

# VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

## CHAPTER 431

*An Act to amend and reenact §§ 24.2-226, 24.2-228, and 24.2-682 of the Code of Virginia, relating to elections; filling vacancies in certain local offices; special elections.*

[H 1014]

Approved April 11, 2010

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 24.2-226, 24.2-228, and 24.2-682 of the Code of Virginia are amended and reenacted as follows:**

§ 24.2-226. Election to fill vacancy.

A. A vacancy in any elected 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 requiring special elections within the time limits provided in this title.~~ 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 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. 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, city, or town officers regularly elected in November, or in May in the case of other city and town officers promptly, which shall be no later than the next general election unless the vacancy occurs within 90 days of the next general election in which event it shall be held promptly but no later than the second general election. 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.~~ Upon receipt of written notification by an officer or officer-elect of his resignation as of a stated date, the governing body or school board, as the case may be, 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. 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 60 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.

§ 24.2-228. Interim appointment to local governing body or elected school board; elected mayor.

A. When a vacancy occurs in a local governing body or an elected school board, the remaining members of the body or board, respectively, within ~~forty-five~~ 45 days of the office becoming vacant, ~~shall~~ may appoint a qualified voter of the election district in which the vacancy occurred to fill the vacancy. If a majority of the remaining members *of the body or board* cannot agree, or do not act, the judges of the circuit court of the county or city ~~shall~~ may make the appointment. ~~The Notwithstanding any charter provisions to the contrary, the person so appointed in a county or city, or a town with a population greater than 3,500, shall hold office only until the qualified voters fill the vacancy by special election pursuant to § 24.2-226 § 24.2-682 and the person so elected has qualified. The person so appointed in a town with a population of 3,500 or less shall serve for the remainder of the term and no special election shall be held.~~

If a majority of the seats on any governing body or elected school board are vacant, the remaining members shall not make interim appointments and the vacancies shall be filled as provided in § 24.2-227.

B. When a vacancy occurs in the office of a mayor who is elected by the voters, the council shall make an interim appointment to fill the vacancy as provided in subsection A.

C. For the purposes of this article and subsection D of § 22.1-57.3, local school boards comprised of elected and appointed members shall be deemed elected school boards.

§ 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 55 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, 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.