

To: House Committee on Government Operations
From: Teri Corsones, VBA Executive Director
Re: H. 154
Date: March 9, 2021

Thank you for the opportunity to comment on H.154 as introduced, which proposes to “deem a municipal office vacant whenever a municipal officer fails to take a required oath of office within one week of election or appointment”. Comments were solicited from the VBA Municipal Law and Property Law Sections. Following is a summary of comments and other related information that we hope is helpful to the discussion.

Availability of Rule 75 Action. It’s our understanding that the purpose of the bill is to address a situation that arose last year in Wilmington when an elected select board member refused to take his oath of office (or to resign) and there was uncertainty as to what could be done to rectify the situation. Commenters suggested that a Rule 75 action would be appropriate under the circumstances. Rule 75 is available to review any action or failure to act by a Government agency or individual. It involves filing a concise statement of the facts and the relief requested. No responsive pleading need be filed unless the court orders one. Rule 75 actions are to be filed within 30 days of the action or refusal to act. Presumably, a request for expedited action may accompany the request for review. If a similar situation to that in Wilmington were to arise in the future, it was suggested that a Rule 75 action requesting an order of removal would be a reasonable avenue for resolution. Here’s a [LINK](#) to VRCP 75.

Due Process: In the event a Rule 75 action isn’t accepted as a reasonable solution if another elected official were to refuse to take the oath, commenters felt strongly that the proposed amendment lacks basic due process. They felt that a path to removal either has to be through the courts (a Rule 75 action) or through some other process that gives everyone an opportunity to be heard in public. Otherwise, as presently proposed, if someone is elected and for whatever reason fails to take the oath within a week’s time and the office is declared “vacant”, “a summary denial of the will of the people, without remedy” arises.

One Week Timeline: Commenters also felt that the one-week timeline in the proposed amendment was too short a period of time. Many circumstances could prevent someone from taking an oath within seven days, especially during this time of reduced municipal office hours, quarantine periods, and lack of in-person contacts. A month was considered more realistic.

“Fails” versus “Refuses”: The proposed bill refers to a municipal officer failing to take an oath of office, when the situation that prompted the bill had to do with the elected official refusing to take the oath. Since the circumstances for an official’s failure to take an oath could be beyond the official’s control, it was suggested that substituting “refuses” for “fails” would be more limited and more responsive to the situation that led to the proposed bill.

17 V.S.A. 831 reference in Error: The reference to 17 V.S.A. 831 should be a reference to 24 V.S.A. 831.

Specific Municipal Officers: Since 24 V.S.A. 831 refers to specific elected or appointed municipal officers, and only those officers would presumably be impacted by H.154 if enacted, it was suggested that the specific officials be identified in the bill, to avoid confusion about to whom the bill applies. The officials specified in 24 V.S.A. 831 are clerks, select board members, constables, listers and fence viewers, only.