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State Election Laws: Overview of Statutes Regarding Emergency Election Postponement Within the State

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Summary

Federal law establishes the date of the general presidential election as the Tuesday following the first Monday in November every four years. However, due to the possibility of an emergency or disaster, including the threat of a terrorist attack, occurring immediately before or during a scheduled election, some states have enacted statutes providing for the temporary postponement of elections in their respective states, precincts, districts, or counties. This Report summarizes seven state statutes that provide a mechanism for the postponement of certain elections. In the event of emergencies or disasters, it appears that these laws might provide for the postponement of the general presidential election within the state.¹ The following state statutes are summarized: Florida, Georgia, Hawaii, Louisiana, Maryland, New York, and North Carolina. In addition, examples of state statutes that grant the governor the power to suspend certain state laws during an emergency are included. Although these statutes do not mention elections, they might be relied on to support the state's delay of the general presidential election in an emergency.²

¹ As this Report provides a summary overview of various state statutory provisions, it is of paramount importance to consult with the appropriate secretary of state or state board of elections for more detailed information regarding each state's election procedures and regulations. As states may address election postponement through rules, regulations, executive orders or other means, this summary of statutes is not a comprehensive discussion of election postponement procedures and may not be an exhaustive list of states where election postponement provisions exist. For further information regarding issues relating to election postponement, *see* CRS Report RL32471, *Executive Branch Power to Postpone Elections*, by Kenneth R. Thomas.

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Introduction

Federal law establishes the date of the general presidential election as the Tuesday following the first Monday in November every four years.³ In 2004, in accordance with the federal law, the date of the general presidential election is November 2.⁴ However, due to the possibility of an emergency or disaster, including the threat of a terrorist attack, occurring immediately before or during a scheduled election, some states have enacted statutes providing for the temporary postponement of certain elections in their respective states, precincts, districts, or counties.⁵

Summary of State Statutes Regarding Emergency Election Postponement Within the State

The following summarizes state laws that provide a mechanism for the postponement of certain elections. In the event of emergencies or disasters, it appears that these laws might provide for the postponement of the general presidential election within the respective state, its precincts, districts or counties:

Florida: The governor may, upon issuing an executive order declaring a state of emergency or impending emergency, suspend or delay any election. The rescheduled election must be held within 10 days after the date of the delayed election or as soon as practicable thereafter. FLA. STAT. § 101.101.733 (2004).

Georgia: In the event the governor declares that a state of emergency or disaster exists pursuant to state law or a federal agency declares that a state of emergency or disaster exists, the secretary of state is authorized to postpone the date of any election in the affected area. The secretary of state shall exercise the powers granted by this section of law carefully, and any such postponement or extension shall not exceed 45 days. GA. CODE ANN. § 21-2-50.1 (2004).

³ The U.S. Constitution provides, “The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.” U.S. CONST. ART. II, § 1. Accordingly, Congress enacted the federal statute establishing the date of the presidential election: “The electors of President and Vice President shall be appointed, in each State, on the Tuesday next after the first Monday in November, in every fourth year succeeding every election of a President and Vice President.” 3 U.S.C. § 1. The Constitution further establishes January 20 at noon as the date and time that a presidential term begins and ends: “The terms of the President and Vice President shall end at noon on the 20th day of January ... and the terms of their successors shall then begin.” U.S.CONST. AMEND. XX, § 1.

⁴ On the Tuesday following the first Monday in November, in accordance with federal law and the U.S. Constitution, voters in each state choose electors for the President and Vice President equal to the number of the state’s U.S. Senators and Representatives in Congress. U.S. CONST. ART. II, § 1; AMEND. XII. In accordance with the Twenty-third Amendment, the District of Columbia chooses three electors.

⁵ In view of the federal law establishing the date of choosing presidential electors, issues may emerge regarding how state laws authorizing postponement of the general presidential election can be reconciled with the federal statute. This Report is limited to providing summaries of the relevant state statutes and does not discuss those legal issues.

Hawaii: If the extent of damage caused by any natural disaster is such that the ability of voters, in any precinct, district, or county, to exercise their right to vote is substantially impaired, the chief election officer may require the registered voters of the affected precinct to vote by absentee ballot and may postpone the election in the affected precinct for no more than 21 days, provided that the postponement does not affect the election, tabulation or distribution of results for those precincts, districts, or counties not designated for postponement. HAW. REV. STAT. § 11-92.3 (2003).

