

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 873

An Act to amend and reenact §§ 15.1-644, 22.1-57.3, 24.2-226, 24.2-227, and 24.2-228 of the Code of Virginia, relating to vacancies in elected school boards.

[H 289]

Approved April 9, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-644, 22.1-57.3, 24.2-226, 24.2-227, and 24.2-228 of the Code of Virginia are amended and reenacted as follows:

§ 15.1-644. Department of education.

The ~~Department~~ *department* of education shall consist of the county school board, the division superintendent of schools and the officers and employees thereof. Except as herein otherwise provided, the county school board and the division superintendent of schools shall exercise all the powers conferred and perform all the duties imposed upon them by general law. In addition the parks and playgrounds shall be under the supervision and control of the ~~Department~~ *department* of education. Except for the initial elected board which shall consist of five members, the county school board shall be composed of not less than three nor more than nine members; however, there shall be at least one school board member elected from each of the county's magisterial or election districts. Such members shall be elected by popular vote from election districts coterminous with the election districts for the board of county supervisors. The exact number of members shall be determined by the board of county supervisors. Elections of school board members shall be held to coincide with the elections of members of the board of county supervisors at the regular general election in November. The terms of office for the county school board members shall be the same as the terms of the members of the board of county supervisors and shall commence on January 1 following their election.

A vacancy in the office of school board member shall be filled pursuant to §§ 24.2-226 and ~~24.2-227~~ 24.2-228.

In order to have their names placed on the ballot, all candidates shall be nominated only by petition as provided by general law pursuant to § 24.2-506.

The county school board may also appoint a resident of the county to cast the deciding vote in case of a tie vote of the school board as provided in § 22.1-75. The tie breaker, if any, shall be appointed for a four-year term whether appointed to fill a vacancy caused by expiration of term or otherwise.

The chairman of the county school board shall for the purpose of appearing before the board of county supervisors under the provisions of § 15.1-636 be considered head of this department, unless some other person in the department shall be designated by the school board for such purpose.

§ 22.1-57.3. Election of school board members.

A. If a majority of the qualified voters voting in such referendum vote in favor of changing the method of selecting school board members to direct election by the voters, then the members of the school board shall be elected by popular vote. Elections of school board members in a county, city, or town shall be held to coincide with the elections for members of the governing body of the county, city, or town at the regular general election in November in the case of a county or the regular general election in May in the case of a city or town. In no event shall any election of school board members take place prior to 1994.

B. The initial elected board shall consist of the same number of members as the appointed school board it replaces, and the members shall be elected from the established county or municipal election districts, at large, or a combination thereof, on the same basis as the school board previously was appointed. If the appointed school board being replaced has not been appointed either on an at-large basis or on the basis of the established county or municipal election districts, or a combination thereof, the members shall be elected at large unless the governing body of the county, city, or town provides for the election of school board members on the basis of the established county or municipal election districts. If the appointed school board being replaced has been appointed at large, the governing body of the county, city, or town may establish school election districts for the election of school board members. The governing body may provide for a locality-wide district, one or more districts comprised of a part of the locality, or any combination thereof, and for the apportionment of one or more school board members to any district.

The terms of the members of the elected school board for any county, city, or town shall be the same as the terms of the members of the governing body for the county, city, or town. In any locality in which both the school board and the governing body are elected from election districts, as opposed to being elected wholly on an at-large basis, the elections of the school board member and governing body member from each specific district shall be held simultaneously except as otherwise provided in

§ 22.1-57.3:1.

At the first election for members of the school board, so many members shall be elected as there are members to be elected at the regular election for the governing body. At each subsequent regular election for members of the governing body, the same number of members of the school board shall be elected as the number of members to be elected at the regular election to the governing body. However, if the number of members on the school board differs from the number of members of the governing body, the number of members elected to the school board at the first and subsequent general election shall be either more or less than the number of governing body members, as appropriate, to the end that the number of members on the initial elected school board is the same as the number of members on the appointed board being replaced.

Except as provided in § 22.1-57.3:1, the terms of the members of the school board shall be staggered only if the terms of the members of the governing body are staggered. If there are more, or fewer, members on the school board than on the governing body, the number of members to be elected to the school board at the first and subsequent election for school board members shall be the number required to establish the staggered term structure so that (i) a majority of the members of the school board is elected at the same time as a majority of the members of the governing body; (ii) if one-half of the governing body is being elected and the school board has an even number of members, one-half of the members of the school board is elected; (iii) if one-half of the governing body is being elected and the school board has an odd number of members, the majority by one member of the school board is elected at the first election and the remainder of the school board is elected at the second election; or (iv) if a majority of the members of the governing body is being elected and the school board has an even number of members, one-half of the members of the school board is elected.

