

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 353

An Act to amend and reenact §§ 24.2-102 and 24.2-103 of the Code of Virginia, relating to State Board of Elections; increasing membership and terms; Commissioner of Elections; role and eligibility; report.

[H 236]

Approved March 12, 2020

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 24.2-102 and 24.2-103 of the Code of Virginia are amended and reenacted as follows:
§ 24.2-102. Appointment; terms; Commissioner of Elections; prohibited activities.**

A. The State Board of Elections is continued and shall consist of ~~three~~ *five* 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, 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~~ *Three* Board members shall be of the political party ~~which~~ *that* cast the highest number of votes for Governor at that election. When the Governor was not elected as the candidate of a political party, representation shall be given to each of the political parties having the highest and next highest number of members of the General Assembly at the time of the appointment and ~~two~~ *three* Board members shall be of the political party having the highest number of members in the General Assembly. Each political party entitled to an appointment may make and file recommendations with the Governor for the appointment. Its recommendations shall contain the names of at least three qualified voters of the Commonwealth. *Appointments shall be made with due consideration of geographical representation, and no two Board members shall reside in the same congressional district.*

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

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

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

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

No member of the Board shall serve as the chairman of a state, local, or district level political party committee or 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 qualified voters in the Commonwealth.

B. *The Governor shall appoint a Commissioner of Elections, subject to confirmation by the General Assembly, to head the Department of Elections and to act as its principal administrative officer. The Commissioner shall be appointed to a term of four years, which shall begin on July 1 of the year following a gubernatorial election. The Commissioner shall be a qualified voter of the Commonwealth.*

The Commissioner shall receive the salary fixed by law. He may employ the personnel required to carry out the duties required by law and imposed by the Board.

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

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

The Commissioner shall not serve as the chairman of a state, local, or district level political party committee or 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 qualified voters in the Commonwealth.

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

A. The State Board, through the Department of Elections, shall supervise and coordinate the work of the county and city electoral boards and of the registrars to obtain uniformity in their practices and proceedings and legality and purity in all elections. It shall make rules and regulations and issue instructions and provide information consistent with the election laws to the electoral boards and registrars to promote the proper administration of election laws. Electoral boards and registrars shall provide information requested by the State Board and shall follow (i) the elections laws and (ii) the rules and regulations of the State Board insofar as they do not conflict with Virginia or federal law. The State Board shall post on the Internet within three business days any rules or regulations made by the State Board. Upon request and at a reasonable charge not to exceed the actual cost incurred, the State 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 State Board shall adopt a seal for its use and bylaws for its own proceedings.

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

2. That the provisions of this act shall become effective on January 1, 2021.

3. That the two members added to the State Board of Elections pursuant to this act shall be appointed for terms of four years, to begin February 1, 2021, and to end on January 31, 2025. One member shall represent the political party of the Governor, and one member shall represent the political party that had the next highest number of votes in the Commonwealth at the last preceding gubernatorial election.