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SENATE BILL NO. 411

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Marsden
on February 2, 2012)

(Patron Prior to Substitute—Senator Norment)

A *BILL to amend and reenact §§ 9.1-201 through 9.1-204, 9.1-1110, 16.1-235.1, 16.1-238, 16.1-240, 16.1-274, 16.1-275, 66-10, and 66-23 of the Code of Virginia and to repeal §§ 2.2-223 and 66-11 of the Code of Virginia, relating to the Virginia Fire Services Board, Forensic Science Board, and State Board of Juvenile Justice; powers and duties of the Boards.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-201 through 9.1-204, 9.1-1110, 16.1-235.1, 16.1-238, 16.1-240, 16.1-274, 16.1-275, 66-10, and 66-23 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-201. Powers of Executive Director.

The Executive Director shall have the following powers to:

1. Supervise the administration of the Department;
2. Prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations;

3. Employ such staff as is necessary to carry out the powers and duties of this chapter, within the limits of available appropriations;

4. Accept on behalf of the Department grants from the United States government and agencies and instrumentalities thereof and any other sources. To these ends, the Executive Director shall have the power to execute such agreements in accordance with ~~the~~ any policies of the Virginia Fire Services Board;

5. Do all acts necessary or convenient to carry out the purpose of this chapter and to assist the Board in carrying out its responsibilities and duties;

6. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth;

7. Appoint a director of fire services training;

8. Receive funds as appropriated by the General Assembly collected pursuant to § 38.2-401, on an annual basis to be used as provided in subsection C of § 38.2-401;

9. Administer the Thermal Imaging Camera Grant Funds established pursuant to § 9.1-205; and

10. Administer the provisions of the Statewide Fire Prevention Code (§ 27-94 et seq.).

§ 9.1-202. Virginia Fire Services Board; membership; terms; compensation.

A. The Virginia Fire Services Board (the Board) is established as a policy board within the meaning of § 2.2-2100 in the executive branch of state government. The Board shall consist of 15 members to be appointed by the Governor as follows: a representative of the insurance industry; two members of the general public with no connection to the fire services, one of whom shall be a representative of those industries affected by SARA Title III and OSHA training requirements; and one member each from the Virginia Fire Chiefs Association, the Virginia State Firefighters Association, the Virginia Professional Fire Fighters, the Virginia Fire Service Council, the Virginia Fire Prevention Association, the Virginia Chapter of the International Association of Arson Investigators, the Virginia Municipal League, and the Virginia Association of Counties, and a member of the Virginia Society of Fire Service Instructors who is a faculty member who teaches fire science at a public institution of higher education. Of these appointees, at least one shall be a volunteer firefighter. The State Fire Marshal, the State Forester, and a member of the Board of Housing and Community Development, appointed by the chairman of that Board shall also serve as members of the Board.

Each of the organizations represented shall submit at least three names for each position for the Governor's consideration in making these appointments.

B. Members of the Board appointed by the Governor shall serve for terms of four years. An appointment to fill a vacancy shall be for the unexpired term. No appointee shall serve more than two successive four-year terms but neither shall any person serve beyond the time he holds the office or organizational membership by reason of which he was initially eligible for appointment.

C. The Board annually shall elect its chairman and vice-chairman from among its membership and shall adopt rules of procedure.

D. ~~Members of the Board shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in § 2.2-2825. Funding for the compensation and costs of expenses of the members shall be provided from the Fire Programs Fund established pursuant to~~

60 § 38.2-401.

61 *E. The Board shall meet no more than four times each calendar year. The Secretary of Public Safety*
62 *may call a special meeting of the Board should circumstances dictate. A majority of the current*
63 *membership of the Board shall constitute a quorum for all purposes.*

64 § 9.1-203. Powers and duties of Virginia Fire Services Board; limitation.

