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HOUSE BILL NO. 972

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 24.2-103, 24.2-230, 24.2-233, as it is currently effective and as it shall become effective, 24.2-238, 24.2-682, and 24.2-684.1 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 2 of Title 24.2 an article numbered 8, consisting of sections numbered 24.2-239 through 24.2-243; and to repeal § 24.2-234 of the Code of Virginia, relating to elections; removal of officers; recall elections; petition.

Patrons—Simon, Convirs-Fowler, Kory, Clark, Hope, Jenkins, Maldonado, Murphy, Reid, Shin and Simonds

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 24.2-103, 24.2-230, 24.2-233, as it is currently effective and as it shall become effective, 24.2-238, 24.2-682, and 24.2-684.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 2 of Title 24.2 an article numbered 8, consisting of sections numbered 24.2-239 through 24.2-243, as follows:

§ 24.2-103. Powers and duties in general; report.

A. The State Board, through the Department of Elections, shall supervise and coordinate the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections. Its supervision shall ensure that major risks to election integrity are (i) identified and assessed and (ii) addressed as necessary to promote election uniformity, legality, and purity. It shall make rules and regulations and issue instructions and provide information consistent with the election laws to the electoral boards and registrars to promote the proper administration of election laws. Electoral boards and registrars shall provide information requested by the State Board and shall follow (a) the elections laws and (b) the rules and regulations of the State Board insofar as they do not conflict with Virginia or federal law. The State Board shall post on the Internet within three business days any rules or regulations made by the State Board. Upon request and at a reasonable charge not to exceed the actual cost incurred, the State Board shall provide to any requesting political party or candidate, within three days of the receipt of the request, copies of any instructions or information provided by the State Board to the local electoral boards and registrars.

B. The State Board, through the Department of Elections, shall ensure that the members of the electoral boards are properly trained to carry out their duties by offering training annually, or more often, as it deems appropriate, and without charging any fees to the electoral boards for the training.

C. The State Board, through the Department of Elections, shall conduct a certification program for the general registrars and shall require each general registrar to receive certification through such program from the Department within 12 months of his initial appointment or any subsequent reappointment. The State Board may grant a waiver requested by a local electoral board to extend, on a case-by-case basis, this deadline by up to three months. The State Board shall develop a training curriculum for the certification program and standards for completing the program and maintaining certification, including required hours of annual training. No fees shall be charged to a general registrar for any required training as part of the certification program. The State Board shall review the certification program every four years, or more often as it deems appropriate.

D. The State Board shall set the training standards for the officers of election and shall develop standardized training programs for the officers of election to be conducted by the local electoral boards and the general registrars. Training of the officers of election shall be conducted and certified as provided by § 24.2-115.2. The State Board shall provide standardized training materials for such training and shall also offer on the Department of Elections website a training course for officers of election. The content of the online training course shall be consistent with the standardized training programs developed pursuant to this section. The State Board shall review the standardized training materials and the content of the online training course every two years in the year immediately following a general election for federal office.

E. The State Board may institute proceedings pursuant to § ~~24.2-234~~ *24.2-233* for the removal of any member of an electoral board who fails to discharge the duties of his office in accordance with law. The State Board may petition the local electoral board to remove from office any general registrar who fails to discharge the duties of his office according to law. The State Board may institute proceedings pursuant to § ~~24.2-234~~ *24.2-233* for the removal of a general registrar if the local electoral board refuses

to remove the general registrar and the State Board finds that the failure to remove the general registrar has a material adverse effect upon the conduct of either the registrar's office or any election. Any action taken by the State Board pursuant to this subsection shall require a recorded majority vote of the Board.

F. The State Board may petition a circuit court or the Supreme Court, whichever is appropriate, for a writ of mandamus or prohibition, or other available legal relief, for the purpose of ensuring that elections are conducted as provided by law.

G. The Department of Elections shall supervise its own staff to assure that no member of its staff shall serve (i) as the chairman of a political party or other officer of a state-, local-, or district-level political party committee or (ii) as a paid or volunteer worker in the campaign of a candidate for nomination or election to an office filled by election in whole or in part by the qualified voters of the Commonwealth.

H. The Department of Elections shall employ a Director of Operations who shall be responsible for managing the day-to-day operations at the Department of Elections and ensuring (i) fulfillment of the Department's mission and responsibilities; (ii) compliance with state and federal election laws and regulations; and (iii) compliance with the Department's business, administrative, and financial policies. This position shall be a full-time classified position subject to the Virginia Personnel Act (§ 2.2-2900 et seq.).

