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SENATE BILL NO. 1455

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Privileges and Elections
on February 15, 2019)

(Patrons Prior to Substitute—Senators Vogel and Edwards [SB 1311])

*A BILL to amend and reenact §§ 2.2-106, 24.2-102, and 24.2-103 of the Code of Virginia, relating to State Board of Elections; membership; appointment of Commissioner of Elections.***Be it enacted by the General Assembly of Virginia:****1. That §§ 2.2-106, 24.2-102, and 24.2-103 of the Code of Virginia are amended and reenacted as follows:****§ 2.2-106. Appointment of agency heads; disclosure of resumes; severance.**

A. Notwithstanding any provision of law to the contrary, the Governor shall appoint the administrative head of each agency of the executive branch of state government except the:

1. Executive Director of the Virginia Port Authority;
2. Director of the State Council of Higher Education for Virginia;
3. Executive Director of the Department of Game and Inland Fisheries;
4. Executive Director of the Jamestown-Yorktown Foundation;
5. Executive Director of the Motor Vehicle Dealer Board;
6. Librarian of Virginia;
7. Administrator of the Commonwealth's Attorneys' Services Council;
8. Executive Director of the Virginia Housing Development Authority; and
9. Executive Director of the Board of Accountancy; and
10. *Commissioner of Elections of the Department of Elections.*

However, the manner of selection of those heads of agencies chosen as set forth in the Constitution of Virginia shall continue without change. Each administrative head and Secretary appointed by the Governor pursuant to this section shall (i) be subject to confirmation by the General Assembly, (ii) have the professional qualifications prescribed by law, and (iii) serve at the pleasure of the Governor.

B. As part of the confirmation process for each administrative head and Secretary, the Secretary of the Commonwealth shall provide copies of the resumes and statements of economic interests filed pursuant to § 2.2-3117 to the chairs of the House of Delegates and Senate Committees on Privileges and Elections. For appointments made before January 1, copies shall be provided to the chairs within 30 days of the appointment or by January 7 whichever time is earlier; and for appointments made after January 1 through the regular session of that year, copies shall be provided to the chairs within seven days of the appointment. Each appointee shall be available for interviews by the Committees on Privileges and Elections or other applicable standing committee. For the purposes of this section and § 2.2-107, there shall be a joint subcommittee of the House of Delegates and Senate Committees on Privileges and Elections consisting of five members of the House Committee and three members of the Senate Committee appointed by the respective chairs of the committees to review the resumes and statements of economic interests of gubernatorial appointees. The members of the House of Delegates shall be appointed in accordance with the principles of proportional representation contained in the Rules of the House of Delegates. No appointment confirmed by the General Assembly shall be subject to challenge by reason of a failure to comply with the provisions of this subsection pertaining to the confirmation process.

C. For the purpose of this section, "agency" includes all administrative units established by law or by executive order that are not (i) arms of the legislative or judicial branches of government; (ii) institutions of higher education as classified under §§ 22.1-346, 23.1-1100, 23.1-3210, and 23.1-3216; (iii) regional planning districts, regional transportation authorities or districts, or regional sanitation districts; and (iv) assigned by law to other departments or agencies, not including assignments to secretaries under Article 7 (§ 2.2-215 et seq.) of Chapter 2 of this title.

D. The resumes and applications for appointment submitted by persons who are appointed by the Governor pursuant to this section shall be available to the public upon request.

E. Severance benefits provided to any departing agency head, whether or not appointed by the Governor, shall be publicly announced by the appointing authority prior to such departure.

§ 24.2-102. Appointment; terms; Commissioner of Elections; prohibited activities.A. The State Board of Elections is continued and shall consist of ~~three~~ six members appointed by the Governor from the qualified voters of the Commonwealth, subject to confirmation by the General Assembly. In the appointment of the Board, *equal* representation shall be given to each of the political parties having the highest and next highest number of votes in the Commonwealth for Governor at the last preceding gubernatorial election. ~~Two Board members shall be of the political party which east the~~

60 highest number of votes for Governor at that election. When the Governor was not elected as the
61 candidate of a political party, *equal* representation shall be given to each of the political parties having
62 the highest and next highest number of members of the General Assembly at the time of the
63 appointment and two Board members shall be of the political party having the highest number of
64 members in the General Assembly. Each political party entitled to an appointment may make and file
65 recommendations with the Governor for the appointment. Its recommendations shall contain the names
66 of at least ~~three~~ five qualified voters of the Commonwealth. *Appointments shall be made with due*
67 *consideration of geographical representation, and no two Board members shall reside in the same*
68 *congressional district.*

