

TO: DPVA
FROM: Georgina Cannan
DATE: April 6, 2016
RE: Special Elections

QUESTION PRESENTED

What are the laws that govern the schedule for special elections in Virginia?

SUMMARY

Special elections create two scheduling issues—the date of the nominating process and the date of the special itself. The nominating process for party candidates in special elections typically has to be done by a method other than a primary, due to the fact that a primary for a special can only happen on a regularly scheduled primary day. Most vacancies occur during recess, particularly when created by a general election, and so special election is typically called by a writ from the Governor.

NOMINATING PROCESS

The process for nominating a candidate in a special election is governed by § 24.2-510, § 24.2-514 – § 24.2-515.1, and § 24.2-536. The provisions in § 24.2-514 state that a primary can only be held to nominate a candidate for a special election on a regularly scheduled primary day. (“A primary is not authorized under this article to nominate presidential electors, nor to nominate candidates to fill vacancies unless the candidates for nomination to fill vacancies are to be voted for on the regular date set by this article for primaries.”).

The schedule for primaries is governed by § 24.2-515 - § 24.2-515.1. Primaries are typically held on the second Tuesday in June, except in presidential years when there is an additional primary on the first Tuesday in March. According to § 24.2-536, if a vacancy occurs less than 75 but more than 45 days before the regular date for holding a primary, the party may choose to nominate a candidate on the date of the regularly schedule primary. The schedule for filing deadlines for such a primary would be dictate by the State Board of Elections.

Alternatively, the party may nominate its candidate by a method other than a primary. The timeline for such a nomination is governed by §24.2-510, which sets deadlines for the completion of the nomination process as follows:

- a) For a special election held at the same time as a November general election, either (i) at least 81 days before the election or (ii) if the special election is held at the second November election after the vacancy occurred, by 7:00 p.m. on the second Tuesday in June before that November election;
- b) For a special election held at the same time as a May general election, by 7:00 p.m. on the first Tuesday in March; or

- c) For a special election held at a time other than a general election, (i) at least 60 days before the election or (ii) within five days of any writ of election or order calling a special election to be held less than 60 days after the issuance of the writ or order.

SPECIAL ELECTION

The process for calling a special election to fill a vacancy in the General Assembly is governed by § 24.2-216. This provision states that for a vacancy that occurs during recess, the Governor has the power to issue a writ of election to dictate the time of the election to fill the vacancy. If the vacancy occurs during session, the Speaker of the House of Delegates or President pro tempore of the Senate, as the case may be, has the power to issue the writ of election. Vacancies may not be filled if they occur within 75 days of the end of the term of the office to be filled.

The potential timing of special elections is governed by § 24.2-682. Every special election must be held on a Tuesday. The code also prohibits special elections within the 55 days prior to a general election or already scheduled special election. The code also prohibits special elections on the same day as a primary. In general, registrars offices need at least 14 days between the issuance of the Writ and the Special Election in order to print ballot materials, etc.