I. The State Board shall adopt a seal for its use and bylaws for its own proceedings.

J. The State Board shall submit an annual report to the Governor and the General Assembly on the activities of the State Board and the Department of Elections in the previous year. Such report shall be governed by the provisions of § 2.2-608.

Article 7.

Removal of ~~Public~~ *Appointed* Officers from Office.

§ 24.2-230. Applicability of article; certain exceptions.

This article shall apply to all ~~elected or~~ appointed Commonwealth, constitutional, and local officers, except officers *(i)* for whose removal the Constitution of Virginia specifically provides *or (ii) appointed to fill a vacancy in an elective office*.

However, an appointed officer shall be removed from office only by the person or authority who appointed him unless he is *(a)* sentenced for a crime as provided for in § 24.2-231 ~~or is~~, *(b)* determined to be "mentally incompetent" as provided for in § 24.2-232~~. This exception shall not apply to an officer who is (i) appointed to fill a vacancy in an elective office or (ii)~~, *or (c)* appointed to an office for a term established by law and the appointing person or authority is not given the unqualified power of removal.

This article shall be applicable to members of local electoral boards and general registrars, but shall not be applicable to assistant registrars who may be removed from office by the general registrar pursuant to § 24.2-112 or to officers of election who may be removed from office by the local electoral board pursuant to § 24.2-109.

§ 24.2-233. (Effective until January 1, 2024) Removal of certain appointed officers by courts.

~~Upon petition, a circuit court~~ *An officer* may ~~remove~~ *be removed* from office ~~any elected officer or officer who has been appointed to fill an elective office, residing within~~ *upon a petition filed with the circuit court in* the jurisdiction ~~of the court~~ *where the officer resides, signed by the person or a majority of the members of the authority who appointed him, under any of the following circumstances*:

1. For neglect of duty, misuse of office, or incompetence in the performance of duties when that neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse effect upon the conduct of the office;

2. Upon conviction of a misdemeanor pursuant to Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and after all rights of appeal have terminated involving the:

a. Manufacture, sale, gift, distribution, or possession with intent to manufacture, sell, give, or distribute a controlled substance or marijuana;

b. Sale, possession with intent to sell, or placing an advertisement for the purpose of selling drug paraphernalia; or

c. Possession of any controlled substance or marijuana and such conviction under subdivision a, b, or c has a material adverse effect upon the conduct of such office;

3. Upon conviction, and after all rights of appeal have terminated, of a misdemeanor involving a "hate crime" as that term is defined in § 52-8.5 when the conviction has a material adverse effect upon the conduct of such office; or

4. Upon conviction, and after all rights of appeal have terminated, of sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, peeping or spying into dwelling or enclosure in violation of § 18.2-130, consensual sexual intercourse with a child 15 years of age or older in violation of § 18.2-371, or indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387, and such conviction has a material adverse effect upon the conduct

of such office.

~~The petition must be signed by a number of registered voters who reside within the jurisdiction of the officer equal to ten percent of the total number of votes cast at the last election for the office that the officer holds.~~

Any person removed from office under the provisions of subdivision 2, 3, or 4 may not be subsequently subject to the provisions of this section for the same criminal offense.

§ 24.2-233. (Effective January 1, 2024) Removal of ~~elected and~~ certain appointed officers by courts.

~~Upon petition, a circuit court may remove from office any elected officer or~~ *An* officer ~~who has been~~ appointed to ~~fill~~ an ~~elective~~ office~~,~~ ~~residing within the jurisdiction of~~ *for a term established by law by an appointing person or authority that is not given the unqualified power of removal may be removed from office upon a petition filed with* the *circuit* court *in the jurisdiction where the officer resides, signed by the person or a majority of the members of the authority who appointed him, under any of the following circumstances*:

1. For neglect of duty, misuse of office, or incompetence in the performance of duties when that neglect of duty, misuse of office, or incompetence in the performance of duties has a material adverse effect upon the conduct of the office;

2. Upon conviction of a misdemeanor pursuant to Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and after all rights of appeal have terminated involving the:

a. Manufacture, sale, gift, distribution, or possession with intent to manufacture, sell, give, or distribute a controlled substance;

b. Sale, possession with intent to sell, or placing an advertisement for the purpose of selling drug paraphernalia; or

c. Possession of any controlled substance and such conviction under subdivision a, b, or c has a material adverse effect upon the conduct of such office;

3. Upon conviction, and after all rights of appeal have terminated, of a misdemeanor involving a "hate crime" as that term is defined in § 52-8.5 when the conviction has a material adverse effect upon the conduct of such office; or

4. Upon conviction, and after all rights of appeal have terminated, of sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, peeping or spying into dwelling or enclosure in violation of § 18.2-130, consensual sexual intercourse with a child 15 years of age or older in violation of § 18.2-371, or indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387, and such conviction has a material adverse effect upon the conduct of such office.

