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SENATE BILL NO. 898

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Privileges and Elections
on February 18, 2005)

(Patron Prior to Substitute—Senator Norment)

*A BILL to amend and reenact §§ 2.2-1837 and 24.2-121 of the Code of Virginia, relating to defense of electoral board members and general registrar staff; costs.***Be it enacted by the General Assembly of Virginia:****1. That §§ 2.2-1837 and 24.2-121 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-1837. Risk management plan for public liability.

A. Subject to the approval of the Governor, the Division shall establish a risk management plan, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide:

1. Protection against liability imposed by law for damages resulting from any claim:

a. Made against any state department, agency, institution, board, commission, officer, agent, or employee for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization;

b. Made against participants, other than professional counsel, in student disciplinary proceedings at public institutions of higher education for nonmalicious acts or omissions of any nature in the course and scope of participation in the proceedings; or

c. Resulting from an authorized indemnification agreement entered into by a Virginia public institution of higher education, which agreements the institutions may execute if the Governor (i) considers in advance of execution (a) the institution's analysis of the relevant public benefit and risk of liability, (b) the Division's charge to be assessed against the institution for providing insurance or self-insurance coverage for the claims resulting from the indemnification agreement, and (c) the Office of the Attorney General's comments, and (ii) determines that execution is necessary to further the public's best interests. The indemnification agreement shall limit the institution's total liability to a stated dollar amount and shall notify the contractor that the full faith and credit of the Commonwealth are not pledged or committed to payment of the institution's obligation under the agreement;

2. Protection against tort liability and incidental medical payments arising out of the ownership, maintenance or use of buildings, grounds or properties owned or leased by the Commonwealth or used by state employees or other authorized persons in the course of their employment;

3. For the payment of attorneys' fees and expenses incurred in defending such persons and entities concerning any claim that (i) arises from their governmental employment or authorization, that (ii) arises from their participation in such student disciplinary proceedings, or (iii) is described in any such indemnification agreement, where the Division is informed by the Attorney General's office that it will not provide a defense due to a conflict or other appropriate reason; and

4. For the payment of attorney's fees and expenses awarded to any individual or entity against the Commonwealth, or any department, agency, institution, board, commission, officer, agent, or employee of the Commonwealth for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity, or in reliance upon any constitutional provision, or law of the Commonwealth. It is the obligation of the Division to provide for such indemnification regardless of whether there is a request for or an award of damages associated with the award of such fees and expenses.

a. As a condition of coverage for the payment of attorney's fees and expenses, the department, agency, institution, board, commission, officer, agent, or employee of the Commonwealth shall (i) promptly notify the Division of the commencement of any claim, suit action or other proceeding prior to its settlement, (ii) provide the Division with full nonprivileged information on the matter as requested, and (iii) permit the Division to participate in the investigation of such claim, suit, action or other proceeding. Failure to promptly notify the Division or to reasonably cooperate may, at the Division's discretion, result in no payment or a reduced payment being made.

b. The Division shall set the premium and administrative costs to be paid to it for providing payment of attorney's attorney fees and expenses awarded pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts, at the time and in the manner that the Division in its sole discretion requires. Premiums and administrative costs shall be set to best ensure the financial stability of the plan.

B. Any risk management plan established pursuant to this section shall provide for the establishment of a trust fund or contribution to the State Insurance Reserve Trust Fund for the payment of claims covered under the plan. The funds shall be invested as provided in § 2.2-1806 and interest shall be added to the fund as earned. The trust fund shall also provide for payment of administrative costs,

60 contractual costs, and other expenses related to the administration of such plan.

61 C. The risk management plan for public liability shall be submitted to the Governor for approval
62 prior to implementation.

63 D. The risk management plan established pursuant to this section shall provide protection against
64 professional liability imposed by law ~~for damages as provided in § 24.2-121,~~ resulting from any claim
65 made against a local electoral board, ~~electoral board member or any of its members, any general~~
66 registrar, ~~or any employee of or paid assistant to a registrar~~ for acts or omissions of any nature while
67 acting in an authorized governmental or proprietary capacity and in the course and scope of employment
68 or authorization, ~~regardless of whether or not the civil action requests monetary damages,~~ subject to the
69 limitations of the risk management plan.

70 E. The risk management plan established pursuant to this section shall provide protection against any
71 claim made against any soil and water conservation district, director, officer, agent or employee thereof,
72 (i) arising out of the ownership, maintenance or use of buildings, grounds or properties owned, leased or
73 maintained by any such district or used by district employees or other authorized persons in the course
74 of their employment, or (ii) arising out of acts or omissions of any nature while acting in an authorized
75 governmental or proprietary capacity and in the course and scope of employment or authorization.

76 F. The risk management plan established pursuant to this section shall provide protection against
77 professional liability imposed by law for damages resulting from any claim made against a local school
78 board selection commission or local school board selection commission members for acts or omissions
79 of any nature while acting in an authorized governmental or proprietary capacity and in the course and
80 scope of authorization, subject to the limitations of the risk management plan.

81 G. The risk management plan established pursuant to this section shall provide coverage for any
82 matter that involves or could involve an action or proceeding against a judge, the nature of which is
83 designed to determine whether discipline or other sanction of the judge for malfeasance or misfeasance
84 is appropriate or to otherwise determine the fitness of the judge to hold office or to continue his
85 employment. No coverage or indemnification shall be made pursuant to this subsection when the
86 Supreme Court of Virginia finds that the judge should be censured or removed from office pursuant to
87 Section 10 of Article VI of the Constitution of Virginia or statutes enacted pursuant thereto.

88 H. The risk management plan established pursuant to this section shall provide protection against
89 claims made against chaplains by persons incarcerated in a state correctional facility, a juvenile
90 correctional center, or a facility operated pursuant to the Corrections Private Management Act
91 (§ 53.1-261 et seq.) arising out of volunteer services provided by the chaplains to such incarcerated
92 persons. For the purposes of this subsection, chaplains shall include only those persons, who, at the time
93 any claim may arise, were acting pursuant to, and in compliance with, an agreement between the
94 chaplain or an organization to which the chaplain belongs, and the Department of Corrections, the
95 Department of Juvenile Justice, or an operator of a facility operated pursuant to the Corrections Private
96 Management Act.

97 § 24.2-121. Defense of the electoral board, its members, and the general registrar staff; appointment
98 of counsel.

99 If any electoral board, any of its members, any general registrar, or any employee of or paid assistant
100 to a registrar is made defendant in any civil action arising out of the performance of his official duties,
101 and does not have legal defense provided under applicable insurance coverage, the officer, employee, or
102 assistant may apply to the ~~circuit court of the county or city in which he serves~~ *Virginia Division of*
103 *Risk Management* to assign counsel for his defense in the action. ~~On a showing of good cause, the court~~
104 ~~may issue orders respecting the employment of an attorney or attorneys, including the attorney for the~~
105 ~~Commonwealth, as may be appropriate and fix his compensation. Reimbursement of -In such case, and~~
106 ~~regardless of whether or not the civil action seeks monetary damages, the Division shall obtain one or~~
107 ~~more attorneys to defend such action, which attorney may be the Attorney General, the attorney for the~~
108 ~~Commonwealth of the particular locality served by the defendant, or one or more private attorneys as~~
109 ~~may be appropriate. In the case of any private attorney, the Division shall determine the appropriate~~
110 ~~rate of compensation. All private attorneys' fees and any expenses incurred in the defense of the action~~
111 ~~may also be allowed by the court. Legal fees and expenses shall be paid from the treasury of the county~~
112 ~~or city except in the case of appointment of the attorney for the Commonwealth of Virginia.~~