65 A. The Board shall have the responsibility for promoting the coordination of the efforts of fire
66 service organizations at the state and local levels. To these ends, it shall have the following powers and
67 duties to:

68 1. ~~Establish a process, involving state and local agencies, public and private, for setting priorities for~~
69 ~~implementing~~ *Ensure the development and implementation of the Virginia Fire Prevention and Control*
70 *Plan and coordinating the activities of state and local agencies, public and private, in implementing the*
71 *Plan;*

72 2. ~~Develop~~ *Review and approve* a five-year statewide plan for fire education and training;

73 3. ~~Establish criteria for~~ *Approve the criteria for and* disbursement of any grant funds received from
74 the federal government and any agencies thereof and any other source and to disburse such funds in
75 accordance therewith;

76 4. Provide technical assistance and advice to local fire departments, other fire services organizations,
77 and local governments *through Fire and Emergency Medical Services studies done in conjunction with*
78 *the Department of Fire Programs;*

79 5. ~~Develop and recommend~~ *Advise the Department of Fire Programs on and adopt* personnel
80 standards for fire services personnel;

81 6. ~~Develop and implement a~~ *Advise the Department of Fire Programs on the Commonwealth's*
82 *statewide plan for the collection, analysis, and reporting of data relating to fires in the Commonwealth;*
83 *utilizing appropriate resources of other state agencies when deemed proper by the Board;*

84 7. Make recommendations to the ~~Governor and General Assembly~~ *Secretary of Public Safety*
85 concerning legislation affecting fire prevention and protection and fire services organizations in Virginia;

86 8. Evaluate all ~~state programs or functions which have a bearing on~~ fire prevention and protection
87 *programs* and to make to the appropriate government officials any recommendations deemed necessary
88 to improve the level of fire prevention and protection in the Commonwealth;

89 9. ~~Provide training and information to localities relative to~~ *Advise the Department of Fire Programs*
90 *on the Statewide Fire Prevention Code; and*

91 10. ~~Study and develop~~ *Investigate* alternative means of ~~providing~~ financial support for volunteer fire
92 departments and to ~~make appropriate recommendations advise jurisdictions~~ regarding the implementation
93 of such alternatives;

94 11. ~~Conduct training schools for fire service personnel in various areas of the Commonwealth; and~~

95 12. ~~Render assistance to local fire departments and volunteer fire companies in training firefighters.~~

96 B. Except for those policies established in § 38.2-401, compliance with the provisions of § 9.1-201
97 and this section and any policies or guidelines enacted pursuant thereto shall be optional with, and at the
98 full discretion of, any local governing body and any volunteer fire department or volunteer fire
99 departments operating under the same corporate charters.

100 § 9.1-204. Fire service training facilities; allocation of funds therefor.

101 A. At the beginning of each fiscal year, the ~~Board~~ *Department of Fire Programs, after approval by*
102 *the Board,* may allocate available funds to counties, cities, and towns within the Commonwealth for the
103 purpose of assisting such counties, cities, towns and volunteer fire companies in the construction,
104 improvement, or expansion of fire service training facilities.

105 B. Available funds shall be allocated at the discretion of the Board *through the Executive Director of*
106 *the Department of Fire Programs, based upon* on the following:

107 1. The total amount of funds available for distribution;

108 2. Financial participation by counties, cities, towns, and volunteer fire companies, any such
109 participation being optional on the part of the locality or the particular volunteer fire company; *and*

110 3. Anticipated use of such facilities by the Commonwealth, its subdivisions, or volunteer fire
111 companies.

112 C. Such funds shall be distributed to the counties, cities, and towns pursuant to contracts prepared by
113 the office of *the* Attorney General.

114 D. Allocations of such funds to volunteer fire companies shall not be contingent upon or conditioned
115 in any way upon compliance with the provisions of § 9.1-201 or with any rules, regulations, or
116 guidelines enacted pursuant to the provisions of § 9.1-201.

117 § 9.1-1110. Functions of Forensic Science Board.

118 A. The Board shall have the power and duty to:

119 1. Adopt regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the
120 administration of (i) this chapter or (ii) §§ 18.2-268.6, 18.2-268.9, 19.2-188.1, and 19.2-310.5 and for
121 any provisions of the Code as they relate to the responsibilities of the Department: ~~Any proposed~~

regulations concerning the privacy, confidentiality, and security of criminal justice information or DNA identification shall be submitted for review and comment to any board, commission, or committee or other body that may be established by the General Assembly to regulate the privacy, confidentiality, and security of information collected and maintained by the Commonwealth or any political subdivision thereof;

2. Develop and establish *Review and comment on* program and fiscal standards and goals governing the operations of the Department;

3. Ensure the development of long-range programs and plans for the incorporation of new technologies as they become available;

