

VIRGINIA ACTS OF ASSEMBLY -- 2000 RECONVENED SESSION

CHAPTER 1070

An Act to amend and reenact §§ 24.2-226, 24.2-227, and 24.2-682 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 24.2-228.1, relating to filling of vacancies in constitutional offices by special elections.

[H 1537]

Approved May 19, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-226, 24.2-227, and 24.2-682 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 24.2-228.1 as follows:

§ 24.2-226. Election to fill vacancy.

A. A vacancy in any elected ~~constitutional or~~ local office, whether occurring when for any reason an officer-elect does not take office or occurring after an officer begins his term, shall be filled by special election except as provided for certain towns by § 24.2-228 *or for constitutional officers as provided in § 24.2-228.1*, or unless provided otherwise by statute or charter. The governing body or, in the case of an elected school board, the school board of the county, city, or town in which the vacancy occurs shall, within fifteen days of the occurrence of the vacancy, petition the circuit court to issue a writ of election to fill the vacancy as set forth in Article 5 (§ 24.2-681 et seq.) of Chapter 6. Either upon receipt of the petition or on its own motion, the court shall issue the writ ordering the election for the next ensuing general election to be held in November in the case of county ~~officers and~~ city, ~~constitutional or town~~ officers *regularly elected in November* or in May in the case of other city and town officers. If the vacancy occurs within 120 days prior to that election, however, the writ shall order the election to be held at the second ensuing such general election. The person so elected shall hold the office for the remaining portion of the regular term of the office for which the vacancy is being filled.

B. Notwithstanding any provision of law or charter to the contrary, no election to fill a vacancy shall be ordered or held if the general election at which it is to be called is scheduled within sixty days of the end of the term of the office to be filled.

C. Notwithstanding any provision of law or charter to the contrary, when an interim appointment to a vacancy in any governing body or elected school board has been made by the remaining members thereof, no election to fill the vacancy shall be ordered or held if the general election at which it is to be called is scheduled in the year in which the term expires.

§ 24.2-227. Interim appointment by court until vacancy filled by election for certain offices.

When a vacancy occurs in any ~~constitutional or~~ local elected office other than a *constitutional office*, local governing body, or an elected school board, a majority of the judges of the judicial circuit for the county or city in which it occurs shall make an interim appointment to the office until the vacancy can be filled by special election. The senior judge shall make the appointment if a majority of the judges cannot agree. The chief or senior deputy, if there is one in the office, shall perform all the duties of the office until the person appointed to fill the vacancy has qualified. The person so appointed shall hold office until the qualified voters fill the vacancy by election and the person so elected has qualified.

§ 24.2-228.1. Election to fill vacancy in constitutional office.

A. A vacancy in any elected *constitutional office*, whether occurring when for any reason an officer-elect does not take office or occurring after an officer begins his term, shall be filled by special election. The governing body of the county or city in which the vacancy occurs shall, within fifteen days of the occurrence of the vacancy, petition the circuit court to issue a writ of election to fill the vacancy as set forth in Article 5 (§ 24.2-681 et seq.) of Chapter 6 of this title. Either upon receipt of the petition or on its own motion, the court shall promptly issue the writ ordering the election for a date determined pursuant to § 24.2-682.

B. The highest ranking deputy officer, or, in the case of the office of attorney for the Commonwealth, the highest ranking full-time assistant attorney for the Commonwealth, if there is such a deputy or assistant in the office, shall be vested with the powers and shall perform all of the duties of the office, and shall be entitled to all the privileges and protections afforded by law to elected or appointed constitutional officers, until the qualified voters fill the vacancy by election and the person so elected has qualified and taken the oath of office. In the event that (i) there is no deputy officer or full-time assistant attorney for the Commonwealth in the office or (ii) the highest-ranking deputy officer or assistant attorney for the Commonwealth declines to serve, the court shall make an interim appointment to fill the vacancy pursuant to § 24.2-227 until the qualified voters fill the vacancy by election and the person so elected has qualified and taken the oath of office.

C. Notwithstanding any provision of law to the contrary, no election to fill a vacancy shall be ordered or held if the general election at which it is to be called is scheduled within sixty days of the

end of the term of the office to be filled.

§ 24.2-682. Times for special elections.

A. Notwithstanding any charter or special act to the contrary, the following provisions govern the times for holding special elections. Every special election shall be held on a Tuesday. No special election shall be held within the sixty days prior to a general or primary election. No special election shall be held on the same day as a primary election. A special election may be held on the same day as a general election.

B. A referendum election shall be ordered at least sixty days prior to the date for which the referendum election is called.

C. A special election to fill a vacancy in any county, city, or town office, including school board member, ~~or in any constitutional office~~, regularly elected in a November general election, shall be held on a November general election day. A special election to fill a vacancy in any city or town office, including school board member, regularly elected in a May general election, shall be held on a regular May general election day.

A special election to fill a vacancy in any constitutional office shall be held promptly and in accordance with the requirements of subsection A.

2. That the provisions of this act shall become effective on October 1, 2000.