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**HOUSE BILL NO. 2982**

Offered January 10, 2007

Prefiled January 10, 2007

*A BILL to amend and reenact §§ 2.2-507 and 2.2-510 of the Code of Virginia, relating to employment of special counsel.*

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 Referred to Committee on General Laws
 

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**Be it enacted by the General Assembly of Virginia:****1. That § 2.2-507 of the Code of Virginia is amended and reenacted as follows:**

§ 2.2-507. Legal service in civil matters.

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity. Upon request of the local attorney for the Commonwealth, the Attorney General may provide legal service in civil matters for soil and water conservation district directors or districts.

B. The Attorney General may represent personally or through one of his assistants any of the following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties:

1. Members, agents or employees of the Alcoholic Beverage Control Board;
2. Agents inspecting or investigators appointed by the State Corporation Commission;
3. Agents, investigators, or auditors employed by the Department of Taxation;
4. Members, agents or employees of the State Mental Health, Mental Retardation and Substance Abuse Services Board, the Department of Mental Health, Mental Retardation and Substance Abuse Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Corrections, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;
5. Persons employed by the Commonwealth Transportation Board;
6. Persons employed by the Commissioner of Motor Vehicles;
7. Persons appointed by the Commissioner of Marine Resources;
8. Police officers appointed by the Superintendent of State Police;
9. Game wardens appointed by the Department of Game and Inland Fisheries;
10. Third impartial panel members appointed to hear a teacher's grievance pursuant to § 22.1-312;
11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1; or
12. Any emergency medical service agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties.

Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants any basic or advanced emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity from liability is raised pursuant to § 8.01-225.

C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division or department *being represented* or whose members, officers, inspectors, investigators, or other employees are ~~defended~~ *being represented* pursuant to this section. Notwithstanding any provision of this section to

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59 the contrary, the Supreme Court may employ its own counsel in any matter arising out of its official  
60 duties in which it, or any justice, is a party.

61 § 2.2-510. Employment of special counsel generally.

62 No special counsel shall be employed for or by the Governor or any state department, institution,  
63 division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of  
64 any circuit court or district court except in the following cases:

65 1. ~~Where~~*When the Governor determines that*, because of the nature of the legal service to be  
66 performed, the Attorney General's office is unable to render such service, ~~then the Governor after issuing~~  
67 *shall issue* an exemption order stating with particularity the facts and reasons ~~upon which he bases his~~  
68 *leading to the conclusion that the Attorney General's office is unable to render such service.* ~~The~~  
69 *Governor may then* employ special counsel to render such service as ~~the Governor~~ he may deem  
70 necessary and proper. *The compensation for such special counsel shall be paid out of the funds*  
71 *appropriated for the administration of the board, commission, division, or department to be represented*  
72 *or whose members, officers, inspectors, investigators, or other employees are to be represented pursuant*  
73 *to this section.*

74 2. In cases of legal services in civil matters to be performed for the Commonwealth, where it is  
75 impracticable or uneconomical for the Attorney General to render such service, he may employ special  
76 counsel whose compensation shall be paid out of the appropriation for the Attorney General's office.

77 3. In cases of legal services in civil matters to be performed for any state department, institution,  
78 division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of  
79 any circuit court or district court where it is impracticable or uneconomical for the Attorney General's  
80 office to render such service, special counsel may be employed but only *as set forth in subsection C*  
81 *§ 2.2-507*, upon the written recommendation of the Attorney General, who shall approve all requisitions  
82 drawn upon the Comptroller for warrants as compensation for such special counsel before the  
83 Comptroller shall have authority to issue such warrants.

84 4. In cases where the Attorney General certifies to the Governor that it would be improper for the  
85 Attorney General's office to render legal services due to a conflict of interests, or that he is unable to  
86 render certain legal services, the Governor may employ special counsel or other assistance to render  
87 such services as may be necessary.

88 5. In cases of legal services in civil matters to be performed by the Virginia Office for Protection  
89 and Advocacy pursuant to Chapter 8.1 (§ 51.5-39.1 et seq.) of Title 51.5.

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