

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 292

An Act to amend and reenact §§ 24.2-803 and 24.2-804 of the Code of Virginia, relating to contested elections.

[H 1463]

Approved March 30, 2006

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-803 and 24.2-804 of the Code of Virginia are amended and reenacted as follows:

§ 24.2-803. Contest of election to General Assembly.

A. This section applies to any general or special election of members to the General Assembly.

B. A contest of the election of any member to the General Assembly may be initiated by an unsuccessful candidate in the election, referred to hereafter as the contestant.

To initiate a contest, the contestant shall give written notice, in the manner provided in subsection D, of his intent to contest the election to the person or persons apparently elected, referred to hereafter as the contestee, and to the Clerk of the House of Delegates if he is contesting a House election or of the Senate if he is contesting a Senate election, no later than thirty days following the date of the election or three days after the conclusion of a recount, whichever is later.

The notice shall state the grounds on which the contestant intends to contest the election. The grounds shall include (i) objections to the eligibility of the contestee based on specific allegations, (ii) objections to the conduct or results of the election accompanied by specific allegations which, if proven true, would have a probable impact on the outcome of the election, or (iii) both.

The notice shall state that an answer by the contestee must be filed with the clerk of the appropriate house within ten days following service of the notice. The contestant shall sign and verify the notice by his oath or affirmation.

At the time of filing the notice, the contestant shall post a bond with surety with the Clerk of the House of Delegates or Senate, as appropriate, in the amount of \$100 per precinct contained in whole or in part in the district being contested. If the contestant wins the contest, the bond shall not be forfeited. If the contestant loses the contest, the bond shall be forfeited to the extent of the contestee's actual and documented costs of defending against the contest, including, but not limited to, reasonable attorneys' fees, expert witnesses' fees, and such costs as would be taxable in an action at law. If the assessed costs exceed the bond, the contestant shall be liable for such excess only pursuant to subsection H.

C. Within ten days after service of the contestant's notice on the contestee, the contestee shall file with the clerk of the appropriate house a written answer. His answer shall admit or deny the allegations on which the contestant relies, or state that he has no knowledge or information concerning an allegation which shall be deemed denial, and state any other defenses, in law or fact, on which he relies. The contestee shall sign and verify his answer by his oath or affirmation.

D. The notice of intent to contest shall be filed by the contestant with the clerk of the appropriate house and copies thereof served by the contestant as provided under § 8.01-296 on each contestee. The answer, petition, and any reply and copies thereof shall be filed with the appropriate clerk, and copies shall be served on the opposing party or his counsel, if any, in the manner prescribed by Rule 1:12 of the Rules of the Supreme Court of Virginia.

After service of the notice of intent, any party, after reasonable notice to the other party or parties, shall be authorized to take depositions to sustain or invalidate the election. The contestant shall complete the taking of depositions to submit with his petition at any time within twenty days following the date of the notice of intent to contest the election, and the contestee shall complete the taking of his depositions within thirty days following the date of the notice of intent to contest the election. By written stipulation of the parties, the testimony of any witness may be filed in the form of an affidavit by the witness within the same time limitations prescribed for the taking of depositions.

Subpoenas for witnesses shall be issued by the clerk of the circuit court of the county or city in which the contestee resides on the application of either party. Witnesses shall be entitled to the same allowances and privileges, and be subject to the same penalties, as witnesses summoned to attend the courts.

Every deposition shall be taken before a person authorized by law to administer oaths, who shall certify and seal the deposition in the same manner as in judicial civil proceedings, and file the same with the clerk of the appropriate house.

E. A written petition shall be filed by the contestant with the clerk of the appropriate house (i) within ten days following the filing of the notice of intent to contest the election if the contested election was held at a November general election and (ii) within ten days following the date of the filing of the notice of intent to contest the election or within two days following the commencement of

the next session of the General Assembly, whichever is later, if the election was held on a different date. The contestee may file a written reply to the petition within five days following its service on him.

No affidavit may be made a part of, or filed in support of, a petition or reply thereto unless the affidavit has previously been filed with the clerk of the appropriate house, pursuant to the written stipulation of the parties or their counsel, on or before the date established by subsection D for the completion of the taking of depositions by the proponent of the affidavit.

F. If the election was held during a regular session of the General Assembly, the times for filing the notice of intent to contest, the answer, petition, and reply and for taking depositions and affidavits shall be set by the Committee on Privileges and Elections of the appropriate house. The Committee may consider the contestant's and contestee's recommendations for the procedural schedule.

G. The clerk shall refer the notice, answer, petition, reply, depositions, and affidavits to the Committee on Privileges and Elections, which documents shall constitute the record in the contest. *A failure to comply in timely manner with the filing requirements of subsection B, C, D, or E shall be dispositive of the contest and have the effect of a finding for the opponent of the party failing to meet such requirements.*

Unless another committee has been designated by the rules of the house to hear contest matters, the Committee on Privileges and Elections shall hear the contest and conduct such investigation as has been directed by resolution of its house. It shall report its findings and recommendations to the house for its action. *The committee hearing the contest shall take up the contest no later than its first regularly scheduled meeting occurring after the filing of the record in the contest.*

H. The house, in its judgment, may find for the contestant and declare him elected, find for the contestee and confirm his election, or declare the election void and order a writ of election as in other cases of vacancy. If the house finds a tie vote has occurred, it shall direct a determination by lot in accordance with § 24.2-674, but no right to a recount shall be permitted. If the house finds, by a two-thirds vote of the house that the contestant has prosecuted the election contest in bad faith, the house may order the contestant to pay to the contestee a sum, *in addition to the amount of the bond posted pursuant to subsection B*, that is not more than the contestee's *additional* actual costs of defending against the contest, including, but not limited to, reasonable attorneys' fees, expert witnesses' fees, and such costs as would be taxable in an action at law. *A determination to assess costs against a contestant in excess of the amount of the bond posted pursuant to subsection B shall be made only upon the recommendation of the Committee on Privileges and Elections, or other committee designated in the rules of the house to hear the contest, adopted by the committee by a two-thirds or greater vote of the committee.*

§ 24.2-804. Contest of elections of Governor, Lieutenant Governor, and Attorney General.

In any election for Governor, Lieutenant Governor, or Attorney General, notice of the intent to contest the election shall be filed with the Clerk of the House of Delegates as prescribed in § 24.2-803. The provisions of § 24.2-803 shall govern standing, notice of intent to contest, answers, service of process, evidence, the petition, procedures, ~~and~~ relief, *and assessed costs* except (i) that in a contest of an election held at the November general election the petition shall be filed within two days following the commencement of a special session of the General Assembly called for the purpose of hearing the contest or of the next regular session of the General Assembly, whichever first occurs, and (ii) that the final determination shall be made by the General Assembly, both houses sitting in joint session in the hall of the House of Delegates, with the Speaker of the House of Delegates presiding.

At the time of filing the notice, the contestant shall post a bond with surety with the Clerk of the House of Delegates in the amount of \$10 per precinct in the Commonwealth. If the contestant wins the contest, the bond shall not be forfeited. If the contestant loses the contest, the bond shall be forfeited and costs assessed as provided in subsections B and H of § 24.2-803.