

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 120

An Act to amend and reenact § 24.2-228.1 of the Code of Virginia, relating to elections; special elections to fill vacancies in constitutional offices; absences.

[H 884]

Approved March 23, 2006

Be it enacted by the General Assembly of Virginia:

1. That § 24.2-228.1 of the Code of Virginia is amended and reenacted as follows:

§ 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 15 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. Upon receipt of written notification by an officer or officer-elect of his resignation as of a stated date, the governing body may immediately petition the circuit court to issue a writ of election, and the court may immediately issue the writ to call the election. The officer's or officer-elect's resignation shall not be revocable after the date stated by him for his resignation or after the thirtieth day before the date set for the special election.

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 60 days of the end of the term of the office to be filled.

D. The absence from the county or city of a constitutional officer by reason of his service in the Armed Forces of the United States shall not be deemed to create a vacancy in the office without a written notification by the officer of his resignation from the office. Notwithstanding any other provision of law, including § 19.2-156, the power to relieve a constitutional officer of the duties or powers of his office or position during the period of such absence shall remain the sole prerogative of the constitutional officer unless expressly waived by him in writing.