~~The petition must be signed by a number of registered voters who reside within the jurisdiction of the officer equal to 10 percent of the total number of votes cast at the last election for the office that the officer holds.~~

Any person removed from office under the provisions of subdivision 2, 3, or 4 may not be subsequently subject to the provisions of this section for the same criminal offense.

§ 24.2-238. Costs.

A. If a judicial proceeding under this article is dismissed in favor of the respondent, the court in its discretion may require the state agency or political subdivision which the respondent serves to pay court costs or reasonable attorney fees, or both, for the respondent.

B. No person who signs a petition for the removal of an official pursuant to § 24.2-233 ~~or who circulates such a petition~~ (i) shall be liable for any costs associated with removal proceedings conducted pursuant to the petition, including attorney fees incurred by any other party or court costs, or (ii) shall have sanctions imposed against him pursuant to § 8.01-271.1.

Article 8.

Removal of Elected Officers from Office.

§ 24.2-239. Applicability of article; definitions.

A. This article shall apply to all elected Commonwealth, constitutional, and local officers, and any officer appointed to fill a vacancy in an elective office except officers for whose removal the Constitution of Virginia specifically provides.

B. As used in this article, unless the context requires another meaning:

"Official sponsors" or "sponsors" means the registered voters who circulate or file an application for a recall petition who were registered and eligible to vote in the last general or special election for the office held by the officer sought to be recalled and who are currently qualified voters for the officer sought to be recalled.

"Recall referendum" or "recall" means a referendum on the question of whether or not an officer identified in a certified recall petition for such referendum should be removed from office for grounds

stated in the recall petition.

§ 24.2-240. Vacancy occurring when officer determined "mentally incompetent" (incapacitated).

A person who is determined to be incapacitated in a judicial proceeding as provided for in Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 shall be deemed for purposes of Article II, Section 1 of the Constitution of Virginia and this title to be "mentally incompetent" as that term is used in those provisions. The office of any person who is so determined to be incapacitated shall become vacant, and the vacancy shall be filled in the manner provided by law. Notwithstanding the provisions of Chapter 20 of Title 64.2, however, any officer shall have a jury trial unless it is waived by him or for him by his counsel of record.

§ 24.2-241. Recall of elected and certain appointed officials.

A. An officer shall be subject to a recall upon a petition filed with the general registrar in whose jurisdiction the officer resides, signed by a number of qualified voters equal to 30 percent of the total number of votes cast at the last election for the office that the officer holds, and certified to the circuit court in whose jurisdiction the officer resides as being grounded on any of the following circumstances:

1. Conviction of a crime against a locality served by the office that occurred during the official's term of office.

2. Conviction of a felony or any offense for which registration is required as defined in § 9.1-902.

B. Within five days of certification of the sufficiency of the petition for recall, the court shall order the election officials of the appropriate locality to conduct a recall referendum not less than 90 days and not more than 150 days from the date of the order.

The general registrar of a locality in which the recall referendum is to be held shall cause a notice of the recall to be published in some newspaper published or having a general circulation in the locality once a week for three successive weeks prior to such referendum and shall post a copy of such notice during the same time at the front door of the registrar's office and the courthouse serving the locality.

The ballots used in the recall referendum shall be printed as follows:

"Shall (name of officer), (name of office), be recalled and removed from public office on the grounds that said official has (state the grounds for recall as identified on the certified petition)?

Yes [ ]

No [ ]"

The ballots shall be counted, returns made and canvassed as in other elections, and the results certified by the electoral board to the State Board of Elections, the clerk of the locality, and the circuit court; and the court shall enter of record the results of the recall referendum.

C. If the majority of the votes cast in the recall are for the proposition, the office in question shall become vacant and the vacancy filled in the manner provided by law. If a majority of the votes cast in the recall are against the proposition, the officer in question shall continue in office and shall not be subject to another referendum for recall on the same grounds.

D. If the office in question is vacated prior to the holding of a recall referendum, no recall shall be conducted.

§ 24.2-242. Application for recall petition.

A. No person shall be permitted to circulate a recall petition before an application to do so has been submitted to and approved by the general registrar of the locality in which the official for which a recall is being sought resides. No application for a recall petition may be filed during the first 180 days or during the last 180 days of the term of office of any public official subject to recall.