69 *After the initial staggering of terms, Board members shall serve four-year terms beginning February*
70 *1, 1995, and each fourth year thereafter of six years, which shall begin on February 1 of the year of the*
71 *appointment. Vacancies shall be filled for the unexpired terms. No member shall be eligible for more*
72 *than two successive four-year six-year terms. A member appointed for an unexpired term may be*
73 *appointed for the two succeeding four-year six-year terms.*

74 The Governor shall appoint a Commissioner of Elections, who shall receive the salary fixed by law.
75 The Commissioner of Elections may employ the personnel required to carry out the duties imposed by
76 the State Board of Elections.

77 *Each year the Governor shall designate one Board member to be the chair of the Board and one*
78 *Board member to be the vice-chair. The chair and vice-chair shall be members of opposite political*
79 *parties.*

80 No member of the Board shall be eligible to offer for or hold an office to be filled in whole or in
81 part by qualified voters in the Commonwealth. If a member resigns to offer for or hold such office, the
82 vacancy shall be filled as provided in this section.

83 No member of the Board shall serve as the chairman of a state, local, or district level political party
84 committee or as a paid or volunteer worker in the campaign of a candidate for nomination or election to
85 an office filled by election in whole or in part by qualified voters in the Commonwealth.

86 *B. The Board shall appoint a Commissioner of Elections, subject to confirmation by the General*
87 *Assembly, to head the Department of Elections and to act as the principal administrative officer. The*
88 *Commissioner shall be appointed by the Board to a term of four years, which shall begin on July 1 of*
89 *the year following a gubernatorial election. The Commissioner shall be a qualified voter of the*
90 *Commonwealth. Such appointment shall require an affirmative vote of five of the six Board members.*
91 *The Commissioner may be removed by the Board upon an affirmative vote of five of the six Board*
92 *members.*

93 *The Commissioner shall receive the salary fixed by law. He may employ the personnel required to*
94 *carry out the duties required by law and imposed by the Board. The personnel employed shall be*
95 *subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.).*

96 *The Commissioner shall not be eligible to offer for or hold an office to be filled in whole or in part*
97 *by qualified voters in the Commonwealth. His candidacy for or election to such office shall vacate his*
98 *position as Commissioner, and the Board shall fill the vacancy for the unexpired term.*

99 *The Board shall not appoint as Commissioner (i) any person who is the spouse of a member of the*
100 *Board or of a person seeking election to an office or holding an elective office that is filled in whole or*
101 *in part by qualified voters in the Commonwealth; (ii) any person, or the spouse of any person, who is*
102 *the grandparent, parent, sibling, child, or grandchild of a member of the Board; or (iii) any person, or*
103 *the spouse of any person, who is the grandparent, parent, sibling, child, or grandchild of a person who*
104 *is seeking election to an office or holds an elective office that is filled in whole or in part by qualified*
105 *voters in the Commonwealth. The Commissioner shall submit his resignation to the Board on the date*
106 *that any such person files as a candidate for election to an office that is filled in whole or in part by*
107 *qualified voters in the Commonwealth.*

108 *The Commissioner shall not serve as the chairman of a state, local, or district level political party*
109 *committee or as a paid or volunteer worker in the campaign of a candidate for nomination or election*
110 *to an office filled by election in whole or in part by qualified voters in the Commonwealth.*

111 **§ 24.2-103. Powers and duties in general; report.**

112 A. The State Board, through the Department of Elections, shall supervise and coordinate the work of
113 the county and city electoral boards and of the registrars to obtain uniformity in their practices and
114 proceedings and legality and purity in all elections. It shall make rules and regulations and issue
115 instructions and provide information consistent with the election laws to the electoral boards and
116 registrars to promote the proper administration of election laws. Electoral boards and registrars shall
117 provide information requested by the State Board and shall follow (i) the elections laws and (ii) the
118 rules and regulations of the State Board insofar as they do not conflict with Virginia or federal law. The
119 State Board shall post on the Internet within three business days any rules or regulations made by the
120 State Board. Upon request and at a reasonable charge not to exceed the actual cost incurred, the State
121 Board shall provide to any requesting political party or candidate, within three days of the receipt of the

request, copies of any instructions or information provided by the State Board to the local electoral boards and registrars.

