

CHAPTER 16.1-06
BALLOTS - VOTING MACHINES - ELECTRONIC VOTING SYSTEMS
CHAPTER 16.1-06

16.1-06-01. Ballots furnished at public expense - Exceptions. Except for local elections, election ballots must be printed and distributed at county expense. For a local election, the expense must be a charge against the local subdivision in which the election is held. For the purpose of this chapter, local elections include elections in townships, school districts, cities, and park districts.

16.1-06-02. Ballots prepared by county auditor or local official. For a local election, the ballots must be printed and distributed under the direction of the auditor or clerk of the local subdivision. For all other elections, ballots must be printed and distributed under the direction of the county auditor, subject to the supervision and approval of the secretary of state as to the legal sufficiency of the form, style, wording, and contents of the ballots.

16.1-06-03. Official ballots only to be used. The official ballot prepared by the county auditor or the local auditor or clerk must contain the name of each candidate whose name has been certified to or filed with such auditor or clerk in the manner provided in this title. Ballots other than official ballots prepared by the county auditor or local auditor or clerk may not be cast or counted in any election governed by this title. The list of officers and candidates and the statements of measures and questions to be submitted to the voters must be deemed an official ballot in precincts in which electronic voting systems are used.

16.1-06-04. Form and quality of ballots generally. All official ballots prepared under this title must:

1. Be printed on uniform quality and color of paper in an ink color suitable to make the ballot clearly legible and compatible with the electronic voting system requirements necessary to tabulate the votes.
2. Be of sufficient length to contain the names of all candidates to be voted for at that election.
3. Have the language "Vote for no more than _____ name (or names)" placed immediately under the name of each office.
4. Have printed thereon "To vote for the candidate of your choice, you must darken the oval opposite the name of the candidate. To vote for a person whose name is not printed on the ballot, write that person's name in the blank space provided for that purpose and darken the oval opposite the space provided."
5. Leave sufficient space for each office to write a name, or names, as the case may be, in lieu of those printed on the ballot.
6. Immediately preceding and on the same line as the name of each candidate must be printed an oval in which the voter is to mark the voter's choice by darkening the oval next to the name of the candidate chosen.
7. Provide two text boxes in the bottom right-hand corner of the ballot. The first text box is to contain the words "All ballots, other than those used to vote absentee, must first be initialed by appropriate election officials in order to be counted." The second text box is to contain the words "Official Ballot", the name of the county, the name or number of the precinct, the date of the election, and the word "initials" preceding a blank line where the judge or inspector shall initial the ballot.
All ballots, other than _____ Official Ballot
those used to vote absentee, _____ County

must first be initialed by
appropriate election officials
in order to be counted

_____ Precinct
(Date of the Election)
Initials _____

Any precinct that uses an electronic counting machine may require the use of a particular writing instrument to mark the ballot so the ballots may be properly counted.

The ballot must contain the names of all candidates, the contents of measures as required by section 16.1-06-09, and the statements of questions to be submitted to the voters. The ballot must be arranged in a manner and form approximating as far as possible the requirements of this section.

16.1-06-05. Form of general election ballot. The official ballots provided for in this title for partisan election at general elections must be prepared as follows:

1. The ballots must be of sufficient length and width to contain a continuous listing of the designation of all the offices to be voted for.
2. On the top left-hand side of such ballot must begin a continuous listing of the designation of each office to be voted for, and under the designation of each office all of the names of the candidates duly nominated for that office must be printed.
3. The names of candidates nominated for each office must appear under the designation of that office, and under each candidate's name must appear, in smaller type, the appropriate party designation for each candidate. If a candidate has been nominated by petition, the designation under that candidate's name, in smaller type, must be "independent nomination".
4. The names of candidates under the designation of each office must be alternated in the printing of the official ballot in the same manner as is provided for the primary election ballot.
5. The size of type must be as specified by the secretary of state.

The list of offices and candidates and the statements of measures and questions to be submitted to the voters must be arranged on the ballot in a manner and form approximating as far as possible the requirements of this section.

