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HOUSE BILL NO. 2416

Offered January 19, 2017

A *BILL to amend and reenact § 19.2-13 of the Code of Virginia, relating to special conservators of the peace; authority; insurance.*

Patron—Fowler

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-13 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-13. Special conservators of the peace; authority; jurisdiction; registration; liability of employers; penalty; report.

A. Upon the submission of an application, which shall include the results of the background investigation conducted pursuant to subsection C, from (i) any sheriff or chief of police of any county, city, or town; (ii) any corporation authorized to do business in the Commonwealth; (iii) the owner, proprietor, or authorized custodian of any place within the Commonwealth; or (iv) any museum owned and managed by the Commonwealth, a circuit court judge of any county or city shall appoint special conservators of the peace who shall serve as such for such length of time as the court may designate, but not exceeding four years under any one appointment, during which time the court shall retain jurisdiction over the appointment order, upon a showing by the applicant of a necessity for the security of property or the peace and presentation of evidence that the person or persons to be appointed as a special conservator of the peace possess a valid registration issued by the Department of Criminal Justice Services in accordance with the provisions of subsection C. Upon an application made pursuant to clause (ii), (iii), or (iv), the court shall, prior to entering the order of appointment, transmit a copy of the application to the local attorney for the Commonwealth and the local sheriff or chief of police who may submit to the court a sworn, written statement indicating whether the order of appointment should be granted. However, a judge may deny the appointment for good cause, and shall state the specific reasons for the denial in writing in the order denying the appointment. A judge also may revoke the appointment order for good cause shown, upon the filing of a sworn petition by the attorney for the Commonwealth, sheriff, or chief of police for any locality in which the special conservator of the peace is authorized to serve or by the Department of Criminal Justice Services. Prior to revocation, a hearing shall be set and the special conservator of the peace shall be given notice and the opportunity to be heard. The judge may temporarily suspend the appointment pending the hearing for good cause shown. A hearing on the petition shall be heard by the court as soon as practicable. If the appointment order is suspended or revoked, the clerk of court shall notify the Department of Criminal Justice Services, the Department of State Police, the applicable local law-enforcement agencies in all cities and counties where the special conservator of the peace is authorized to serve, and the employer of the special conservator of the peace.

The order of appointment ~~may~~ shall provide that a special conservator of the peace ~~shall have all the powers, functions, duties, responsibilities and authority of any other conservator of the peace~~ may only perform the duties for which he is qualified as specified on the application pursuant to subsection B. The order of appointment shall provide that such duties shall only be exercised within such geographical limitations as the court may deem appropriate specified by the court, which shall be within the confines of the county, city or town that makes application or on the real property where the corporate applicant is located, or any real property contiguous to such real property, limited, except as provided in subsection F, to the city or county wherein application has been made, ~~whenever and only when~~ such special conservator of the peace is engaged in the performance of his duties as such. The order may provide that the special conservator of the peace shall have the authority to make an arrest outside of such geographical limitations if the arrest results from a close pursuit that was initiated when the special conservator of the peace was within the confines of the area wherein he has been authorized to have the powers and authority of a special conservator of the peace; the order ~~may~~ shall further delineate a geographical limitation or distance beyond which the special conservator of the peace may not effectuate such an arrest that follows from a close pursuit. The order shall require the special conservator of the peace to comply with the provisions of the United States Constitution and the Constitution of Virginia. The order shall not identify the special conservator of the peace as a law-enforcement officer pursuant to § 9.1-101. The order may provide, however, that the special conservator of the peace is a "law-enforcement officer" for the purposes of Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 or Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, but such designation shall not qualify the

