

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 24.2-228.1 of the Code of Virginia, relating to filling a vacancy in*
3 *constitutional office.*

4 [S 1089]

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. Either upon receipt of the petition or on its own motion, the court shall promptly issue the
15 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~~ *filled by* a special election ordered by the court
23 to be held at the next ensuing general election to be held in November. If the vacancy occurs within 90
24 days prior to that election, however, the writ shall order the election to be held at the second ensuing
25 such general election.

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

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

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

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