16.1-06-06. General election ballots for persons authorized to vote for presidential electors only - Prepared separately - General law governs. In addition to the ballots prepared pursuant to section 16.1-06-05, ballots must be prepared containing only the names of duly certified candidates for presidential electors for use by persons authorized to vote for those offices by law. The provisions of this title regarding the preparation, form, arrangement of names, and delivering of ballots must govern in regard to the general election ballot prepared pursuant to this section. The ballots prepared pursuant to this section must be delivered to electors who qualify only to vote for presidential electors pursuant to sections 16.1-14-18 and 16.1-14-19.

16.1-06-07. Arrangement of names on ballot for presidential electors. Repealed by S.L. 1981, ch. 230, § 8; 1981, ch. 240, § 3.

16.1-06-07.1. Arrangement of names on ballot - Presidential electors. In presidential election years the ballot provided for in section 16.1-06-05 must include the designation of the office of president and vice president as the first listing of the continuous listing of the designation of each office to be voted for. The names of presidential electors, presented in one certificate of nomination, must be arranged in a group enclosed in brackets under the designation of the office of president and vice president on the right side of the ballot column. To the left and opposite the center of each group of electors' names must be printed in bold type the surname of the presidential candidate represented and in line with such surname must be placed a single oval.

A mark within such oval by the voter must be designated as a vote for all the electors. The appropriate party designation must appear, in smaller type, under the surname of the presidential candidate represented.

16.1-06-08. No-party ballot at general elections - Contents - Delivered to elector.

There must be a separate no-party ballot at the general election upon which must be placed the names of all candidates who have been nominated on the no-party primary ballot at the primary election. Such ballots must be in the same form as the no-party primary ballot and must be delivered to each elector by the proper election official. The separate ballot may be on the same paper or electronic ballot, but the list of offices and candidates must be entitled "no-party ballot" in a manner to clearly indicate the separation of the no-party list of offices and candidates from the party list of offices and candidates.

16.1-06-09. Constitutional amendments and initiated and referred measures - Manner of stating question - Explanation of effect of vote - Order of listing.

Constitutional amendments or measures, initiated measures, and referred measures, duly certified to the county auditor by the secretary of state, or any other question or measure to be voted on, except the election of public officers at any primary, general, or special election including officers subject to a recall petition, must, unless otherwise determined by the secretary of state, be stated in full in a legible manner on the ballot. If the secretary of state concludes the amendment or measure is too long to make it practicable to print in full, the secretary of state in consultation with the attorney general shall cause to be printed a short, concise summary, which must fairly represent the substance of the constitutional amendment or initiated or referred measure. After the foregoing statement, the secretary of state shall cause to be printed another short, concise statement of the effect of an affirmative or negative vote on the constitutional amendment or initiated or referred measure. This explanatory statement must be drafted by the secretary of state in consultation with the attorney general. The words "Yes" and "No" must be printed on the ballot at the close of the statement regarding the effect of an affirmative or negative vote, in separate lines with an oval before each statement in which the voter is to indicate how the voter desires to vote on the question by darkening the oval. If two or more amendments or questions are to be voted on, they must be printed on the same ballot.

The measures to be submitted to the electors must be grouped and classified as constitutional measures, initiated statutes, or referred statutes and must be placed within such groups or classifications by the secretary of state in the order received, for the purpose of placing them on the ballot. Measures submitted by the legislative assembly must be placed first on the ballot within their classification in the order approved by the legislative assembly. Constitutional measures shall be placed first on the ballot, initiated statutes second, and referred statutes third. After all the measures have been placed within the appropriate group or classification, all measures must be numbered consecutively, without regard to the various groups or classifications.

16.1-06-09.1. Constitutional amendments - Statement of intent. Repealed by S.L. 1995, ch. 206, § 5.

16.1-06-10. Voting machines authorized. Repealed by S.L. 2003, ch. 171, § 33.

