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**SENATE BILL NO. 226**

Offered January 13, 2010

Prefiled January 12, 2010

*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.*

Patron—Barker

Referred to Committee on Privileges and Elections

**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 except as provided for central absentee voter precincts pursuant to subsection F of § 24.2-712.*

At 6:45 p.m. an officer of election shall announce that the polls will close in fifteen minutes. The officers of election shall list the names of all 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.

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

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59 30 days from the original date of the election.

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

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

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

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

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

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

110 *1. The court may extend the hours that the polls will remain open, for a time determined by the*  
111 *court to be appropriate to address the circumstances, for any geographic area, provided that such a*  
112 *determination results in the same closing time for all precincts within each affected county, city, or*  
113 *town. When making such a determination, the judge shall consider evidence presented by all parties*  
114 *authorized to petition the court, including which voters may be unable to vote because of the emergency.*  
115 *The court order shall also have the effect of extending all other postelection deadlines specified in this*  
116 *chapter for an equivalent period of time in each affected county, city, or town. The court order shall be*  
117 *issued no later than one hour before the closing time in effect for the affected polls at that time. In no*  
118 *event shall the closing time be extended by more than three hours.*

119 *2. The court shall notify each affected local electoral board that the hours that the polls shall remain*  
120 *open shall be extended, which notice shall show the nature of the emergency, the localities affected*

**121** *thereby, and the new time that the polls shall close.*

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