



Special elections to fill vacancies

What does the new legislation mean for you?

Summer 2010

Background

In the 2010 session of the General Assembly, two bills were passed that altered the procedure for filling vacancies within a city or town council or county board of supervisors. The effect of the changes differs depending on the size of a locality, with a greater impact on towns with a population of less than 3,500. The new legislation also certifies the legitimacy of actions taken by appointed interim members of Council.

Before the new bills were passed, it was unclear what voting rights appointed council members have in certain cases. The Constitution of Virginia requires “a recorded affirmative vote of a majority of all members *elected* to the governing body” to pass certain budgetary items. The new legislation answers this question by asserting that appointed members have equal power to the other members. One of the bills requires all vacated positions to be filled by special elections.

For localities with a population of greater than 3,500, the changes affect the timing of when a special election must be held. These localities will still be able to appoint an interim council member, but must hold the special election to fill the seat no later than at the second general election. The special election may be held on any Tuesday, but it is more cost effective to hold a special election on the same day as a general election.

The legislation requires towns with a population of less than 3,500 to hold a special election to fill vacancies. Now, as with larger localities, these towns must hold a special election no later than the second general election to replace the interim appointed member.

Effect on towns with populations greater than 3,500

Towns with a population of less than 3,500 were previously exempt from a requirement to hold a special election if an elected position became vacant, so long as

the remainder of council made an appointment within 45 days of the vacancy. The changes to the law remove this exemption, requiring these towns to hold a special election after appointing a replacement.

To temporarily fill the vacated position, the town may appoint a qualified voter of the election district. This appointment must be made within 45 days of the vacancy. If the appointment is not made or the remaining members cannot agree on a nominee, the judges of the circuit court may make the appointment. This appointed person may only serve until the qualified voters of the jurisdiction fill the seat through a special election.

Within 15 days of the occurrence of the vacancy, the town must petition the circuit court to issue a writ of election to fill the position. The court shall issue an order for a special election which shall be the next general election *unless* the vacancy occurs within 90 days of the next general election. In these cases, the special election must occur no later than the second general election after the vacancy.

New procedure generally

For localities with populations greater than 3,500, the new legislation only changes the timeline for holding a special election to fill a vacancy. To temporarily fill the vacated position, the current council may appoint someone within 45 days of the vacancy. If the council cannot agree or does not act, the circuit court judges may make the appointment. This person will hold office until a special election is held to permanently fill the position.

The timeline for larger localities is the same as the one described above: Within 15 days of the occurrence of the vacancy, the locality must petition the circuit court to issue a writ of election to fill the position. The court shall issue an order for a special election which shall be the next general election *unless* the vacancy occurs within 90 days of the next general election. In these cases, the special election must occur no later than the second general election after the vacancy.

Measuring “the next general election” is defined by the Code. If the locality has local elections in May and

federal/state elections in November, both count as general elections. A few examples may be helpful:

Localities with local elections in May and state and federal elections in November

If a council member resigns on July 2, the special election to fill the seat must be the next general election, which would be in November. (July 2 is outside of the 90 days stipulated by the Code).

If a council member resigns on October 1, the special election to fill the seat must be held no later than the second general election, which would be in May.

Localities with only November elections

If a council member resigns on July 2, the special election must be held on the next general election in November.

If a council member resigns on October 1, the special election must be held the following November.

For a locality of any size, charter provisions that specify the timing of special elections are valid only if the charter provision provides for an election within the time limits set by the new legislation.

Authority of appointed officials

For all localities, the code revisions speak to the authority of appointed members of council. The revised code states that the actions of appointed officials are binding and that appointed officials have the same powers as elected officials. The items that are specifically mentioned in the Constitution of Virginia as measures that require a majority vote of elected members are appropriations of more than \$500, the imposition of taxes, and the authorization to borrow money. The second new piece of legislation attempts to clarify that appointed members' votes on these three items are binding and valid.

If you would like to suggest topics for future publications, contact Mark Flynn at P.O. Box 12164, Richmond, VA 23241, 804/523-8525, mflynn@vml.org