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SENATE BILL NO. 311

Offered January 11, 2012

Prefiled January 10, 2012

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 sections numbered 3.10 and 3.11, relating to council; elections.

Patron—Blevins

Referred to Committee on Local Government

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 sections numbered 3.10 and 3.11 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(a) Any member of the council who is indicted for a felony shall be suspended from office until the indictment is withdrawn or quashed or he is tried and acquitted, and any member of the council who shall have been convicted of a felony while in office shall thereby forfeit his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) *Neither the city council nor any of its members shall direct or request 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. Any council member violating the provisions of this section or voting for a motion, resolution, or ordinance in violation of this section shall be guilty of a Class 3 misdemeanor and upon conviction thereof shall forfeit office as a council member.*

(c) A councilman shall forfeit office if he/she:

1. Violates any provision of the City Charter,
2. No longer resides in the ward from which he/she was elected,
3. Is convicted of a crime involving moral turpitude, or
4. Fails to pay all annual real estate taxes, and penalty and interest if any is due, for any fiscal year by the following December 31 or fails to pay the annual personal property taxes, and penalty and interest if any is due, for any fiscal year by December 31 of the year in which they are due.

If forfeiture occurs, the council shall notify the offending councilman of the alleged forfeiture offense during open council sessions and in writing. A copy of the written offense shall also be delivered to the City Attorney for review. A hearing regarding the forfeiture shall be held during open sessions of the next regularly scheduled council meeting. The forfeiture shall be stated for the record. The offending councilman shall be given the opportunity to state his/her case. If the forfeiture offense is deemed to be accurate, the offending councilman shall have the opportunity to resign his/her office. If a resignation is not forthcoming, the council shall call for a vote of dismissal.

§ 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 electors qualified to vote in the ward which such member serves, or, in the case of the Mayor, by the electors 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 of a successor of the Council member or Mayor sought to be removed and containing a general statement of the grounds upon which the election of a successor is sought. The petition shall be signed by electors equal in number to at least 15 percent (15%) of the electors of the council member's ward, or, in the case of the Mayor, at least 15 percent (15%) of those electors 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. Each person 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

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59 thereof, and when bound together and offered for filing, such separate papers shall be deemed to
60 constitute one petition with respect to the election of the Council member or members named therein.
61 One of the signers of the petition shall make oath before a proper official that the statements made
62 therein are true, as he/she believes, and upon such separate paper, the circulation of the petition to
63 which the signatures were appended, shall make oath that each signature to such papers is the genuine
64 signature of the person whose name it purports to be, and that it was signed in his/her presence.

65 (c) If it appears that the petition is signed by the requisite percentage of electors, the same shall be
66 accepted as prima facie regular and sufficient, but it shall be subject to summary review as provided in
67 paragraph (d) of this article.

68 (d) A petition, which complies with the requirements of this chapter as to form, number of signers,
69 and manner of execution, shall be accepted as prima facie sufficient. The Circuit Court of Southampton
70 County shall have summary jurisdiction upon complaint of an elector to determine the sufficiency of the
71 petition and the genuineness of the signatures thereon, and the qualifications of the electors signing the
72 same, and may make such order in the matter as justice may require. Such proceedings shall be
73 instituted within 10 days after presentation of the petition, and the burden of proof shall be on the
74 complainant.

75 (e) If the petition shall be sufficient, and if the Council member or members whose removal is sought
76 shall not resign within five days after the sufficiency of the petition has been determined by a judge of
77 the Circuit Court, a judge thereof shall order and fix a day for holding an election for the selection of a
78 successor to each Council member named in said petition, which election shall be held not less than 30
79 nor more than 40 days from the presentation of the petition or from the making of any court thereon.
80 Such judge shall cause publication of notice and all arrangements to be made for holding such election
81 and the same shall be conducted and the result thereof returned and declared in all respects as in other
82 special elections so far as possible.

83 (f) A nomination of a candidate to succeed each Council member sought to be removed shall be
84 made without the intervention of a primary election, by filing with the Clerk of the Southampton County
85 Circuit Court at least 10 days prior to such special election a petition proposing a person for such
86 Council seat signed by electors equal in number to at least 15 percent (15%) of the electors of the
87 Council member's ward, or, in the case of the Mayor, at least 15 percent (15%) of those electors
88 City-wide who voted in the most recent gubernatorial election.

89 (g) The ballots at such election shall conform to the following requirements: With respect to each
90 Council member whose removal is sought, the question shall be submitted: "Shall (name of Council
91 member) be removed from City Council by recall?" Beneath the aforesaid question shall be placed the
92 names of the candidates to fill the vacancy. The name of the Council member whose removal is sought
93 shall not appear on the ballot as a candidate to succeed himself/herself.

94 (h) In any such election, if a majority of the votes cast on the question of removal be affirmative, the
95 candidate receiving the highest number of the votes cast shall be declared elected. The Council member
96 whose removal is sought shall thereupon be deemed removed from Council upon the announcement of
97 the official canvass of the election. The successor of any Council member so removed shall fill the
98 vacancy during the unexpired term of his predecessor. In case the person or persons receiving the
99 highest number of votes shall fail to qualify within 10 days after receiving notification of his/her
100 election, the seat shall be deemed vacant. The question of the removal of any Council member shall not
101 be submitted to the electors a second time during the same term, until after the expiration of one year
102 from the determination of the first application or his/her removal. The method of removal herein
103 provided is cumulative and additional to such other methods as may be provided by law.

104 § 3.11. Candidate for Election as Mayor while a Member of Council.

105 In the event any member of the City Council during his/her tenure of office shall desire to be a
106 candidate for the office of mayor, he/she shall be eligible to do so, but shall tender his/her resignation
107 as a member of City Council not fewer than 10 days after filing his/her petition for the office of mayor
108 with such resignation to be effective on June 30 of the election year. Such resignation shall state the
109 Council member's intention to run for the office of mayor and shall require no formal acceptance by the
110 remaining members of the City Council and shall be final and irrevocable as of the date it is tendered.
111 The remaining two-year term of office of any City Council member who has resigned for the stated
112 purpose of running for office of mayor shall be filled as more specifically set forth in § 3.02(a). Such
113 two-year term shall begin on the first day of July next following the date of such election.