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HOUSE BILL NO. 2791

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on General Laws and Technology
on February 18, 2019)

(Patron Prior to Substitute—Delegate Knight)

A BILL to amend and reenact § 2.2-2901 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-2901.1, relating to the Virginia Personnel Act; appointments, promotions, and tenure based upon merit and fitness; discrimination prohibited.

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-2901 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-2901.1 as follows:

§ 2.2-2901. Appointments, promotions, and tenure based upon merit and fitness.

A. In accordance with the provisions of this chapter and except as otherwise provided by law, all appointments and promotions to and tenure in positions in the service of the Commonwealth shall be based solely upon merit and fitness; ~~to~~. The merit and fitness of applicants or employees shall be ascertained, as far as possible, by the competitive rating of qualifications by the respective appointing authorities.

Persons holding positions in the service of the Commonwealth on July 1, 1952, shall be deemed to be holding their positions as though they had received appointment under the terms of this chapter.

B. Persons who leave the service of the Commonwealth for service in any of the armed forces of the United States shall be entitled to be restored to such positions upon the termination of their service with the armed forces, provided such persons, except for good cause shown, have filed an application for restoration to such positions within 90 calendar days following such termination of military service, accompanied by a certificate attesting that the military duty was satisfactorily performed. Such persons shall thereafter hold such positions as though they had received appointment under the terms of this chapter, except as to any such position which, in the meantime, may have been abolished. Any such former employee returning to, or applying for, employment in the state service, as provided by this section, shall be considered as having at least as favorable a status with reference to this chapter as he would have occupied if his service had been continuous.

C. No establishment of a position or rate of pay, and no change in rate of pay shall become effective except on order of the appointing authority and approval by the Governor. This subsection shall not apply to any position the compensation of which is at a rate of \$1,200 per annum or less.

D. In order to attract and retain professional auditors, accountants and staff members in the service of the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission may establish scales of pay for such positions notwithstanding the provisions of this chapter. Such scales when established and certified to the Department of Human Resource Management and the Comptroller shall be applicable in the stead of the scales established under the personnel plan.

E. The governing boards of public institutions of higher education shall establish policies for the designation of administrative and professional faculty positions at such institutions. Those designations shall be reserved for positions that require a high level of administrative independence, responsibility, and oversight within the organization or specialized expertise within a given field as defined by the governing board. The authority under this subsection to establish policies for the designation of administrative and professional faculty positions shall be granted only to those institutions that meet the conditions prescribed in subsection A of § 23.1-1002.

§ 2.2-2901.1. Employment discrimination prohibited.

A. For the purposes of this section:

"Gender identity" means the gender-related identity, appearance, or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

"Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, or homosexuality.

B. No state agency, institution, board, bureau, commission, council, or instrumentality of the Commonwealth shall discriminate in employment on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, or status as a veteran. This prohibition does not in any way permit or require the lowering of any job requirements, performance standards, or qualifications necessary to successfully perform the duties of the position. The prohibition against discrimination established by this section shall apply to all state agencies, institutions, boards, bureaus, commissions, councils, or instrumentalities of the Commonwealth notwithstanding § 2.2-2905.