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SENATE BILL NO. 796

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections
on February 26, 2008)

(Patron Prior to Substitute—Senator Barker)

A BILL to amend and reenact §§ 24.2-105.1, 24.2-603, and 24.2-603.1 of the Code of Virginia, relating to elections; information and polling hours; emergencies; extension of polling hours.

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-105.1, 24.2-603, and 24.2-603.1 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-105.1. Election and voter participation information on the Internet.

Beginning with the general election in November 1998, the State Board shall implement a system by which it shall furnish lists of candidates for all elections in the Commonwealth, and information on proposed constitutional amendments and statewide referenda prepared pursuant to §§ 30-19.9 and 30-19.10, electronically through the Internet. The Board may list other referenda issues on the Internet. The lists and information shall be made available on the Internet as far in advance of the election as practicable and remain available on the Internet at least until the day after the election.

The State Board shall provide election results and statistical information on its website. The information shall include voter turnout information which shall be calculated as the percentage of active voters who voted excluding voters assigned to inactive status pursuant to Chapter 4 (§ 24.2-400 et seq.). The information shall also include the total number of registered voters and the number assigned to inactive status.

No election results for an election conducted in whole or in part within a region affected by a court order issued pursuant to § 24.2-603.1 to extend polling hours shall be made public by the State Board or any electoral board or general registrar until the close of all of the polls in the region affected by the court order.

§ 24.2-603. Hours polls to be open; closing the polls.

At A. Except as provided in subsection B, at all elections, the polls shall be open at each polling place at 6:00 a.m. on the day of the election and closed at 7:00 p.m. on the same day.

At 6:45 p.m. an officer of election shall announce that the polls will close in fifteen 15 minutes. The officers of election shall list the names of all identify the end of the line of qualified voters in line before the polling place at 7:00 p.m. and permit those voters and no others to vote after 7:00 p.m.

B. If the hours for the polls to be open are extended pursuant to § 24.2-603.1, at 6:45 p.m. an officer of election shall announce that the polls had been scheduled to close in 15 minutes and inform voters of the new closing time. The officers of election shall identify the end of the line of qualified voters in line before the polling place at 7:00 p.m. and permit those voters to vote after 7:00 p.m. Fifteen minutes before the polls are finally scheduled to close, an officer of election shall announce that the polls will close in 15 minutes. The officers of election shall identify the end of the line of qualified voters in line before the polling place when polls close and permit those voters and no others to cast a provisional ballot in accordance with § 24.2-653 after the polls close.

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

A. 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 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 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

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

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

87 The provisions of § 24.2-663 requiring the voiding of all ballots received from any voter who votes
88 more than once in the same election shall not apply to ballots otherwise lawfully cast or recast pursuant
89 to this section; however, no more than one ballot may be counted from any voter in the same election.
90 If one ballot has already been counted, any additional ballots from the same voter shall be void and
91 shall not be counted. The provisions of § 24.2-1004 or any other law prohibiting any voter from voting
92 more than once in the same election, or any oath attesting to the same, shall not apply to ballots
93 otherwise lawfully cast or recast pursuant to this section.

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

98 *B. In the event of a state of emergency declared by the Governor pursuant to Chapter 3.2*
99 *(§ 44-146.13 et seq.) of Title 44 or declared by the President of the United States or the governor of*
100 *another state pursuant to law and confirmed by the Governor by an executive order, or a disaster or*
101 *emergency circumstance not constituting a declared state of emergency that directly interferes with the*
102 *electoral process or that interferes with the right or ability of voters to travel to the polls, the Secretary*
103 *of the State Board of Elections or the state chair of a political party may petition the Circuit Court for*
104 *the City of Richmond or the circuit court in an affected county, city, or town to extend the hours for*
105 *which the polls shall be open in the affected region.*

106 *1. A court may extend the hours that the polls will remain open, for a time determined by the court*
107 *to be appropriate to address the circumstances, for any geographic area, provided that such a*
108 *determination results in the same closing time for all precincts within each affected county, city, or*
109 *town. The court order shall also have the effect of extending all other postelection deadlines specified in*
110 *this chapter for an equivalent period of time in each affected county, city, or town. The court order*
111 *shall be issued no later than one hour before the closing time in effect for the affected polls at that*
112 *time. In no event shall the closing time be extended by more than four hours.*

113 *2. The circuit court shall notify each affected local electoral board that the hours that the polls shall*
114 *remain open shall be extended, which notice shall show: the nature of the emergency; the localities*
115 *affected thereby; and the new time that the polls shall close.*

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