If the school board is elected at large and the terms of the members of the school board are staggered, the school board members to be replaced at the first election shall include all appointed school board members whose appointive terms are scheduled to expire on December 31 next following the first election of county school board members, or on June 30 next following the first election of city or town school board members. If the number of school board members whose appointive terms are so scheduled to expire is zero or less than the number of school board members to be elected at the first election, the appointed school board members to be replaced at the first election shall also include those whose appointive terms are scheduled to expire next subsequent to the date on which the terms of office of the first elected school board members will commence. If the appointive terms of more than one school board member are scheduled to expire simultaneously, but less than all of such members are to be replaced at the first election, then the identity of such school board member or members to be replaced at the first election shall be determined by a drawing held by the county or city electoral board at least ten days prior to the last day for a person to qualify as a candidate for school board member.

In any case in which school board members are elected from election districts, as opposed to being elected from the county, city, or town at large, the election districts for the school board shall be coterminous with the election districts for the county, city, or town governing body, except as may be specifically provided for the election of school board members in a county, city, or town in which the governing body is elected at large.

C. The terms of office for the school board members shall commence on January 1 following their election in the case of a county and on July 1 following their election in the case of a city or town. On December 31 following the first election of county school board members, or on June 30 in the case of a city or town school board, the terms of office of the members of the school board in office through appointment shall expire and the school board selection commission, if there is one, shall be abolished. If the entire school board is not elected at the first election of school board members, only the terms of the appointed members being replaced shall so expire and the terms of the appointed members being replaced at a subsequent election shall continue or be extended to expire on December 31 or June 30, as appropriate, of the year of the election of the school board members replacing them.

D. *Except as otherwise provided herein, a vacancy in the office of any elected school board member shall be filled pursuant to §§ 24.2-226 and ~~24.2-227~~ 24.2-228. In any county that has adopted the urban county executive form of government and that has adopted an elected school board, any vacancy on the elected school board shall be filled in accordance with the procedures set forth in § 15.1-729, mutatis mutandis. Notwithstanding any provision of law or charter to the contrary, if no candidates file for election to a school board office and no person who is qualified to hold the office is elected by write-in votes, a vacancy shall be deemed to exist in the office as of January 1, in the case of a county school board, or July 1, in the case of a city or town school board, following the general election. For the purposes of this subsection and Article 6 (§ 24.2-225 et seq.) of Chapter 2 of Title 24.2, local school boards comprised of elected and appointed members shall be deemed elected school boards.*

E. In order to have their names placed on the ballot, all candidates shall be nominated only by petition as provided by general law pursuant to § 24.2-506.

F. For the purposes of this section, the election and term of the mayor or chairman of the board of supervisors shall be deemed to be an election and term of a member of the governing body of the municipality or county, respectively, whether or not the mayor or chairman is deemed to be a member

of the governing body for any other purpose.

G. No employee of a school board shall be eligible to serve on the board with whom he is employed.

§ 24.2-226. Election to fill vacancy.

A. A vacancy in any elected constitutional or 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 unless provided otherwise by statute or charter. 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 fifteen 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 officers and city constitutional officers or in May in the case of other city and town officers. 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. 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 sixty 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.

§ 24.2-227. Interim appointment by court until vacancy filled by election for certain offices.

When a vacancy occurs in any constitutional or local elected office other than a local governing body *or an elected school board*, a majority of the judges of the judicial circuit for the county or city in which it occurs shall make an interim appointment to the office until the vacancy can be filled by special election. The senior judge shall make the appointment if a majority of the judges cannot agree. The chief or senior deputy, if there is one in the office, shall perform all the duties of the office until the person appointed to fill the vacancy has qualified. The person so appointed shall hold office until the qualified voters fill the vacancy by election and the person so elected has qualified.

§ 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 thirty days of the office becoming vacant shall appoint a qualified voter of the election district in which the vacancy occurred to fill the vacancy. If a majority of the remaining members cannot agree, or do not act, the judges of the circuit court of the county or city shall make the appointment. The person so appointed in a county or city, or a town with a population greater than 3,500, shall hold office until the qualified voters fill the vacancy by special election pursuant to § 24.2-226 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.*