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HOUSE BILL NO. 1035

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 15.2-1626, 15.2-1627.2, 15.2-1627.3, and 15.2-1636.8 of the Code of Virginia, relating attorneys for the Commonwealth; compensation and collection of fees.

Patron—Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-1626, 15.2-1627.2, 15.2-1627.3, and 15.2-1636.8 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-1626. Attorney for the Commonwealth.

The voters in every county and city shall elect an attorney for the Commonwealth unless otherwise provided by general law or special act. The attorney for the Commonwealth shall exercise all the powers conferred and perform all the duties imposed upon such officer by general law. He may perform such other duties, not inconsistent with his office, as the governing body may request. He shall be elected as provided by general law for a term of four years. Every county and city may, with the approval of the Compensation Board, provide for employing compensated assistants to the attorney for the Commonwealth as in the opinion of the Compensation Board may be required, *but in no instance shall staffing or funding levels be determined by reference to the number of charges brought or the number of convictions obtained, nor shall the Compensation Board rely on standards devised or recommended by the attorney for the Commonwealth, law-enforcement agencies, or professional associations representing attorneys for the Commonwealth or law-enforcement officers*. Such assistant or assistants shall be appointed by the attorney for the Commonwealth for a term coterminous with his own. The compensation for such assistants to the attorneys for the Commonwealth shall be as provided for assistants to attorneys for the Commonwealth under § 15.2-1627.1.

§ 15.2-1627.2. Disposition of fees of attorneys for the Commonwealth.

Every such attorney for the Commonwealth shall, however, continue to collect all fees which he may be entitled to receive by law, other than from the Commonwealth and any political subdivision, and shall dispose of the same as in this section provided. ~~One-half of all~~ *The* fees ~~to which attorneys for the Commonwealth are entitled for~~ *collected in consideration of* the performance of official duties or functions~~,~~ *of attorneys for the Commonwealth* shall be paid by them, or such official as may collect the same, ~~not later than the tenth day of the month following their receipt, into the treasuries of their respective counties and cities, and the remaining one-half of all such fees shall be paid by such official as may collect the same~~ into the state treasury, not later than the tenth day of the month following their receipt. *The State Treasurer shall pay to the treasuries of the respective counties and cities of the attorneys for the Commonwealth a proportion of half of all such fees collected by all attorneys for the Commonwealth, as determined by each county or city's crime rate, criminal incident rate, or arrest rate.*

§ 15.2-1627.3. Attorneys for the Commonwealth and city attorneys; in criminal cases; when no costs or fees taxed.

The fees of attorneys for the Commonwealth in all felony and misdemeanor cases in which there is a conviction and sentence not set aside on appeal or a judgment for costs against the prosecutor, and for expenditures made in the discharge of his duties shall be as follows:

For each trial of a ~~single count felony~~ *Class 1 or Class 2 felony* indictment, ~~$40~~ *or other felony that carries a possible penalty of life in prison, except robbery in violation of § 18.2-58, $120.*

For each trial of ~~a multiple count~~ *any other* felony indictment*, or robbery in violation of § 18.2-58,* $40 ~~per count~~*, regardless of the number of counts*.

For each person tried for a misdemeanor in his circuit court, $15, and for each person prosecuted by him before such court of his county or city for a misdemeanor, which he is required by law to prosecute, or upon an indictment found by a grand jury, $15, and in every misdemeanor case so prosecuted the court or judge shall tax in the costs and enter judgment for such misdemeanor fee.

No attorney for the Commonwealth or city attorney shall receive a fee for appearing in misdemeanor cases before a district court notwithstanding any provision of law to the contrary.

No costs or fees shall be taxed for, or in any way allowed to, an attorney for the Commonwealth of any city or county or a city attorney of any city in any case, unless he in person, or by a duly authorized assistant, actually appears and prosecutes the proceedings before the court.

§ 15.2-1636.8. Duties of Board in fixing salaries, expenses, etc.

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All salaries of such officers shall be as hereinafter provided. The expenses and other allowances of all such officers shall be fixed and determined on or before May 1 of each year. The Board shall, no later than the fifteenth day following final adjournment of the General Assembly of Virginia in each session, provide to such officers and the local governing body of each city and county he represents, an estimate of expenses and other allowances to be fixed by the Board for the next fiscal year. The Board shall, at meetings duly called by the chairman, carefully consider the questionnaires and written requests filed as required by § 15.2-1636.7 and consider the work involved in the discharge of the duties of the respective officers, the extent to which such duties are imposed by actions of the local governing body, the amount expended or proposed to be expended by each for clerks, deputies, and other assistants, the efficiency with which the affairs of each such office are conducted, and such other matters as the Board may deem pertinent and material, including the number of local governments served if more than one, including the pay and compensation plan of each political subdivision, if it has one, and the locality's plans for adjustments of salaries and expenses for the ensuing fiscal year, as well as the plan of the Commonwealth for adjustment of state salaries and expenses for such year. The Board shall fix and determine what constitutes a fair and reasonable budget for the participation of the Commonwealth toward the total cost of the office. In its deliberations with respect to any office of an attorney for the Commonwealth, the Board shall not consider whether volunteer assistants are being used in that office. *In determining staffing or funding levels for any office of an attorney for the Commonwealth, the Board shall not consider the number of charges brought or the number of convictions obtained, nor shall the Board rely on standards devised or recommended by the attorney for the Commonwealth, law-enforcement agencies, or professional associations representing attorneys for the Commonwealth or law-enforcement officers. Insofar as the number and types of criminal cases handled by an office of an attorney for the Commonwealth are relevant to staffing or funding levels, the relevant data shall be calculated from population data, crime rates, criminal incident rates, or arrest rates, collected and published by the Virginia State Police or the Federal Bureau of Investigation. In no instance shall the workload of any office of the attorney for the Commonwealth be determined using measures that increase if an attorney for the Commonwealth (i) elects to prosecute a more serious charge, (ii) elects to prosecute additional charges from a single arrest or criminal incident, (iii) obtains convictions rather than dismissing charges or offering reduced charges, or (iv) proceeds with prosecution rather than diversion.* Such budgets, in the aggregate, shall not contemplate state expenditures in excess of the appropriation available to the Board. Prior to holding any such meeting for the fixing of salaries and expenses as provided in this article, ~~ten~~ *10* days' written notice of the time, place, and purpose of such meeting shall be given every officer affected and to the mayor or city manager of the city or to the chairman of the governing body and administrator, executive, or manager of the county affected.

When the salaries, expenses, and other allowances for the several counties and cities have been tentatively fixed by the Board they shall notify the governing body of each city and county of the amounts so fixed. Within ~~thirty~~ *30* days thereafter, but not later, the governing body may file with the Compensation Board any objection it may have to such allowances so fixed. When such objection is filed the Board shall fix a time for a hearing on such objection, of which time the governing body as well as the officer affected shall have at least ~~fifteen~~ *15* days' notice. For the purpose of determining the merits of such protest the governing body may designate two members of such body to serve as additional members of the Compensation Board, and such additional members shall each have one vote on the Board.

The chairman of the Board shall record the salary of each such officer, his clerks, assistants, and deputies, and the allowances made for other items~~,~~ and shall promptly notify each such officer of the same with respect to his office.

In fixing, determining, and recording the salaries of the full-time deputy sheriffs mentioned in § 15.2-1609.2, the Board shall act solely with reference to establishing an aggregate allowance for personal services to the respective sheriffs for such deputy sheriffs. The annual salary of each such full-time deputy sheriff shall be fixed and determined as provided by § 15.2-1609.2.