16.1-06-10.1. Electronic counting machines authorized - Sharing of machines. The use of electronic counting machines is authorized in any election precinct upon finding and declaration by resolution of the city governing body, and also of the board of county commissioners of the county in which the election precinct is located, that the use is advisable or necessary in that precinct. Thereafter, electronic counting machines may be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city and county, agreed upon by the respective governing bodies, provided the machines being procured have been certified for procurement and use in the state by the secretary of state according to section 16.1-06-26. Two or more counties may enter an agreement concerning the shared use and transport between counties of electronic counting machines and apportioning of expenses. Any electronic counting machine

used in an election must be so constructed that when properly operated it registers or records correctly and accurately every vote cast.

16.1-06-11. Electronic voting systems authorized. The use of electronic voting systems in accordance with the provisions of this chapter is hereby authorized in any election precinct upon finding and declaration by resolution of the city governing body, and also of the board of county commissioners of the county in which such election precinct is located, that such use is advisable or necessary in that precinct. Thereafter, a system or systems may be procured, on a temporary or permanent basis, under terms and conditions, including assumption and division of cost of acquisition and maintenance by the city and county, agreed upon by the respective governing bodies, provided the system or systems being procured have been approved and certified for procurement and use in the state by the secretary of state according to section 16.1-06-26. The system or systems may then be used in any state, county, city, or district election in that precinct or other voting area of which that precinct is a part.

16.1-06-12. Definitions. As used in this title with regard to electronic voting systems:

1. "Automatic tabulating equipment" means an apparatus which automatically tabulates and counts votes recorded on ballots or entered directly into a computer or other electronic device by means of a touchscreen or other data entry device and data processing machines which can be used for counting votes and tabulating results.
2. "Ballot" means a handcount paper ballot or for an electronic voting system includes a tabulating paper ballot, recorded by optical scan reader, containing the names of offices and candidates and the questions to be voted on, which is used in conjunction with the marking device and on which votes may be recorded. For direct recording electronic voting systems, ballot means the ballot display provided by electro-optical devices showing the names and candidates and the questions to be voted on that allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device.
3. "Counting center" means the location or locations designated by the county auditor for the automatic tabulating and counting of ballots.
4. "Direct-recording electronic voting system" means a voting system that records votes by means of a ballot display provided by electro-optical devices that allows a voter to directly enter choices into electronic storage with the use of a touchscreen or other data entry device. An alphabetic keyboard may be employed as an entry device to facilitate voting for write-in candidates. A voter's choices are stored in the direct-recording electronic voting system's internal memory devices and added to the choices of all other voters.
5. "Electronic voting system" means a system, or the combination of electronic voting systems and devices authorized under this chapter, that may employ a marking device in conjunction with ballots or the use of a touchscreen or other data entry device and automatic tabulating equipment for the recording, tabulating, and counting of votes in an election.
6. "Electronic voting system device" means a single unit of an electronic voting system.
7. "Marking device" means a device for marking ballots with ink or other substance, or any other method for recording votes on ballots in a manner that the votes may be tabulated and counted by automatic tabulating equipment.
8. "Optical scan" means a procedure in which votes cast on a paper ballot are tabulated by means of examining marks made in voting response locations on the ballot with an optical reader.

§ 33. **16.1-06-13. Requirements for voting machines.** Repealed by S.L. 2003, ch. 171,

16.1-06-14. Requirements for electronic voting systems. Any electronic voting system used in an election in this state must:

1. Provide facilities for voting for nominated candidates, for persons not in nomination, and upon questions or measures submitted to the voters.
2. Permit each voter to vote for as many persons for any office as the voter is entitled to vote for, and must allow each voter to vote in primary elections for candidates for nomination by the political party of the voter's choice, but it must preclude each voter from voting for more persons for any office than the voter is entitled to vote for, from voting more than once for the same candidate or upon the same measure or question submitted to the voters, or voting the ballot of more than one political party in any primary election.
3. Permit each voter, insofar as is possible, by the replacement of spoiled ballots, to change the voter's vote for any candidate, or upon any measure or question submitted to the voters, up to the time the voter begins the final operation to register the voter's vote.
4. Permit and require voting in absolute secrecy, and must be so constructed and controlled that no person can see or know for whom any other elector has voted or is voting, except a voter whom the person has assisted or is assisting in voting, as prescribed by law, and that no person may see or know the number of votes registered for any candidate or tamper with any mechanism.
5. Be provided with a procedure by the use of which, immediately after the polls are closed, all voting is absolutely prevented.
6. Be so constructed that when properly operated it shall register or record correctly and accurately every vote cast.
7. Be so constructed that a voter may readily learn the method of operating it.
8. Permit voting by ballot or by entering directly into a computer or other electronic device by means of a touchscreen or other data entry device.
9. Permit voting for presidential electors by making only one mark.
10. Permit write-in voting and absentee voting.
11. Permit the rotation of names of candidates on ballots as required by this title.
12. In the case of electronic systems procured after August 1, 2003, be capable of notifying a voter that the voter has overvoted, undervoted, and in the case of a primary election, cross-party voted before the voter casts a ballot.
13. In the case of direct-recording electronic voting systems, be capable of preventing a voter from overvoting and cross-party voting before the voter casts a ballot.
14. In the case of direct-recording electronic voting systems, be capable of producing in random order a paper copy of each ballot cast on the system.
15. Ensure that any direct-recording electronic voting system procured or used in the state may not transmit uncounted votes or ballots through the internet.

16. Fulfill the criteria and standards established by the secretary of state according to section 16.1-06-26.

16.1-06-15. Mandatory testing of electronic voting systems before each election and after tabulation of ballots.

1. All electronic voting systems used in this state must be tested to ascertain whether the automatic tabulating equipment will accurately count the votes cast for all offices and measures. The testing must be conducted prior to each election at which the system will be used. The testing must be done by the county auditor or county auditor's designee, and after each test, the testing materials and any preaudited ballots used during the test must be sealed and retained in the same manner as election materials after an election.
2. The test of an electronic voting system employing paper ballots must be conducted by processing a preaudited group of ballots on which are recorded a predetermined number of valid votes for each candidate and measure and must include for each office one or more ballots which have votes in excess of the number allowed by law in order to test the ability of the automatic tabulating equipment to reject such votes. During the test a different number of valid votes must be assigned to each candidate for an office and for and against each measure. If an error is detected, the cause of it must be ascertained and corrected, and an errorless count must be secured and filed as provided in this section.
3. The test must be conducted at least one week before the election. One week before the test is conducted, the county auditor must send the district chairman of each political party having a candidate on the ballot a notice of the test. The notice must state the time, place, and date of the test or tests and that the district chairman or district chairman's designee may attend.
4. At the conclusion of the test, the programming for each electronic voting device must be sealed within the device with a unique numbered seal that must be verified by the election inspector before the opening of the polls to make sure the programming has not been removed from the device.
5. After each election, the secretary of state shall order a random testing of the voting system programming for one precinct in each county of the state according to logic and accuracy testing procedures detailed in subsection 2 and as may be further defined by the secretary of state in writing. This test is to be conducted before the meeting of the county canvassing board.

16.1-06-16. County auditor to provide and distribute ballots - Other election supplies delivered at same time. For each election precinct in the county, the county auditor shall provide the number of ballots the auditor determines to be necessary. Each county auditor shall:

1. Have the ballots printed at least fifteen days before the election and available for public inspection at the auditor's office.
2. Deliver to the inspector in each precinct or cause to be delivered in a secure manner to the polling location no later than the day before the election the number of ballots, pollbooks, ballot boxes, voting equipment, forms of oaths, and other election supplies as the county auditor determines necessary.

16.1-06-17. County auditor to provide ballots and other electronic voting system supplies. At the same time as other election supplies are provided and distributed, the county auditor shall provide to each precinct in the county using an electronic voting system:

1. A sufficient number of electronic voting system devices and ballots if the electronic voting system employs ballots.
2. One facsimile diagram of the entire face of the electronic voting system device as it will appear on election day.
3. Appropriate instruction material for the use of the electronic voting system devices.
4. All other materials required to carry out the election process through the use of electronic voting systems.

16.1-06-18. Delivery of ballots. County auditors shall deliver, or cause to be delivered, by mail or other reliable method, to the inspector of elections in each precinct the official ballots, if available. The ballots must be delivered in sealed packages marked plainly with the precinct for which the ballots are intended. The county auditor also shall deliver or cause to be delivered a suitable seal for the purpose of sealing the wrapper containing the ballots as provided in section 16.1-15-08.