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59 special conservator of the peace as a "qualified law-enforcement officer" or "qualified retired
60 law-enforcement officer" within the meaning of the federal Law Enforcement Officer Safety Act, 18
61 U.S.C. § 926(B) et seq., and the order of appointment shall specifically state this. ~~Upon request and for~~
62 ~~good cause shown, the order may also provide that the special conservator of the peace is authorized to~~
63 ~~use the seal of the Commonwealth in a badge or other credential of office as the court may deem~~
64 ~~appropriate. Upon request and for good cause shown, the order may also provide that the special~~
65 ~~conservator of the peace may use the title "police" on any badge or uniform worn in the performance of~~
66 ~~his duties as such.~~ The order may also provide that a special conservator of the peace who has
67 completed the minimum training standards established by the Criminal Justice Services Board, has the
68 authority to affect arrests, using up to the same amount of force as would be allowed to a
69 law-enforcement officer employed by the Commonwealth or any of its political subdivisions when
70 making a lawful arrest. The order shall prohibit blue flashing lights, but upon request and for good
71 cause shown may provide that the special conservator of the peace may use flashing lights and sirens
72 *authorized pursuant to § 46.2-1023* on any vehicle used by the special conservator of the peace when he
73 is in the performance of his duties. Prior to granting an application for appointment, the circuit court
74 shall ensure that the applicant has met the registration requirements established by the Criminal Justice
75 Services Board.

76 B. All applications and orders for appointments of special conservators of the peace shall be
77 submitted on forms developed by the Office of the Executive Secretary of the Supreme Court of
78 Virginia in consultation with the Department of Criminal Justice Services and shall specify the duties for
79 which the applicant is qualified. The applications and orders shall specify the geographic limitations
80 consistent with subsection A.

81 C. No person shall seek appointment as a special conservator of the peace from a circuit court judge
82 without possessing a valid registration issued by the Department of Criminal Justice Services, except as
83 provided in this section. Applicants for registration may submit an application on or after January 1,
84 2004. A temporary registration may be issued in accordance with regulations established by the Criminal
85 Justice Services Board while awaiting the results of a state and national fingerprint search. However, no
86 person shall be issued a valid registration or temporary registration until he has (i) complied with, or
87 been exempted from the compulsory minimum training standards as set forth in this section; (ii)
88 submitted his fingerprints on a form provided by the Department to be used for the conduct of a
89 national criminal records search and a Virginia criminal history records search; (iii) submitted the results
90 of a background investigation, performed by any state or local law-enforcement agency, which may, at
91 its discretion, charge a reasonable fee to the applicant and which shall include a review of the
92 applicant's criminal history records and may include a review of the applicant's school records,
93 employment records, or interviews with persons possessing general knowledge of the applicant's
94 character and fitness for such appointment; and (iv) met all other requirements of this article and Board
95 regulations. No person with a criminal conviction for a misdemeanor involving (a) moral turpitude, (b)
96 assault and battery, (c) damage to real or personal property, (d) controlled substances or imitation
97 controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, (e)
98 prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or (f)
99 firearms, or any felony, or who is required to register with the Sex Offender and Crimes Against Minors
100 Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, or who is prohibited from possessing,
101 transporting, or purchasing a firearm shall be eligible for registration or appointment as a special
102 conservator of the peace. A special conservator of the peace shall report if he is arrested for, charged
103 with, or convicted of any misdemeanor or felony offense or becomes ineligible for registration or
104 appointment as a special conservator of the peace pursuant to this subsection to the Department of
105 Criminal Justice Services and the chief law-enforcement officer of all localities in which he is authorized
106 to serve within three days of such arrest or of becoming ineligible for registration or appointment as a
107 special conservator of the peace. Any appointment for a special conservator of the peace shall be
108 eligible for suspension and revocation after a hearing pursuant to subsection A if the special conservator
109 of the peace is convicted of any offense listed in this subsection or becomes ineligible for registration or
110 appointment as a special conservator of the peace pursuant to this subsection. All appointments for
111 special conservators of the peace shall become void on September 15, 2004, unless they have obtained a
112 valid registration issued by the Department of Criminal Justice Services.

113 D. Each person registered as or seeking registration as a special conservator of the peace shall be
114 covered by evidence of a policy of liability insurance or self-insurance in an amount and with coverage
115 as fixed by the Board *and such amount shall be no less than \$1 million*. Any person who is aggrieved
116 by the misconduct of any person registered as a special conservator of the peace and recovers a
117 judgment against the registrant, which is unsatisfied in whole or in part, may bring an action in his own
118 name against the insurance policy of the registrant.