B. The State Board, through the Department of Elections, shall ensure that the members of the electoral boards and general registrars are properly trained to carry out their duties by offering training annually, or more often, as it deems appropriate, and without charging any fees to the electoral boards and general registrars for the training. The State Board shall set the training standards for the officers of election and shall develop standardized training programs for the officers of election to be conducted by the local electoral boards and the general registrars. Training of the officers of election shall be conducted and certified as provided by § 24.2-115.2. The State Board shall provide standardized training materials for such training and shall also offer on the Department of Elections website a training course for officers of election. The content of the online training course shall be consistent with the standardized training programs developed pursuant to this section. The State Board shall review the standardized training materials and the content of the online training course every two years in the year immediately following a general election for federal office.

C. The State Board may institute proceedings pursuant to § 24.2-234 for the removal of any member of an electoral board who fails to discharge the duties of his office in accordance with law. The State Board may petition the local electoral board to remove from office any general registrar who fails to discharge the duties of his office according to law. The State Board may institute proceedings pursuant to § 24.2-234 for the removal of a general registrar if the local electoral board refuses to remove the general registrar and the State Board finds that the failure to remove the general registrar has a material adverse effect upon the conduct of either the registrar's office or any election. Any action taken by the State Board pursuant to this subsection shall require a recorded majority vote of the Board.

D. The State Board may petition a circuit court or the Supreme Court, whichever is appropriate, for a writ of mandamus or prohibition, or other available legal relief, for the purpose of ensuring that elections are conducted as provided by law.

E. The Department of Elections shall supervise its own staff to assure that no member of its staff shall serve (i) as the chairman of a political party or other officer of a state-, local-, or district-level political party committee or (ii) as a paid or volunteer worker in the campaign of a candidate for nomination or election to an office filled by election in whole or in part by the qualified voters of the Commonwealth.

F. *The Department of Elections shall employ a Director of Operations. The Director of Operations shall be responsible for managing the day-to-day operations at the Department of Elections and ensuring (i) fulfillment of the Department's mission and responsibilities, (ii) compliance with state and federal election laws and regulations, and (iii) compliance with the Department's business, administrative, and financial policies. This position shall be a full-time classified position subject to the Virginia Personnel Act (§ 2.2-2900 et seq.).*

G. The State Board shall adopt a seal for its use and bylaws for its own proceedings.

H. A telephone call between two members of the Board preparing for a meeting shall not constitute a meeting under the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), provided that no discussion or deliberation takes place that would otherwise constitute a meeting.

I. *The State Board shall submit an annual report to the Governor and the General Assembly on the activities of the State Board and Department of Elections in the previous year. Such report shall be governed by the provisions of § 2.2-608.*

2. That the terms of persons serving as members of the State Board of Elections prior to the effective date of this act shall expire on the effective date of this act.

3. That the initial appointments of members of the State Board of Elections shall be staggered as follows: one member, representing the political party of the Governor, shall be appointed for a term to expire January 31, 2020; one member, representing the political party that had the next highest number of votes in the Commonwealth for Governor at the last preceding gubernatorial election, shall be appointed for a term to expire January 31, 2021; one member, representing the political party of the Governor, shall be appointed for a term to expire January 31, 2022; one member, representing the political party that had the next highest number of votes in the Commonwealth for Governor at the last preceding gubernatorial election, shall be appointed for a term to expire January 31, 2023; one member, representing the political party of the Governor, shall be appointed for a term to expire January 31, 2024; and one member, representing the political party that had the next highest number of votes in the Commonwealth for Governor at the last preceding gubernatorial election, shall be appointed for a term to expire January 31, 2025. After the initial appointments of members of the State Board of Elections pursuant to this enactment, appointments shall be for terms of six years beginning on February 1 of the year of the appointment.

4. That the term of the person serving as the Commissioner of Elections prior to the effective date

183 of this act shall expire on the effective date of this act.

184 5. That the initial appointment of the Commissioner of Elections by the State Board of Elections
185 shall be for a term to expire on June 30, 2022. After the initial appointment of the Commissioner
186 of Elections by the State Board of Elections pursuant to this enactment, the appointment shall be
187 for a term of four years beginning on July 1 of the year following a gubernatorial election.