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SENATE BILL NO. 523

Senate Amendments in [] - February 9, 2022

Prefiled January 12, 2022

A BILL to amend and reenact § 12.09 of Chapter 640 of the Acts of Assembly of 2011, which provided a charter for the City of Portsmouth, relating to recall of elective officers.

Patron Prior to Engrossment—Senator Lucas

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That § 12.09 of Chapter 640 of the Acts of Assembly of 2011 is amended and reenacted as follows:

§ 12.09. Recall of elective officers.

a. Any elective officer, or officer who has been appointed to fill an elective office, of the city may be removed from office at any time after one year from the beginning of the term of office by the electors qualified to vote for a successor for such incumbent. Such officers can only be removed under this section for (1) 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 or (2) conviction of a misdemeanor that would have a material adverse effect upon the conduct of such office after all rights of appeal have [been] terminated. The procedure to effect such removal shall be as hereinafter set forth.

b. A petition signed by electors equal in number to at least thirty percent (30%) of the electors of the city voting for governor in the last preceding gubernatorial election, and demanding the election of a successor of the officer sought to be removed, shall be filed with the Clerk of the Circuit Court. The petition shall contain a general specific statement of the grounds, as described above, upon which the election of a successor is sought. Such petition may be filed at any time after one year has elapsed since the beginning of the term of the official sought to be removed. Each signer shall include the number and street of his or her residence in the city, and the date he or she signed the petition. 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 election of the successor of the officer or officers named therein. One of the signers of such petition shall make oath before a proper official that the statements made therein are true, as he or she believes, and upon such separate paper, the circulator of the petition to which signatures are appended shall make oath that each signature to such paper is the genuine signature of the person whose name it purports to be, and that it was signed in his or her presence.

c. If it appears that the statement of grounds [as is required in provisions (1) and (2) of subsection a] is adequate and that the petition is signed by the requisite percentage of electors, the same shall be accepted as prima facie regular and sufficient, but it shall be subject to summary review in the same manner as provided in § 12.08 of this Chapter. In addition, a judge of the Circuit Court may hold a hearing and take evidence to determine the sufficiency of the petition.

d. If the petition is sufficient, and if the officer or officers whose removal is sought do not resign within five days after the sufficiency of the petition has been determined by a judge of the Circuit Court, a judge thereof shall thereupon order and fix a day for holding an election for the selection of a successor to each officer named in said petition, which election shall be held not fewer than thirty nor more than forty days from the presentation of the petition or from the making of any court order thereon. The judge shall cause publication of notice and all arrangements to be made for holding such election and the same shall be conducted and the result thereof returned and declared in all respects as in other special elections, in so far as possible.

e. A nomination of a candidate to succeed each officer sought to be removed shall be made without the intervention of a primary election, by filing with the Clerk of the Circuit Court at least ten days prior to such special election, a petition proposing a person for such office, signed by the electors equal in number to at least thirty percent (30%) of the electors of the city voting for governor in the last preceding gubernatorial election.

f. The ballots at such election shall conform to the following requirements: with respect to each officer whose removal is sought, the question shall be submitted: Shall (name of officer) be removed from the office (name of office) by recall? Beneath the aforesaid question shall be placed the names of the candidates to fill the vacancy. The name of the officer whose removal is sought shall not appear on

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59 the ballot as a candidate to succeed him/herself.

60 g. In any such election, if a majority of the votes cast on the question of removal be affirmative, the
61 candidate receiving the highest number of the votes cast shall be declared elected and if more than one
62 council member is removed at such election, the candidates receiving the highest number of votes, equal
63 in number to the number of council members removed, shall be declared elected. The officer whose
64 removal is sought shall thereupon be deemed removed from office upon the announcement of the
65 official canvass of the election. The successor of any officer so removed shall hold office during the
66 unexpired term of his predecessor. In case the person or persons receiving the highest number of votes
67 shall fail to qualify within ten days after receiving notification of election, the office shall be deemed
68 vacant. The question of the removal of any officer shall not be submitted to the electors a second time
69 during the same term of office, until after the expiration of one year from the determination of the first
70 application for removal. The method of removal herein provided is cumulative and additional to such
71 other methods as may be provided by law.