Louisiana: Upon issuance of an executive order declaring a state of emergency or impending emergency, the governor may suspend or delay any election. The governor shall take such action only upon certification by the secretary of state that such a state of emergency exists. As chief election officer of the parish, a clerk of the court may bring to the attention of the secretary of state any difficulties occurring in his parish due to natural disasters. If any delays or suspensions are authorized by the governor, the delayed election day shall resume or be rescheduled as soon thereafter as is practicable. LA. REV. STAT. § 18:401.2 (2004).⁶

Maryland: In the event of a state of emergency, declared by the governor in accordance with law, that interferes with the electoral process, the emergency proclamation may provide for the postponement, until a specific date, of the election in part or all of the state. Md. Code Ann. [Elections] § 8-103 (2003).

New York: A county board of elections, or the state board of elections with respect to an election conducted in a district in the jurisdiction of more than one county board of elections, may determine that, as the direct consequence of fire, earthquake, tornado, explosion, power failure, act of sabotage, enemy attack or other disaster, less than 25% of the registered voters of any city, town or village, or if the city of New York, or any county therein, actually voted in any general election. Such a determination shall be subject to approval by the state board of elections. If the state board of elections makes such determination, it shall notify the board of elections with the jurisdiction in that county that an additional day of election shall be held. Thereafter, the county board of elections shall set a date for an additional day for voting in the county, city, town or village affected by the statement, which shall not be more than twenty days after the original date of the general election. NY [Elections] LAW § 3-108 (Consol. 2004).

North Carolina: The executive director, as chief state elections official, may exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by any of the following: a natural disaster, extremely inclement weather, an armed conflict involving U.S. armed forces or mobilization of those forces,

⁶ The Louisiana election emergency statute begins with the following statement of findings: “Due to the possibility of an emergency or common disaster occurring before or during a regularly scheduled or special election, and in order to ensure maximum citizen participation in the electoral process and provide a safe and orderly procedure for persons seeking to qualify or exercise their right to vote, to minimize to whatever degree possible a person’s exposure to danger during declared states of emergency, and to protect the integrity of the electoral process, it is hereby found and declared to be necessary to designate a procedure for the emergency suspension or delay and rescheduling of qualifying, absentee voting in person, and elections.” LA. REV. STAT. § 18:401.2 (2004).

including the state National Guard and reserve components. In exercising those emergency powers, the executive director shall avoid unnecessary conflict with the provisions of this chapter of law. N.C. GEN. STAT. § 163-27.1 (2004).

Examples of State Statutes That Might Be Employed for Election Postponement Within the State By Granting the Governor Power to Suspend State Law In Emergencies

Some states statutes authorize the governor to suspend certain state laws in the event of an emergency. While these statutes do not specifically mention elections, it is possible that they might be relied on to support the delay of the general presidential election, within the respective state, its precincts, districts or counties, in the event of an emergency or disaster. While not an exhaustive list, the following summaries are provided as examples of these types of state laws:

Arizona: During a state of war emergency, the governor may suspend the provisions of any statute prescribing the procedure for conduct of state business, or the orders or rules of any state agency, if the governor determines and declares that strict compliance would in any way prevent, hinder or delay mitigation of the effects of the emergency. "State of war emergency" means the condition that immediately exists whenever the U.S. is attacked or upon receipt by the state of a warning from the federal government indicating that such an attack is imminent. ARIZ. REV. STAT. ANN. §§ 26-303(A)(1), 301(15)(2004).

California: During a state of war emergency or a state of emergency, the governor may suspend any regulatory statute, or statute prescribing the procedure for conduct of state business, or the orders, rules, or regulations of any state agency where the governor determines and declares that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the emergency. "State of war emergency" means the condition which exists immediately, with or without a proclamation thereof by the governor, whenever the state or U.S. is attacked by an enemy or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent. "State of emergency" means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the governor's warning of an earthquake or volcanic prediction, or an earthquake, complications resulting from the year 2000 problem, or other conditions, other than conditions resulting from a labor controversy or conditions causing a "state of war emergency," which, by reason of their magnitude, are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission. CAL. GOV'T CODE ANN. §§ 8571, 8558(a), (b)(2004).

