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SENATE BILL NO. 856

Senate Amendments in [] - January 31, 2020

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

Patron Prior to Engrossment—Senator Ebbin

Referred to Committee on Privileges and Elections

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 [five 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 five-year four-year] terms. A member appointed for an unexpired term may be appointed for the two succeeding [four-year five-year 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

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SB856E

59 *date that any such person files as a candidate for election to an office that is filled in whole or in part*
60 *by qualified voters in the Commonwealth.*

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

64 **§ 24.2-103. Powers and duties in general; report.**

65 A. The State Board, through the Department of Elections, shall supervise and coordinate the work of
66 the county and city electoral boards and of the registrars to obtain uniformity in their practices and
67 proceedings and legality and purity in all elections. It shall make rules and regulations and issue
68 instructions and provide information consistent with the election laws to the electoral boards and
69 registrars to promote the proper administration of election laws. Electoral boards and registrars shall
70 provide information requested by the State Board and shall follow (i) the elections laws and (ii) the
71 rules and regulations of the State Board insofar as they do not conflict with Virginia or federal law. The
72 State Board shall post on the Internet within three business days any rules or regulations made by the
73 State Board. Upon request and at a reasonable charge not to exceed the actual cost incurred, the State
74 Board shall provide to any requesting political party or candidate, within three days of the receipt of the
75 request, copies of any instructions or information provided by the State Board to the local electoral
76 boards and registrars.

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

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

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

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

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

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

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

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

113 **3. That [the terms of persons serving as members of the State Board of Elections prior to the**
114 **effective date of this act shall expire on the effective date of this act.**

115 **4. That the initial appointments of members of the State Board of Elections shall be staggered as**
116 **follows: one member, representing the political party of the Governor, shall be appointed for a**
117 **term to expire January 31, 2022; one member, representing the political party that had the next**
118 **highest number of votes in the Commonwealth at the last preceding gubernatorial election, shall**
119 **be appointed for a term to expire January 31, 2023; one member, representing the political party**
120 **of the Governor, shall be appointed for a term to expire January 31, 2024; one member,**

121 representing the political party that had the next highest number of votes in the Commonwealth at
122 the last preceding gubernatorial election, shall be appointed for a term to expire January 31, 2025;
123 and one member, representing the political party of the Governor, shall be appointed for a term
124 to expire January 31, 2026 the two members added to the State Board of Elections pursuant to
125 this act shall be appointed for terms of four years, to begin February 1, 2021, and to end on
126 January 31, 2025. One member shall represent the political party of the Governor, and one
127 member shall represent the political party that had the next highest number of votes in the
128 Commonwealth at the last preceding gubernatorial election] .

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