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HOUSE BILL NO. 151

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Militia, Police and Public Safety
on January 26, 2018)

(Patron Prior to Substitute—Delegate Fowler)

*A BILL to amend and reenact § 19.2-13 of the Code of Virginia, relating to special conservators of the peace; authority; insurance.***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 perform only 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 be exercised only 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; however, a court may, in its discretion, specify in the order of appointment additional jurisdictions in which a special conservator of the peace employed by the Shenandoah Valley Regional Airport Commission, the Richmond Metropolitan Transportation Authority, or the Virginia Museum of Fine Arts may exercise his duties. 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

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

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

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

D. Each person registered as or seeking registration as a special conservator of the peace shall be covered by evidence of a policy of (i) personal injury liability insurance, as defined in § 38.2-117; (ii) property damage liability insurance, as defined in § 38.2-118; and (iii) miscellaneous casualty insurance, as defined in subsection B of § 38.2-111, which includes professional liability insurance that provides coverage for any activity within the scope of the duties of a special conservator of the peace as set forth in this section, in an amount and with coverage for each as fixed by the Board, or self-insurance in an amount and with coverage as fixed by the Board. Any person who is aggrieved by the misconduct of any person registered as a special conservator of the peace and recovers a judgment against the

122 registrant, which is unsatisfied in whole or in part, may bring an action in his own name against the
123 insurance policy of the registrant.

124 E. Effective July 1, 2015, all persons currently appointed or seeking appointment or reappointment as
125 a special conservator of the peace are required to register with the Department of Criminal Justice
126 Services, regardless of any other standing the person may have as a law-enforcement officer or other
127 position requiring registration or licensure by the Department. The employer of any special conservator
128 of the peace shall notify the circuit court, the Department of Criminal Justice Services, the Department
129 of State Police, and the chief law-enforcement officer of all localities in which the special conservator of
130 the peace is authorized to serve within 30 days after the date such individual has left employment and
131 all powers of the special conservator of the peace shall be void. Failure to provide such notification
132 shall be punishable by a fine of \$250 plus an additional \$50 per day for each day such notice is not
133 provided.

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

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

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

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

182 H. The governing body of any locality or the sheriff of a county where no police department has

183 been established may enter into mutual aid agreements with any entity employing special conservators of
184 the peace that is located in such locality for the use of their joint forces and their equipment and
185 materials to maintain peace and good order. Any law-enforcement officer or special conservator of the
186 peace, while performing his duty under any such agreement, shall have the same authority as lawfully
187 conferred on him within his own jurisdiction.

188 *I. No special conservator of the peace shall display or use the word "police" on any uniform, badge,*
189 *credential, or vehicle in the performance of his duties as a special conservator of the peace. Other than*
190 *special conservators of the peace employed by a state agency, no special conservator of the peace shall*
191 *use the seal of the Commonwealth on any uniform, badge, credential, or vehicle in the performance of*
192 *his duties. However, upon request and for good cause shown, the order of appointment may provide that*
193 *a special conservator of the peace (i) employed by the Shenandoah Valley Regional Airport Commission*
194 *or the Richmond Metropolitan Transportation Authority may use the word "police" on any badge,*
195 *uniform, vehicle in the performance of his duties or the seal of the Commonwealth on any badge or*
196 *credential in the performance of his duties and (ii) employed by the Virginia Museum of Fine Arts may*
197 *use the word "police" on any badge or uniform worn in the performance of his duties.*