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SENATE BILL NO. 796

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Cuccinelli
on March 3, 2008)

(Patron Prior to Substitute—Senator Barker)

A BILL to amend and reenact §§ 24.2-105.1, 24.2-603, 24.2-603.1, 24.2-700, and 24.2-701 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, 24.2-603.1, 24.2-700, and 24.2-701 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.

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~~ 8:00 p.m. on the same day.

At ~~6:45~~ 7:45 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~~ 8:00 p.m. and permit those voters and no others to vote after ~~7:00~~ 8:00 p.m.

B. If the hours for the polls to be open are extended pursuant to § 24.2-603.1, at 7:45 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 8:00 p.m. and permit those voters to vote after 8:00 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

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60 vote in the rescheduled election.

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

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

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

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

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

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

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

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

119 § 24.2-700. Persons entitled to vote by absentee ballot.

120 The following registered voters may vote by absentee ballot in accordance with the provisions of this
121 chapter in any election in which they are qualified to vote:

1. Any person who, in the regular and orderly course of his business, profession, or occupation or while on personal business or vacation, will be absent from the county or city in which he is entitled to vote;

2. Any person who is (i) a member of a uniformed service of the United States, as defined in 42 U.S.C. § 1973ff-6 (7), on active duty, or (ii) a member of the merchant marine of the United States, or (iii) who temporarily resides outside of the United States, or (iv) the spouse or dependent residing with any person listed in (i), (ii), or (iii), and who will be absent on the day of the election from the county or city in which he is entitled to vote;

3. Any student attending a school or institution of learning, or his spouse, who will be absent on the day of election from the county or city in which he is entitled to vote;

4. Any person who is unable to go in person to the polls on the day of election because of a physical disability or physical illness;

5. Any person who is confined while awaiting trial or for having been convicted of a misdemeanor, provided that the trial or release date is scheduled on or after the third day preceding the election. Any person who is awaiting trial and is a resident of the county or city where he is confined shall, on his request, be taken to the polls to vote on election day if his trial date is postponed and he did not have an opportunity to vote absentee;

6. Any person who is a member of an electoral board, registrar, officer of election, or custodian of voting equipment;

7. Any duly registered person who is unable to go in person to the polls on the day of the election because he is primarily and personally responsible for the care of an ill or disabled family member who is confined at home;

8. Any duly registered person who is unable to go in person to the polls on the day of the election because of an obligation occasioned by his religion; or

9. Any person who, in the regular and orderly course of his business, profession, or occupation, will be at his place of work and commuting to and from his home to his place of work for ~~eleven~~ 12 or more hours of the ~~thirteen~~ 14 hours that the polls are open pursuant to § 24.2-603.

§ 24.2-701. Application for absentee ballot.

A. The State Board shall furnish each general registrar with a sufficient number of applications for official absentee ballots. The registrars shall furnish applications to persons requesting them.

The State Board shall implement a system that enables eligible persons to request and receive an absentee ballot application electronically through the Internet. Electronic absentee ballot applications shall be in a form approved by the State Board.

Except as provided in § 24.2-703, a separate application shall be completed for each election in which the applicant offers to vote. An application for an absentee ballot may be accepted the later of (i) 12 months before an election, or (ii) the day following any election held in the twelfth month prior to the election in which the applicant is applying to vote.

Any application received before the ballots are printed shall be held and processed as soon as the printed ballots for the election are available.

For the purposes of this chapter, the general registrar's office shall be open a minimum of eight hours between the hours of 8:00 a.m. and 5:00 p.m. on the first and second Saturday immediately preceding all general elections, except May general elections held in towns, and on the Saturday immediately preceding any primary election, May general election held in a town, or special election.

Unless physically disabled, all applications for absentee ballots shall be signed by the applicant who shall state, subject to felony penalties for making false statements pursuant to § 24.2-1016, that to the best of his knowledge and belief the facts contained in the application are true and correct and that he has not and will not vote in the election at any other place in Virginia or in any other state. If the applicant is unable to sign the application, a person assisting the applicant will note this fact on the applicant signature line and provide his signature, name, and address.

B. Applications for absentee ballots shall be completed in the following manner:

1. An application completed in person shall be made not less than three days prior to the election in which the applicant offers to vote and completed only in the office of the general registrar. The applicant shall sign the application in the presence of a registrar or a member of the electoral board. The applicant shall provide one of the forms of identification specified in subsection B of § 24.2-643, or if he is unable to present one of the forms of identification listed in that section, he shall sign a statement, subject to felony penalties for making false statements pursuant to § 24.2-1016, that he is the named registered voter who he claims to be. An applicant who requires assistance in voting by reason of physical disability or inability to read or write may request assistance pursuant to § 24.2-649 and be assisted in preparation of this statement in accordance with that section. The provisions of § 24.2-649 regarding persons who are unable to sign shall be followed when assisting an applicant in completing this statement.

