

12105772D

## SENATE BILL NO. 311

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns  
on February 29, 2012)

(Patron Prior to Substitute—Senator Blevins)

A BILL to amend and reenact § 3.09 of Chapter 155 of the Acts of Assembly of 1962, which provided a charter for the City of Franklin, and to amend Chapter 155 of the Acts of Assembly of 1962 by adding a section numbered 3.10, relating to council; elections.

Be it enacted by the General Assembly of Virginia:

1. That § 3.09 of Chapter 155 of the Acts of Assembly of 1962 is amended and reenacted and that Chapter 155 of the Acts of Assembly of 1962 is amended by adding a section numbered 3.10 as follows:

§ 3.09. Limitations on Power and Disqualifications.

(a) Any member of the council who is indicted for a felony shall be suspended from office until the indictment is withdrawn or quashed or he is tried and acquitted, and any member of the council who shall have been convicted of a felony while in office shall thereby forfeit his office.

(b) No member of city council shall direct the appointment of any person to or the removal of any person from any office or employment by the city manager or by any of the manager's subordinates, or in any way take part in the appointment of or removal of officers and employees of the city except as specifically provided in this charter. Except for the purpose of inquiry, the city council and its members shall so long as the city manager form of government obtains deal with the administrative service of the city solely through the city manager, and neither. Neither the city council nor any member thereof shall have authority to give orders either publicly or privately to any of the subordinates subordinate of the city manager, either publicly or privately.

§ 3.10. Recall Election of Council Members and Mayor.

(a) Any member of City Council may be recalled and removed from office at any time after one year from the beginning of his/her term of office by the persons qualified to vote in the ward which such member serves, or, in the case of the Mayor, by the persons qualified to vote in the City at large. The procedure to effect such removal shall be as hereinafter set forth.

(b) A petition shall be filed with the Clerk of the Southampton County Circuit Court demanding the election for a recall of the Council member or Mayor sought to be removed and containing a general statement of the grounds upon which the recall election is sought. The petition shall be signed by registered voters equal in number to at least 125 registered voters of the council member's ward, or, in the case of the Mayor, at least 10 percent (10%) of those registered voters in each individual ward City-wide who voted in the most recent gubernatorial election. Such petition may be filed at any time after one year has elapsed since the beginning of the term of the Council member sought to be removed, or in the case of the Mayor, after one year has elapsed since the beginning of his/her term from which he/she is sought to be removed. Each registered voter signing the petition shall add to his/her signature his/her place of residence, giving street and number, if any, and the date signed. Such petition may be in the form of separate papers, but each separate paper to which signatures are appended shall contain at the top thereof the original petition or a duplicate statement thereof, and when bound together and offered for filing, such separate papers shall be deemed to constitute one petition with respect to the recall of the Council member or members or the Mayor named therein. Each signature on the petition shall have been witnessed by a person who is himself a qualified voter, or qualified to register to vote, for the office for which he is circulating the petition and whose affidavit to that effect appears on each page of the petition.

(c) If it appears that the petition is signed by the requisite number in the case of a member of council or the requisite percentage in the case of the mayor of registered voters, the same shall be accepted as prima facie regular and sufficient, but it shall be subject to summary review as provided in paragraph (d) of this article.

(d) A petition, which complies with the requirements of this chapter as to form, number of signers, and manner of execution, shall be accepted as prima facie valid. The Circuit Court of Southampton County shall have summary jurisdiction upon complaint of a registered voter to determine the validity of the petition and the genuineness of the signatures thereon, and the qualifications of the registered voters signing the same, and may make such order in the matter as justice may require. Such proceedings shall be instituted within 30 days after presentation of the petition, and the burden of proof shall be on the complainant.

(e) If the petition shall be valid, and if the Council member or members or mayor whose removal is sought shall not resign within five days after the validity of the petition has been determined by a judge

60 of the Circuit Court, a judge thereof shall order and fix a day for holding an election for recall, which  
61 election shall be held as soon as practical under Title 24.2 of the Code of Virginia, but not less than 30  
62 nor more than 120 days from the certification of the petition or from the making of any court thereon.  
63 Not less than 14 days prior to the recall election, the city manager shall cause publication of notice in  
64 a publication of general circulation of the recall election, and all arrangements shall be made by the  
65 city electoral board for holding such recall election and the same shall be conducted and the result  
66 thereof returned and declared in all respects as in other special elections so far as possible.

67 (f) The ballots at such election shall conform to the following requirements: With respect to each  
68 Council member whose removal is sought, the question shall be submitted: "Shall (name of Council  
69 member) be removed from City Council by recall?" Immediately following each such question, there  
70 shall be printed on the ballots the following:

71 " \* YES

72 \* NO"

73 (h) In any such election, if a majority of the votes cast on the question of removal be affirmative,  
74 then the Council member or mayor whose removal is sought shall thereupon be deemed removed from  
75 Council or the office of mayor upon the announcement of the official canvass of the election by the city  
76 electoral board, and the vacancy caused by such recall shall be filled on an interim basis by the  
77 remainder of the council, according to the provisions of § 3.02 of this charter until such time as a  
78 special election can be held in compliance with Virginia Code §§ 24.2-225, 24.2-226 and 24.2-228. The  
79 question of the removal of any Council member shall not be submitted to the registered voters a second  
80 time during the same term, until after the expiration of one year from the determination of the first  
81 application or his/her removal. The method of removal herein provided is cumulative and additional to  
82 such other methods as may be provided by law.