Illinois: In the event of a disaster, the governor may, by proclamation, declare that a disaster exists. Upon such proclamation, the governor shall have and may exercise, for a period not to exceed 30 days, the power to suspend the provisions of any regulatory statute prescribing procedures for conduct of state business, or the orders, rules and

regulations of any state agency, if strict compliance would in any way prevent, hinder or delay necessary action in coping with the disaster. The governor shall also have the power to utilize all available resources of the state government as reasonably necessary to cope with the disaster and to transfer the direction, personnel or functions of state departments and agencies or units thereof for the purpose of performing or facilitating disaster response and recovery programs. "Disaster" means an occurrence or threat of widespread or severe damage, injury or loss of life or property resulting from any natural or technological cause, including fire, flood, earthquake, wind, storm, hazardous materials spill or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action, public health emergencies, or acts of domestic terrorism. 20 ILL. COMP. STAT. ANN. § 3305/7(a), 3305/4 (2004).

Indiana: The governor shall declare a disaster emergency by executive order or proclamation if the governor determines that a disaster has occurred or that the occurrence or the threat of a disaster is imminent. The state of disaster emergency continues until the governor either determines that the threat or danger has passed or the disaster has been dealt with to the extent that emergency conditions no longer exist; and terminates the state of disaster emergency by executive order or proclamation. However, a state of disaster emergency may not continue for longer than 30 days unless the state of disaster emergency is renewed by the governor. The general assembly, by concurrent resolution, may terminate a state of disaster emergency at any time. During a state of disaster emergency, the governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency if strict compliance would in any way prevent, hinder, or delay necessary action in coping with the emergency. The governor may also use all available resources of the state government and of each political subdivision of the state reasonably necessary to cope with the disaster emergency and transfer the direction, personnel, or functions of state departments and agencies or units for performing or facilitating emergency services. "Disaster" means an occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or manmade cause, including fire, flood, earthquake, wind, storm, wave action, oil spill, other water contamination requiring emergency action to avert danger or damage, air contamination, drought, explosion, riot, or hostile military or paramilitary action. BURNS IND. CODE ANN. §§ 10-14-3-12(a),(d); 10-14-3-1 (2004).

Michigan: The governor may, upon the declaration of a state of disaster or a state of emergency, suspend a regulatory statute, order, or rule prescribing the procedures for conduct of state business, when strict compliance with the statute, order, or rule would prevent, hinder, or delay necessary action in coping with the disaster or emergency, with the exception of criminal process and procedures. The governor may also utilize the available resources of the state and its political subdivisions, and those of the federal government made available to the state, as are reasonably necessary to cope with the disaster or emergency and transfer the direction, personnel, or functions of state departments, agencies, or units thereof for the purpose of performing or facilitating emergency management. "Emergency" means any occasion or instance in which the governor determines state assistance is needed to supplement local efforts and capabilities to save lives, protect property and the public health and safety, or to lessen or avert the threat of a catastrophe in any part of the state. "Disaster" means an occurrence or threat

of widespread or severe damage, injury, or loss of life or property resulting from a natural or human-made cause including, fire, flood, snowstorm, ice storm, tornado, windstorm, wave action, oil spill, water contamination, utility failure, hazardous peacetime radiological incident, major transportation accident, hazardous materials incident, epidemic, air contamination, blight, drought, infestation, explosion, or hostile military action or paramilitary action, or similar occurrences resulting from terrorist activities, riots, or civil disorders. MICH. COMP. LAWS ANN. §§ 30.405(1)(a); 30,402(e),(h)(2004).

Tennessee: Upon declaration of a state of emergency or disaster, the governor may suspend the provisions of any law, order, rule or regulation prescribing the procedures for conduct of state business or the orders or rules or regulations of any state agency, if strict compliance would in any way prevent, hinder, or delay necessary action in coping with the emergency. The governor may also utilize all available resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency and transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services. "Disaster" means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state emergency by a county, the governor, or the president of the U.S. "Emergency" means an occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results in substantial injury or harm to the population or substantial damage to or loss of property. TENN. CODE ANN. §§ 58-2-107; 58-2-101(4),(6)(2004).

Texas: The governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of a state agency if strict compliance with the provisions, orders, or rules would in any way prevent, hinder, or delay necessary action in coping with a disaster. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause including, fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, volcanic activity, epidemic, air contamination, blight, drought, infestation, explosion, riot, hostile military or paramilitary action, other public calamity requiring emergency action, or energy emergency. TEX. GOV'T CODE §§ 418.016; 418.004(1)(2004).

West Virginia: During a state of emergency, the governor may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders, rules or regulations of any state agency, if strict compliance would in any way prevent, hinder or delay necessary action in coping with the emergency. "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action. W. VA. CODE §§ 15-5-6(g); 15-5-2(h)(2004).

By Bradford Fitch

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