VIRGINIA ACTS OF ASSEMBLY -- 2004 SESSION

CHAPTER 205

An Act to amend and reenact § 24.2-603.1 of the Code of Virginia, relating to postponement of certain elections; emergency situations.

[S 528]

Approved March 29, 2004

Be it enacted by the General Assembly of Virginia:
1. That § 24.2-603.1 of the Code of Virginia is amended and reenacted as follows:

§ 24.2-603.1. Postponement of certain elections; state of emergency.

For purposes of this section, "election" means *(i)* any local or state referendum, *(ii)* any primary, special, or general election for local or state office except *a general election* for Governor, Lieutenant Governor, Attorney General and the General Assembly, *(iii) any primary for federal office including any primary for the nomination of candidates for the office of President of the United States,* or *(iv) any federal special election to fill a vacancy in the United States Senate or the United States House of Representatives.* In the event of a state of emergency declared by the Governor pursuant to Chapter 3.2 (§ 44-146.13 et seq.) of Title 44 or declared by the President of the United States or the governor of another state pursuant to law and confirmed by the Governor by an executive order, the Governor may postpone an election by executive order in areas affected by the emergency to a date, *notwithstanding the provisions of § 24.2-682,* not to exceed ~~fourteen~~ *14* days from the original date of the election.

If a local governing body determines that a longer postponement is required, it may petition a three-judge panel of the Virginia Supreme Court, to include the Chief Justice as the presiding Justice, for an extension. The Chief Justice shall choose the other two Justices by lot. The Court may postpone the election to a date it deems appropriate, *notwithstanding the provisions of § 24.2-682,* not to exceed ~~thirty~~ *30* days from the original date of the election.

Only those persons duly registered to vote as of the original date of the election shall be entitled to vote in the rescheduled election.

If, as a direct result of the emergency, any ballots already cast at the polling places or equipment on which ballots have been cast, or any voted absentee ballots already received by the appropriate election officials or any equipment on which absentee ballots have already been cast have been destroyed or otherwise damaged so that such ballots cannot be counted by the counting device or counted manually, the Governor *(i)* shall specify ~~whether votes~~ *that such ballots or votes* previously cast by machinery or paper need to be recast on *or by* the rescheduled election date~~. If the Governor determines that absentee ballots do not need to be recast,~~ *so that they may be counted and (ii) shall direct the appropriate election officials to immediately send replacement absentee ballots to all absentee voters whose voted ballots are known to have been so destroyed or damaged. Such instructions may be issued by executive order separately from the executive order postponing the election.* Any absentee ballots duly cast and received by the ~~original~~ *rescheduled* election date *and able to be counted* shall be valid and counted when determining the results of the rescheduled election*; however, if more than one absentee ballot is received from any voter, only the first absentee ballot received and able to be counted shall be counted.* Any person who was duly registered to vote as of the original date of the election, and who has not voted ~~absentee~~*, or who is permitted to recast their ballot due to the emergency,* may vote by absentee ballot in accordance with the provisions of Chapter 7 (§ 24.2-700 et seq.) of this title in the rescheduled election. *Official ballots shall not be invalidated on the basis that they contain the original election date.*

If the postponement of the election is ordered after voting at the polls on the original election date has already commenced, all qualified voters in a precinct in which any voted ballots, voting equipment containing voted ballots or pollbooks recording who has already voted in that precinct have been destroyed or damaged as a direct result of the emergency, so that the votes cannot be counted or it cannot be determined who has already voted, shall be allowed to vote in the rescheduled election, and no votes cast at the polls on the original election date shall be counted. If the postponement of the election is ordered after voting at the polls on the original election date has already commenced and no ballots cast at the polls, voting equipment containing voted ballots or pollbooks recording who has already voted in that election in that precinct have been destroyed or damaged as a direct result of the emergency, only qualified voters who had not yet voted shall be eligible to vote on the rescheduled election day and all votes cast on the original and postponed election dates shall be counted at the close of the polls on the rescheduled election day.

The provisions of § 24.2-663 requiring the voiding of all ballots received from any voter who votes more than once in the same election shall not apply to ballots otherwise lawfully cast or recast pursuant to this section; however, no more than one ballot may be counted from any voter in the same election.

If one ballot has already been counted, any additional ballots from the same voter shall be void and shall not be counted. The provisions of § 24.2-1004 or any other law prohibiting any voter from voting more than once in the same election, or any oath attesting to the same, shall not apply to ballots otherwise lawfully cast or recast pursuant to this section.

No results shall be tallied or votes counted in any postponed election before the closing of the polls on the rescheduled election date. Officers of election in unaffected areas shall count and report the results for the postponed election after the close of the polls on the rescheduled election date. The counting may take place at the precinct or another location determined by the local electoral board.

The State Board shall prescribe appropriate procedures to implement this section.