

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

4 [H 1771]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 24.2-228.1 of the Code of Virginia is amended and reenacted as follows:**

8 § 24.2-228.1. Election to fill vacancy in constitutional office.

9 A. Notwithstanding any provision of a charter to the contrary, a vacancy in any elected constitutional
10 office, whether occurring when for any reason an officer-elect does not take office or occurring after an
11 officer begins his term, shall be filled by special election. The governing body of the county or city in
12 which the vacancy occurs shall, within 15 days of the occurrence of the vacancy, petition the circuit
13 court to issue a writ of election to fill the vacancy as set forth in Article 5 (§ 24.2-681 et seq.) of
14 Chapter 6 of this title. Either upon receipt of the petition or on its own motion, the court shall promptly
15 issue the writ ordering the election for a date determined pursuant to § 24.2-682. Upon receipt of written
16 notification by an officer or officer-elect of his resignation as of a stated date, the governing body may
17 immediately petition the circuit court to issue a writ of election, and the court may immediately issue
18 the writ to call the election. The officer's or officer-elect's resignation shall not be revocable after the
19 date stated by him for his resignation or after the thirtieth day before the date set for the special
20 election. *Notwithstanding the foregoing provisions, a vacancy in any elected constitutional office in any*
21 *county or city with a population of 15,000 or less, or shared by two or more units of government with a*
22 *combined population of 15,000 or less, shall be held at a special election ordered by the court to be*
23 *held at the next ensuing general election to be held in November. If the vacancy occurs within 120 days*
24 *prior to that election, however, the writ shall order the election to be held at the second ensuing such*
25 *general election.*

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

36 C. Notwithstanding any provision of law to the contrary, no election to fill a vacancy shall be
37 ordered or held if the general election at which it is to be called is scheduled within 60 days of the end
38 of the term of the office to be filled.

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

45 **2. That an emergency exists and this act is in force from its passage.**

ENROLLED

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