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SENATE BILL NO. 323

Offered January 8, 2014

Prefiled January 6, 2014

A *BILL to amend and reenact § 2.2-1837, relating to the establishment of a risk management plan for owners of certain dams.*

Patron—Watkins

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-1837 of the Code of Virginia is 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 in accordance with this subsection.

A Virginia public institution of higher education may execute an indemnification agreement 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. However, no such institution shall be authorized to enter into an indemnification agreement in accordance with this subsection to indemnify any person or entity against damages arising from a sponsored project conducted by such institution. For the purposes of this section, a "sponsored project" is a research, instruction, or service project conducted at a Virginia public institution of higher education pursuant to a grant, cooperative agreement, or other contract;

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 attorney 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 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 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,

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59 result in no payment or a reduced payment being made.

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

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

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

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

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

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

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

96 H. The risk management plan established pursuant to this section shall provide protection against
97 claims made against chaplains by persons incarcerated in a state correctional facility, a juvenile
98 correctional center, or a facility operated pursuant to the Corrections Private Management Act
99 (§ 53.1-261 et seq.) arising out of services provided by the chaplains to such incarcerated persons,
100 regardless of whether such services were provided on a volunteer basis or for compensation. For the
101 purposes of this subsection, chaplains shall include only those persons, who, at the time any claim may
102 arise, were acting pursuant to, and in compliance with, an agreement between the chaplain or an
103 organization to which the chaplain belongs, and the Department of Corrections, the Department of
104 Juvenile Justice, or an operator of a facility operated pursuant to the Corrections Private Management
105 Act.

106 I. *The risk management plan established pursuant to this section shall provide protection against any*
107 *claim made against any owner of land upon which an impounding structure owned, maintained, or*
108 *operated by a soil and water conservation district is situated for liability for damage to the property of*
109 *others or injury to persons, including loss of life resulting from the operation or failure of the*
110 *impounding structure arising out of (i) the ownership of land upon which any impounding structure*
111 *owned, maintained, or operated by the soil and water conservation district is located or (ii) acts or*
112 *omissions of any nature while owner of land upon which an impounding structure owned, maintained,*
113 *or operated by any soil and water conservation district is located. Nothing in this subsection establishes*
114 *or alters any agreement by, or responsibility of, any soil and water conservation district to provide for*
115 *operation or maintenance of any impounding structure.*