B. An application for a recall petition shall be made on a form approved by the State Board of Elections and distributed by the general registrar. The form shall include:

1. The name and office of the person for which the recall is being sought

2. The printed names, residence addresses, and signatures of the official sponsors, along with the date on which the application was signed by each sponsor.

3. The designation of one of the sponsors as the petition chairperson who shall represent the sponsors on all matters pertaining to the recall application and petition.

4. A statement of the grounds on which the recall is being sought.

5. An affidavit by the petition chairperson and the person circulating such recall application that each person sponsoring such recall application is a registered voter qualified to vote for the office for which the application for a recall petition was circulated.

C. Applications shall be issued by the general registrar, who shall assign a number to each application. Such number shall appear on the face of each application. The general registrar shall keep records of applications issued, including the date of issuance and number assigned. The general registrar shall immediately notify in writing the public officer named for recall in the application that an application for a recall petition has been officially issued for circulation.

D. The number of official sponsors necessary to file an application for a recall petition must be at least 100 or 10 percent of the number of those who voted in the election for the public official sought to

be recalled, whichever is smaller.

E. No application for a recall petition shall be accepted for verification if more than 15 days have elapsed since the application forms were issued to the sponsors. If an application for a recall petition contains more than one sheet, such application, when offered for filing, shall be bound together and each sheet shall be numbered consecutively at the foot of each page beginning with page one. No application for a recall petition shall be amended, supplemented, or returned after it has been filed with the general registrar for verification.

F. On receipt of the application, the general registrar shall file the application and immediately notify in writing the public officer named for recall in the application that a completed application for a recall petition has been filed with the general registrar for verification. The general registrar shall then proceed to determine the legal sufficiency of the application and determine if the signers are qualified to be sponsors. The general registrar shall be assisted by the Central Criminal Records Exchange for the purposes of determining the veracity of the grounds for recall stated in the application. If the general registrar finds that any signer is not a qualified voter eligible to sign the application, such signature shall not be counted in determining whether the application contains a sufficient number of signatures as required by law. The nullification of a signature on an application shall not affect the validity of other signatures contained in such application. The general registrar shall certify the sufficiency or insufficiency of the application for a recall petition within 10 business days.

G. Upon certifying the sufficiency of the application for a recall petition, the general registrar shall issue official recall petition forms, assign a number to the recall petition, which number shall appear on the face of each petition form, and issue that number to the sponsors. The general registrar shall immediately notify in writing the public officer named for recall in the application that a recall petition has been officially issued for circulation.

§ 24.2-243. Recall petition.

A. The official recall petition shall be on a form approved by the State Board of Elections and distributed by the general registrar. The form shall include:

1. The official application number associated with the petition.

2. The locality in which the petition is to be circulated

3. The following statement: "We, the qualified voters registered to vote in the recall referendum herein petitioned, demand the recall of (name and office of the person for which the recall is being sought) on the grounds that said official (the grounds for recall as stated in the recall petition application and verified by the general registrar)."

4. Lines for signatures that include adjacent spaces for the printed name of the signer, the signer's residence address, the date on which the petition was signed, and the last four digits of the signer's social security number.

5. The following notice: "If (insert appropriate number) qualified voters sign this petition, there will be an election at which a majority of the electors voting therein will determine whether the above-named official will be removed from office."

6. An affidavit to be signed by the circulator of the recall petition that (i) he is not a minor or a felon whose voting rights have not been restored, (ii) that each of the names on the petition form was signed in his presence on the date indicated and that in his belief each signer was a qualified voter for the office sought to be recalled, and (iii) if he is not a legal resident of the Commonwealth, that he consents to the jurisdiction of the courts of Virginia in resolving any disputes concerning the circulation of petitions, or signatures contained therein.

B. Every qualified voter signing a recall petition shall do so in the presence of the person circulating the petition, who is to execute the affidavit on the petition form. At the time of signing, the qualified voter shall sign his name, and such qualified voter or the person circulating the petition shall, in the appropriate spaces following the signature, print the qualified voter's full name, residence address, and the date on which the qualified voter signed the petition.

Each voter signing the petition may provide on the petition the last four digits of his social security number, if any; however, noncompliance with this requirement shall not be cause to invalidate the voter's signature on the petition.

If a qualified voter is incapable of signing his own name, he may specifically request the circulator of the petition to sign and print his name and complete the information required on the petition sheet to accompany the signature; provided, however, that the circulator shall also sign his full name beside the printed name of such elector.