183 For federal elections held after January 1, 2004, this paragraph shall apply in the case of any voter
184 who is required by subparagraph (b) of 42 U.S.C.S. § 15483 of the Help America Vote Act of 2002 to
185 show identification the first time that voter votes in a federal election in the state. After completing an
186 application for an absentee ballot in person, such voter shall present: (i) a current and valid photo
187 identification; or (ii) a copy of a current utility bill, bank statement, government check, paycheck or
188 other document that shows the name and address of the voter. Such individual who desires to vote in
189 person but who does not show one of the forms of identification specified in this paragraph shall be
190 offered a provisional ballot under the provisions of § 24.2-653. Neither the identification requirements of
191 subsection B of § 24.2-643, nor the identification requirements of subsection A of § 24.2-653, shall
192 apply to such voter at that election. The State Board of Elections shall provide instructions to the
193 electoral boards for the handling and counting of such provisional ballots pursuant to subsection B of
194 § 24.2-653 and this section.

195 2. Any other application may be made by mail, electronic or telephonic transmission to a facsimile
196 device if one is available to the office of the general registrar or the office of the State Board if a
197 device is not available locally, or other means. The application shall be on a form furnished by the
198 registrar or, if made under subdivision 2 of § 24.2-700, may be on a Federal Post Card Application
199 prescribed pursuant to 42 U.S.C. § 1973ff (b) (2). The Federal Post Card Application may be accepted
200 the later of (i) 12 months before an election, or (ii) the day following any election held in the twelfth
201 month prior to the election in which the applicant is applying to vote. The application shall be made to
202 the appropriate registrar no later than 5:00 p.m. on the seventh day prior to the election in which the
203 applicant offers to vote.

204 C. Applications for absentee ballots shall contain the following information:

205 1. The applicant's printed name, the last four digits of the applicant's social security number, and the
206 reason the applicant will be absent or cannot vote at his polling place on the day of the election;

207 2. A statement that he is registered in the county or city in which he offers to vote and his residence
208 address in such county or city. Any person temporarily residing outside the United States shall provide
209 the last date of residency at his Virginia residence address, if that residence is no longer available to
210 him. Any person who makes application under subdivision 2 of § 24.2-700 who is not a registered voter
211 may file the applications to register and for a ballot simultaneously;

212 3. The complete address to which the ballot is to be sent directly to the applicant, unless the
213 application is made in person at a time when the printed ballots for the election are available and the
214 applicant chooses to vote in person at the time of completing his application. The address given shall be
215 either the address of the applicant on file in the registration records or the address at which he will be
216 located while absent from his county or city. No ballot shall be sent to, or in care of, any other person;
217 and

218 4. In the case of a person, or the spouse or dependent of a person, who is on active service as a
219 member of the armed forces of the United States or a member of the merchant marine of the United
220 States, the branch of service to which he or the spouse belongs, and his or the spouse's rank, grade, or
221 rate, and service identification number; or

222 5. In the case of a student, or the spouse of a student, who is attending a school or institution of
223 learning, the name and address of the school or institution of learning; or

224 6. In the case of a person who is unable to go in person to the polls on the day of the election
225 because of a physical disability or physical illness, the nature of the illness or disability; or

226 7. In the case of a person who is confined awaiting trial or for having been convicted of a
227 misdemeanor, the name and address of the institution of confinement; or

228 8. In the case of a person who will be absent on election day for business reasons, the name of his
229 employer or business; or

230 9. In the case of a person who will be absent on election day for personal business or vacation
231 reasons, the name of the county or city in Virginia or the state or country to which he is traveling; or

232 10. In the case of a person who is unable to go to the polls on the day of election because he is
233 primarily and personally responsible for the care of an ill or disabled family member who is confined at
234 home, the name of the family member and the nature of his illness or disability; or

235 11. In the case of a person who is unable to go to the polls on the day of election because of an
236 obligation occasioned by his religion, his religion and the nature of the obligation; or

237 12. In the case of a person who, in the regular and orderly course of his business, profession, or
238 occupation, will be at his place of work and commuting to and from his home to his place of work for
239 12 or more hours of the 14 hours that the polls are open pursuant to § 24.2-603, the name of his
240 business or employer, address of his place of work, and hours he will be at the workplace and
241 commuting on election day.