4. Review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds;

5. Monitor the activities of the Department and its effectiveness in implementing the standards and goals of the Board;

6. Advise the Governor, and Director, and General Assembly on matters relating to the Department and forensic science in general;

74. Review, amend, and approve and comment on recommendations of the Scientific Advisory Committee;

85. Monitor the receipt, administration, and expenditure of all funds and other assistance available for carrying out the purposes of this chapter;

96. Approve Department applications for grants from the United States government or any other source in carrying out the purposes of this chapter and approve of acceptance of any and all donations both real and personal, and grants of money from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. With regard to any grants of money from a governmental or public agency, the Board may delegate or assign the duties under this subdivision to the chairman of the Board who may, with the concurrence of the vice-chairman and in consultation with the Director, make such determinations. Any grants or other donations received pursuant to this section by the Department shall be detailed in the annual report of the Board required by subsection B. The report shall include the identity of the grantor or donor, the nature of the transaction, and the conditions, if any. Any moneys received pursuant to this section shall be deposited in the state treasury to the account of the Department;

107. Monitor all contracts and agreements necessary or incidental to the performance of the duties of the Department and execution of its powers under this chapter, including but not limited to, contracts with the United States, units of general local government or combinations thereof, in Virginia or other states, and with agencies and departments of the Commonwealth; and

118. Recommend actions to foster and promote coordination and cooperation between the Department and the user programs that are served.

B. By November 1 of each year, the Board shall review and make recommendations to the Chairmen of the House Committee on Appropriations, the Senate Committee on Finance, and the Crime Commission Governor and General Assembly concerning any or all of the following:

1. New major programs and plans for the activities of the Department and elimination of programs no longer needed;

2. Policy and priorities in response to agency needs;

3. General fiscal year operational budget and any major changes in appropriated funds;

4. Actions to foster and promote coordination and cooperation between the Department and the user programs which are served;

5. Rules and regulations necessary to carry out the purposes and intent of this chapter; and

6. Any recommendations submitted to the Board or the Director by the Scientific Advisory Committee.

§ 16.1-235.1. Provision of court services; replacement intake officers.

The chief judge may make arrangements for a replacement intake officer from another court service unit to ensure the capability of a prompt response in matters under § 16.1-255 or § 16.1-260 during hours the court is closed. The replacement intake officer shall have all the authority and power of an intake officer of that district when authorized in writing by the appointing authority and by the chief judge of that district. The arrangements shall conform to policy governing the use of replacement intake officers established by the State Board of Juvenile Justice.

§ 16.1-238. Compensation of probation officers, court service staff members and related court service personnel; reimbursement; traveling and other expenses.

The compensation of probation officers and other court service staff members appointed in accordance with subsection B of § 16.1-235 B shall be fixed by the governing body of the city or county in which they serve; in accordance with minimum standards prescribed by the State Board. They shall be paid out of the county or city treasury. One-half of such compensation shall be reimbursed to any

city or county complying with the minimum standards set by the State Board from funds appropriated to the Department. Any funds from the Department of Criminal Justice Services or from other public fund sources outside of the provisions of this law which are used in compensating such personnel shall not be considered state funds.

Compensation of all other probation officers and related court service personnel appointed in accordance with *subsection A of § 16.1-235 A* shall be fixed in accordance with Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. Personnel transferred from local and regional court staffs shall suffer no reduction in pay and shall transfer into the state program all accrued leave and other benefits allowable under Chapter 29 of Title 2.2. Probation officers and related court service personnel appointed in accordance with *subsection A of § 16.1-235 A* shall be paid necessary traveling and other expenses incurred in the discharge of their duties.

The salary and expenses provided for personnel appointed in accordance with *subsection A of § 16.1-235 A* shall be paid by the Commonwealth, and no part shall be paid by or chargeable to any county or city. The governing body of any county or city, however, may add to the compensation of such personnel such an amount as the governing body may appropriate not to exceed ~~fifty~~ 50 percent of the amount paid by the Commonwealth. No such additional amount paid by a local governing body shall be chargeable to the Department of Juvenile Justice nor shall it remove or supersede any authority, control or supervision of the Department.

§ 16.1-240. Citizens advisory council.