C. A completed recall petition shall be filed with the general registrar in the locality in which the petitions were originally issued. If a recall petition contains more than one sheet, such recall petition shall, when offered for filing, be bound together and each sheet shall be numbered consecutively at the foot of each page beginning with page one. A recall petition shall not be accepted for verification for:

1. Any officer for whom not fewer than 5,000 signatures are required for the recall petition if more

than 45 days have elapsed since the date the official recall petition forms were issued to the sponsor; or

2. Any officer for whom fewer than 5,000 signatures are required if more than 30 days have elapsed since the date the official recall petition forms were issued to the sponsors.

D. No recall petition shall be amended, supplemented, or returned after it has been filed with the general registrar for verification.

E. The general registrar shall be responsible for determining the sufficiency of the recall petition within 30 days after it has been filed. Review of the legal sufficiency of recall petitions shall be conducted according to uniform standards approved by the State Board of Elections. Each qualified voter signing the petition shall have been registered in the jurisdiction for which the petition is circulated at the time of signing the petition and at the time of validating the petition signatures.

F. Upon certifying the sufficiency or insufficiency of a recall petition, the general registrar shall immediately notify the petition chairman and the officer who is named on the recall petition in writing of the results and officially file the certification of the sufficiency of the petition with the local circuit court.

§ 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 81 days prior to the date for which the referendum election is called*, except for a recall referendum ordered pursuant to 24.2-241*.

C. A special election to fill a vacancy in any constitutional office shall be held promptly and in accordance with the requirements of subsection A.

§ 24.2-684.1. Requirements for voter petitions to call for referendum elections.

In addition to other applicable requirements of law, the following requirements shall apply whenever a referendum election is initiated by voter petitions *except for a recall referendum initiated pursuant to Article 8 (§ 24.2-239 et seq.) of Chapter 2*. The requirements of this section shall be construed to override any requirement of general or special law in conflict with this section, except requirements set out in charter provisions to govern the exercise of recall, initiative, or referendum powers in a county, city, or town.

The requirements of this section shall apply to petitions calling for any referendum which is ordered to be held on or after January 1, 1994.

1. Prior to circulating any petition for signature, an individual shall file a copy of the petition with the clerk of the circuit court for the county or city in which the referendum will be held. The individual shall be a qualified voter of the county or city and shall file, with the petition copy, a statement giving his name; residence address and, if different, his mailing address; and the name of the organization, if any, which he represents in circulating the petition. The copy of the petition shall be filed on or after the effective date of the law which authorizes the referendum for which the petition will be circulated. The clerk shall certify, within 10 days of such filing, that he has received and accepted the petition copy and statement.

2. If the referendum will be held only in a town, the copy and statement shall be filed with the clerk of the circuit court for the county in which the town, or larger portion of the town, is located, and the individual shall be a qualified voter of the town. If the referendum will be held only in part of a county, city, or town, the copy and statement shall be filed with the clerk of the appropriate circuit court, and the individual shall be a qualified voter of the part of the county, city, or town in which the referendum will be held. If the referendum will be held in more than one county, city, or town, the copy and statement shall be filed with the clerk of the circuit court of any one of the localities in which the referendum will be held, and the individual shall be a qualified voter of that locality.

3. Each qualified voter signing a petition shall date his signature.

4. Each such voter may provide on the petition the last four digits of his social security number, if any; however, noncompliance with this requirement shall not be cause to invalidate the voter's signature on the petition.

5. Each signature on the petition shall be witnessed by a person who is qualified to vote, or qualified to register to vote, in the referendum for which he is circulating the petition and whose affidavit to that effect, including his name, residence address and, if different, his mailing address, and the name of the organization, if any, that he represents in circulating the petition, appears on each page, front and back, of the petition.

6. The petition shall be circulated, completed, and filed with the appropriate court or authority within nine months of the date of the certification by the clerk of the circuit court pursuant to subdivision 1.

7. Each qualified voter signing the petition shall have been validly registered in the jurisdiction for which the petition is circulated at the time of signing the petition and at the time of validating the

petition signatures.

8. The number of voters registered on January 1 of the year of the certification by the clerk of the circuit court pursuant to subdivision 1 shall be the basis for determining the number of signatures required on the petition in all cases in which the law authorizing the referendum provides that the number of signatures required for the petition is a percentage of the number of registered voters.

9. If the court or authority finds that the filed petitions are valid and sufficient under law, it shall proceed, as provided by law, to order or call for the referendum election. If the court or authority finds that the filed petitions are invalid for any cause, the petitions and the signatures on them shall be invalid for all purposes. The invalidity of one or more signatures on a petition page shall not be cause to invalidate the entire petition page. If the circulators of the petitions fail to file within the nine-month period provided in subdivision 6, the petitions and the signatures on them shall be invalid for all purposes.

2. That § 24.2-234 of the Code of Virginia is repealed.