are properly performing their duties at the polling place. The election inspector shall assign duties so as to equally and fairly include both parties represented on the election board.
2. The election inspector shall assign ministerial duties to poll clerks, who shall carry out the ministerial duties assigned by the election inspector.
3. The election inspector shall assign the poll clerks to perform the function of maintaining the pollbook. The designated poll clerks shall maintain the pollbook. The pollbook must contain the name and address of each individual voting at the precinct and must be arranged in the form and manner prescribed by the secretary of state.

4. The members of the election board shall challenge the right of anyone to vote whom they know or have reason to believe is not a qualified elector by requiring the elector to complete and sign a voter's affidavit.
5. Each member of the election board shall remain on the premises of the polling place during the time the polls are open to prevent the occurrence of fraud, deceit, or other irregularity in the conduct of the election.
6. All members of the election board shall distribute ballots and other election materials to electors. An election judge from each party represented on the election board shall give any assistance requested by electors in marking ballots or operating electronic voting system devices.
7. Each member of the election board shall maintain order in the polling place.

16.1-05-05. Compensation of election officers.

The county auditors shall pay at least the state minimum wage to the relevant election officials. Members of the election board and poll clerks who attend the training sessions provided by section 16.1-05-03 must be paid at least the state minimum wage for the hours in attendance in the session in addition to necessary expenses and mileage. State, county, or other election officials who are required to incur expenses while performing duties in the election process may be reimbursed only for their actual and necessary expenses and mileage in the performance of those duties, in accordance with sections 11-10-15, 44-08-04, and 54-06-09. Other persons performing election duties must also be paid for expenses and mileage in like manner and amounts. Members of election boards who attend the training sessions provided by section 16.1-05-03 must be paid at least twenty-five percent more than the state minimum wage during the time spent in the performance of their election duties.

16.1-05-06. Challenging right to vote - Identification or affidavit required - Penalty for false swearing - Optional poll checkers.

1. Three poll challengers appointed by the district chairman of each political party represented on the election board are entitled to be in attendance at each polling place. Individual poll challengers may be replaced at any time during the hours of voting, but no more than three poll challengers from each political party are entitled to be in attendance at each polling place at any one time.
2. Any member of the election board may challenge the right of an individual to vote if the election board member has knowledge or has reason to believe the individual is not a qualified elector. A poll challenger may request members of the election board to challenge the right of an individual to vote if the poll challenger has knowledge or has reason to believe the individual is not a qualified elector of the precinct. A challenge may be based upon any one of the following:
 - a. The individual offering to vote does not meet the age or citizenship requirements.
 - b. The individual offering to vote has never voted in the precinct before, the name of the individual offering to vote does not appear in the pollbook generated from the central voter file, and the individual fails to provide reasonable evidence of residency in the precinct.
 - c. Except as provided in section 16.1-01-05, the individual offering to vote physically resides outside of the precinct.
 - d. The individual offering to vote does not meet the residency requirements provided in section 16.1-01-04.
 - e. The individual offering to vote fails or refuses to provide an appropriate form of identification as requested under subsection 3.
3. If after an election board member has requested that the individual offering to vote provide an appropriate form of identification to address any of the voting eligibility concerns listed in subsection 2 and the identification is not provided or does not adequately confirm the eligibility of the challenged individual, the challenged individual may not vote unless the challenged individual executes an affidavit, acknowledged before an election board member, that the challenged individual is a legally qualified elector of the precinct.

4. The affidavit must include:
 - a. The name of the affiant.
 - b. The address of the affiant.
 - c. The birth date of the affiant.
 - d. The contact telephone number of the affiant.
 - e. The address of the affiant at the time the affiant last voted.
 - f. The previous last name of the affiant if it was different when the affiant last voted.
 - g. The identification number and state of any state-issued identification regardless of the state in which the identification was issued, if available.
 - h. A recitation of the qualifications for voting as set forth in section 16.1-01-04 and the rules for determining residence.
 - i. Notice of the penalty for making a false affidavit and that the county auditor is required to verify the affidavit.
 - j. A notice indicating that the affidavit is not an open record, but that information identifying who voted after executing an affidavit is an open record as part of the pollbook, except for any individual listed as secured active in the central voter file under section 16.1-02-13.
 - k. A place for the affiant to sign and swear to the affiant's qualifications as a voter.
5. Written notice of the penalty for making a false affidavit and that the county auditor shall verify the affidavits must be prominently displayed at the polling place in a form prescribed by the secretary of state. An individual who falsely swears in order to vote is guilty of a class A misdemeanor and must be punished pursuant to chapter 16.1-01.
6. The district chairman of each political party represented on the election board may appoint poll checkers to a polling place, provided the poll checkers do not interfere with the election process or with the members of the election board in the performance of their duties. Poll challengers must be qualified electors of the district in which they are assigned.
7. No poll challenger or checker may be a member of the election board.
8. The district chairman shall notify the county auditor of each county contained in the legislative district one day before the day of the election of the names of individuals whom the district chairman has appointed to serve as poll challengers and poll checkers in the precincts in the legislative district.

16.1-05-07. Poll clerks to check identification and verify eligibility - Poll clerks to request, correct, and update incorrect information contained in the pollbook.

1. Before delivering a ballot to an individual according to section 16.1-13-22, the poll clerks shall request the individual to show identification, which includes the individual's residential address and date of birth. The identification may include:
 - a. An official form of identification issued by the state;
 - b. An official form of identification issued by a tribal government;
 - c. A form of identification prescribed by the secretary of state; or
 - d. A combination of any of the forms of identification under subdivisions a through c.
2. If an individual offering to vote does not have or refuses to show an appropriate form of identification, the individual may be allowed to vote without being challenged according to section 16.1-05-06 if the individual provides to the election board the individual's date of birth and if a member of the election board or a clerk knows the individual and can personally vouch that the individual is a qualified elector of the precinct.
3. If an individual offering to vote does not meet either of the options set forth in subsection 1 or 2, the election board shall challenge the individual's right to vote and the individual may not vote unless the individual executes a voter's affidavit, as provided in section 16.1-05-06.
4. a. When verifying an individual's eligibility or when entering the name of an individual into the pollbook, poll clerks shall request, correct, and update any incorrect or incomplete information about an individual required to be included in the pollbook generated from the central voter file.

- b. If the individual's name is contained in the pollbook generated from the central voter file, the poll clerks shall verify the individual's residential address and mailing address, if different from the individual's residential address.
 - c. If the individual's name is not contained in the pollbook generated from the central voter file but the individual is determined eligible to vote, the poll clerks shall record the individual's name in the pollbook. The poll clerks shall request and obtain any additional information for the individual required to be included in the pollbook.
5. Poll clerks shall direct an individual who is attempting to vote in the incorrect precinct to the proper precinct and voting location.

16.1-05-08. County auditor to provide election board members with precinct maps or precinct finder.

The county auditor shall provide each precinct election board with an accurate precinct map or precinct finder to assist the election board member in determining whether an address is located in that precinct and for determining which precinct and polling location to which to direct an individual who may be attempting to vote incorrectly in that precinct.

16.1-05-09. Election observers.

1. Election observers must be allowed uniform and nondiscriminatory access to all stages of the election process, including the certification of election technologies, early voting, absentee voting, voter appeals, vote tabulation, and recounts.
2. An election observer must wear a badge with the name of the individual and the name of the organization the individual is representing. An election observer may not wear any campaign material advocating voting for or against a candidate or for or against any position on a question on the ballot. An election observer may not interfere with any voter in the preparation or casting of the voter's ballot or hinder or prevent the performance of the duties of any election official.