16.1-06-19. Instructions, advertisements, maps, and ballots posted in polling places. Each county auditor shall have posters printed, in large type, containing full instructions to electors on obtaining and voting ballots and a copy of section 16.1-01-12, any federal laws regarding prohibitions on acts of fraud and misrepresentations, and general information on voting rights under applicable federal and state laws, including instructions on how to contact the appropriate officials if these rights are alleged to have been violated. The county auditor shall furnish at least one such poster to the election inspector in each election polling place who, before the opening of the polls, shall conspicuously post at least one poster in the polling place. The county auditor, at the time of delivering the ballots to the inspector of elections in each polling place, shall deliver at least five copies of the newspaper publication or other copy of the complete text of any constitutional amendment or initiated or referred measure to such inspector of elections. One of the newspaper publications or copies must be posted conspicuously in the polling place on the morning of the election. Each county auditor shall furnish the election inspector in each polling place with four copies of a map showing the election precinct's boundaries and information regarding the date of the election and the hours during which polling places will be open. The inspector shall, before the opening of the polls, post the maps and information regarding the date of the election and the hours during which polling places will be open at the entry to and in other conspicuous places around the polling place.

16.1-06-20. Election inspector and judges to display material and provide instruction. In addition to other duties provided by law, the election inspector and judges shall provide adequate instruction on the use of the electronic voting device to each voter before the voter enters the voting booth.

16.1-06-21. Pollbooks delivered by county auditor - Contents - Inspector of elections to deliver. The county auditor shall see that one paper or electronic pollbook is delivered to the election inspector in each election precinct or polling place in the county.

The election inspector shall deliver the pollbook, or cause the pollbook to be delivered, to the clerks of election in the inspector's polling place on election day before the opening of the polls.

16.1-06-22. County to provide ballot boxes. The board of county commissioners, at the expense of the county, shall provide suitable ballot boxes for each election polling place in the county.

16.1-06-23. Secretary of state to send instructions to county auditor to make returns. The secretary of state shall send instructions for generating reports for all returns of votes required to be made to the secretary of state's office.

16.1-06-24. Voting machines - Violations - Penalty. Repealed by S.L. 2003, ch. 171, § 33.

16.1-06-25. Electronic voting systems - Violations - Penalty. Any person who violates any of the provisions of this chapter relating to electronic voting systems, who tampers with or injures any electronic voting system or device to be used or being used in any election, or who prevents the correct operation of any such system or device to be used or being used in any election is guilty of a class A misdemeanor.

16.1-06-26. Secretary of state to adopt rules for the purpose of certifying and decertifying electronic voting systems and electronic counting machines. The secretary of state may adopt rules according to subsection 3 of section 16.1-01-01 for certifying and decertifying electronic counting machines authorized in section 16.1-06-10.1 and electronic voting systems authorized in section 16.1-06-11, including any software, hardware, and firmware components used as a part of an electronic voting system or electronic counting machine for use and procurement in the state. The rules may:

1. Establish criteria and standards with which all electronic voting systems and electronic counting machines must comply.
2. Describe the procedures for electronic voting systems and electronic counting machines, any single device of an electronic voting system and electronic counting machine, and any update and enhancement made to them, to be certified and decertified for procurement and use in the state.
3. Define what constitutes a vote on each electronic voting system and electronic counting machine which has been certified for procurement in the state.
4. Describe the procedures for the secretary of state to follow when defining what constitutes a vote on any new electronic voting system and electronic counting machine, any single device of an electronic voting system and electronic counting machine, and any update and enhancement made to them.

An electronic voting system and electronic counting machine, a single device of an electronic voting system and electronic counting machine, and an update and enhancement made to them, in use by a county prior to August 1, 2003, must be reviewed by the secretary of state according to rules adopted under this section by April 1, 2004, and must meet the requirements of the rules, or must be replaced by another electronic voting system and electronic counting machine, a single device of an electronic voting system and electronic counting machine, and an update and enhancement made to them, that meets the requirements of the rules by January 1, 2006.