A. The governing bodies of each county and city served by a court service unit may appoint one or more members to a citizens advisory council, in total not to exceed ~~fifteen~~ 15 members; and the chief judge of the juvenile and domestic relations district court may appoint one or more members to the advisory council, in total not to exceed five members. The duties of the council shall be as follows:

1. To advise and cooperate with the court upon all matters affecting the working of this law and other laws relating to children, their care and protection and to domestic relations;

2. To consult and confer with the court and director of the court service unit from time to time relative to the development and extension of the court service program;

3. To encourage the member selected by the council to serve on the central advisory council to visit, as often as the member conveniently can, institutions and associations receiving children under this law, and to report to the court from time to time and at least annually in its report made pursuant to subdivision 5 hereof the conditions and surroundings of the children received by or in charge of any such persons, institutions or associations;

4. To make themselves familiar with the work of the court under this law; and

5. To make an annual report to the court and the participating governing bodies on the work of the council.

B. Traveling expenses of the members of the citizens advisory council shall be paid from funds appropriated to the Department of Juvenile Justice in accordance with rules and regulations adopted by the State Board.

C. If the governing body does not exercise its option to appoint a citizens advisory council pursuant to subsection A of this section, the judge of the juvenile and domestic relations district court may appoint an advisory board of citizens, not to exceed ~~fifteen~~ 15 members, who shall perform the same duties as provided in this section.

D. One member selected by each citizens advisory council shall serve on a central advisory council to consult and confer with the Director and other appropriate staff of the Department to assist in carrying out the objectives of the court service program, insofar as possible.

§ 16.1-274. Time for filing of reports; copies furnished to attorneys; amended reports; fees.

A. Whenever any court directs an investigation pursuant to ~~subsection subdivision~~ A of § 16.1-237; or § 16.1-273; or § 9.1-153, or an evaluation pursuant to § 16.1-278.5, the probation officer, court-appointed special advocate, or other agency conducting such investigation shall file such report with the clerk of the court directing the investigation. The clerk shall furnish a copy of such report to all attorneys representing parties in the matter before the court no later than ~~seventy-two~~ 72 hours, and in cases of child custody, 15 days, prior to the time set by the court for hearing the matter. If such probation officer or other agency discovers additional information or a change in circumstance after the filing of the report, an amended report shall be filed forthwith and a copy sent to each person who received a copy of the original report. Whenever such a report is not filed or an amended report is filed, the court shall grant such continuance of the proceedings as justice requires. All attorneys receiving such report or amended report shall return such to the clerk upon the conclusion of the hearing and shall not make copies of such report or amended report or any portion thereof. However, the chief judge of each juvenile and domestic relations district court may provide for an alternative means of copying and distributing reports or amended reports filed pursuant to § 9.1-153.

B. Notwithstanding the provisions of §§ 16.1-69.48:2 and 17.1-275, when the court directs the appropriate local department of social services to conduct supervised visitation or directs the appropriate

local department of social services or court services unit to conduct an investigation pursuant to § 16.1-273 or to provide mediation services in matters involving a child's custody, visitation, or support, the court shall assess a fee against the petitioner, the respondent, or both, in accordance with fee schedules established by the appropriate local board of social services when the service is provided by a local department of social services and by the State Board of Juvenile Justice when the service is provided or by a court services unit. The fee schedules shall include (i) standards for determining the paying party's or parties' ability to pay and (ii) a scale of fees based on the paying party's or parties' income and family size and the actual cost of the services provided. The fee charged shall not exceed the actual cost of the service. The fee shall be assessed as a cost of the case and shall be paid as prescribed by the court to the local department of social services, locally operated court services unit or Department of Juvenile Justice, whichever performed the service, unless payment is waived. The method and medium for payment for such services shall be determined by the local department of social services, Department of Juvenile Justice, or the locally operated court services unit that provided the services.

C. When a local department of social services or any court services unit is requested by another local department or court services unit in the Commonwealth or by a similar department or entity in another state to conduct an investigation involving a child's custody, visitation or support pursuant to § 16.1-273 or, in the case of a request from another state pursuant to a provision corresponding to § 16.1-273, or to provide mediation services, or for a local department of social services to provide supervised visitation, the local department or the court services unit performing the service may require payment of fees prior to conducting the investigation or providing mediation services or supervised visitation.

§ 16.1-275. Physical and mental examinations and treatment; nursing and medical care.