119 E. Effective July 1, 2015, all persons currently appointed or seeking appointment or reappointment as
120 a special conservator of the peace are required to register with the Department of Criminal Justice

Services, regardless of any other standing the person may have as a law-enforcement officer or other position requiring registration or licensure by the Department. The employer of any special conservator of the peace shall notify the circuit court, the Department of Criminal Justice Services, the Department of State Police, and the chief law-enforcement officer of all localities in which the special conservator of the peace is authorized to serve within 30 days after the date such individual has left employment and all powers of the special conservator of the peace shall be void. Failure to provide such notification shall be punishable by a fine of \$250 plus an additional \$50 per day for each day such notice is not provided.

F. When the application is made by any sheriff or chief of police, the circuit court shall specify in the order of appointment the name of the applicant authorized under subsection A and the geographic jurisdiction of the special conservator of the peace. Such appointments shall be limited to the city or county wherein application has been made. When the application is made by any corporation authorized to do business in the Commonwealth, any owner, proprietor, or authorized custodian of any place within the Commonwealth, or any museum owned and managed by the Commonwealth, the circuit court shall specify in the order of appointment the name of the applicant authorized under subsection A and the specific real property where the special conservator of the peace is authorized to serve. Such appointments shall be limited to the specific real property within the county, city, or town wherein application has been made. In the case of a corporation or other business, the court appointment may also include, for good cause shown, any real property owned or leased by the corporation or business, including any subsidiaries, in other specifically named cities and counties, but shall provide that the powers of the special conservator of the peace do not extend beyond the boundaries of such real property. The clerk of the appointing circuit court shall transmit to the Department of State Police, the clerk of the circuit court of each locality where the special conservator of the peace is authorized to serve, and the sheriff or chief of police of each such locality a copy of the order of appointment that shall specify the following information: the person's complete name, address, date of birth, social security number, gender, race, height, weight, color of hair, color of eyes, firearm authority or limitation as set forth in subsection G, date of the order, and other information as may be required by the Department of State Police. The Department of State Police shall enter the person's name and other information into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. The Department of State Police may charge a fee not to exceed \$10 to cover its costs associated with processing these orders. Each special conservator of the peace so appointed on application shall present his credentials to the chief of police or sheriff or his designee of all jurisdictions where he has conservator powers. If his powers are limited to certain areas of real property owned or leased by a corporation or business, he shall also provide notice of the exact physical addresses of those areas. Each special conservator shall provide to the circuit court a temporary registration letter issued by the Department of Criminal Justice Services to include the results of the background check prior to seeking an appointment by the circuit court. Once the applicant receives the appointment from the circuit court the applicant shall file the appointment order and a copy of the application with the Department of Criminal Justice Services in order to receive his special conservator of the peace registration document. If the court appointment includes any real property owned or leased by the corporation or business in other specifically named cities and counties not within the city or county wherein application has been made, the clerk of the appointing court shall transmit a copy of the order of appointment to (i) the clerk of the circuit court for each jurisdiction where the special conservator of the peace is authorized to serve and (ii) the sheriff or chief of police of each jurisdiction where the special conservator of the peace is authorized to serve.

If any such special conservator of the peace is the employee, agent or servant of another, his appointment as special conservator of the peace shall not relieve his employer, principal or master from civil liability to another arising out of any wrongful action or conduct committed by such special conservator of the peace while within the scope of his employment.

Effective July 1, 2002, no person employed by a local school board as a school security officer, as defined in § 9.1-101, shall be eligible for appointment as a conservator for purposes of maintaining safety in a public school in the Commonwealth. All appointments of special conservators of the peace granted to school security officers as defined in § 9.1-101 prior to July 1, 2002 are void.

G. The court may limit or prohibit the carrying of weapons by any special conservator of the peace initially appointed on or after July 1, 1996, while the appointee is within the scope of his employment as such.

H. The governing body of any locality or the sheriff of a county where no police department has been established may enter into mutual aid agreements with any entity employing special conservators of the peace that is located in such locality for the use of their joint forces and their equipment and materials to maintain peace and good order. Any law-enforcement officer or special conservator of the peace, while performing his duty under any such agreement, shall have the same authority as lawfully

182 conferred on him within his own jurisdiction.

183 *I. No special conservator of the peace shall display or use the word "police" on any uniform, badge,*
184 *credential, or vehicle in the performance of his duties as a special conservator of the peace. Other than*
185 *special conservators of the peace employed by a state agency, no special conservator of the peace shall*
186 *use the seal of the Commonwealth on any uniform, badge, credential, or vehicle in the performance of*
187 *his duties.*