The juvenile court or the circuit court may cause any juvenile within its jurisdiction under the provisions of this law to be physically examined and treated by a physician or to be examined and treated at a local mental health center. If no such appropriate facility is available locally, the court may order the juvenile to be examined and treated by any physician or psychiatrist or examined by a clinical psychologist. The Commissioner of Behavioral Health and Developmental Services shall provide for distribution a list of appropriate mental health centers available throughout the Commonwealth. Upon the written recommendation of the person examining the juvenile that an adequate evaluation of the juvenile's treatment needs can only be performed in an inpatient hospital setting, the court shall have the power to send any such juvenile to a state mental hospital for not more than 10 days for the purpose of obtaining a recommendation for the treatment of the juvenile. No juvenile sent to a state mental hospital pursuant to this provision shall be held or cared for in any maximum security unit where adults determined to be criminally insane reside; the juvenile shall be kept separate and apart from such adults. However, the Commissioner of Behavioral Health and Developmental Services may place a juvenile who has been certified to the circuit court for trial as an adult pursuant to § 16.1-269.6 or 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff or the public.

Whenever the parent or other person responsible for the care and support of a juvenile is determined by the court to be financially unable to pay the costs of such examination as ordered by the juvenile court or the circuit court, such costs may be paid according to standards, procedures and rates adopted by the State Board, Department from funds appropriated in the general appropriation act for the Department.

The juvenile court or the circuit court may cause any juvenile within its jurisdiction who is found to be delinquent for an offense that is eligible for commitment pursuant to subdivision A 14 of § 16.1-278.8 or § 16.1-285.1 to be placed in the temporary custody of the Department of Juvenile Justice for a period of time not to exceed 30 days for diagnostic assessment services after the adjudicatory hearing and prior to final disposition of his or her case. Prior to such a placement, the Department shall determine that the personnel, services and space are available in the appropriate correctional facility for the care, supervision and study of such juvenile and that the juvenile's case is appropriate for referral for diagnostic services.

Whenever a juvenile concerning whom a petition has been filed appears to be in need of nursing, medical or surgical care, the juvenile court or the circuit court may order the parent or other person responsible for the care and support of the juvenile to provide such care in a hospital or otherwise and to pay the expenses thereof. If the parent or other person is unable or fails to provide such care, the juvenile court or the circuit court may refer the matter to the authority designated in accordance with law for the determination of eligibility for such services in the county or city in which such juvenile or his parents have residence or legal domicile.

In any such case, if a parent who is able to do so fails or refuses to comply with the order, the juvenile court or the circuit court may proceed against him as for contempt or may proceed against him

306 for nonsupport.

307 § 66-10. Powers and duties of Board.

308 The Board shall have the following powers and duties:

309 1. To develop and establish programmatic and fiscal policies governing the operation of programs
310 and facilities for which the Department is responsible under this law.

311 2. To ensure the development and implementation of a long-range youth services policy.

312 3. To review and comment on all budgets and requests for appropriations for the Department prior to
313 their submission to the Governor and on all applications for federal funds.

314 4. To monitor the activities of the Department and its effectiveness in implementing the policies of
315 the Board.

316 5.4. To advise the Governor; and Director and the General Assembly on matters relating to youth
317 services.

318 6.5. To promulgate such regulations as may be necessary to carry out the provisions of this title and
319 other laws of the Commonwealth administered by the Director or the Department. The Board of Juvenile
320 Justice may adopt such Board of Corrections' regulations and standards as it may deem appropriate. If
321 regulations and standards so adopted are not amended substantively by the Board of Juvenile Justice,
322 such Board need not comply with the provisions of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title
323 2.2.

324 7.6. To ensure the development of programs to educate citizens and elicit public support for the
325 activities of the Department.

326 8.7. To establish length-of-stay guidelines for juveniles indeterminately committed to the Department
327 and to make such guidelines available for public comment.

328 § 66-23. Authority of superintendents with regard to application for operator's licenses and
329 employment certificates.

330 The superintendents of facilities established by the Department shall have the authority,
331 commensurate with that of a parent in like cases, to give consent for those children placed in their
332 respective facilities to (i) application for a motor vehicle operator's license and (ii) issuance of an
333 employment certificate. Such authority shall be exercised in accordance with regulations established by
334 the Board.

335 2. That §§ 2.2-223 and 66-11 of the Code of Virginia are repealed.