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SENATE BILL NO. 371

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Vogel
on February 3, 2022)

(Patron Prior to Substitute—Senator Vogel)

A *BILL to amend and reenact §§ 2.2-106, 2.2-2905, and 24.2-102 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, 2.2-2905, and 24.2-102 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 Wildlife Resources;
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.

§ 2.2-2905. Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;

60 4. Officers elected by popular vote or by the General Assembly or either house thereof;
61 5. Members of boards and commissions however selected;
62 6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of
63 accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and
64 notaries public;
65 7. Officers and employees of the General Assembly and persons employed to conduct temporary or
66 special inquiries, investigations, or examinations on its behalf;
67 8. The presidents and teaching and research staffs of state educational institutions;
68 9. Commissioned officers and enlisted personnel of the National Guard;
69 10. Student employees at institutions of higher education and patient or inmate help in other state
70 institutions;
71 11. Upon general or special authorization of the Governor, laborers, temporary employees, and
72 employees compensated on an hourly or daily basis;
73 12. County, city, town, and district officers, deputies, assistants, and employees;
74 13. The employees of the Virginia Workers' Compensation Commission;
75 14. The officers and employees of the Virginia Retirement System;
76 15. Employees whose positions are identified by the State Council of Higher Education and the
77 boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the
78 Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of
79 Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The
80 Library of Virginia, and approved by the Director of the Department of Human Resource Management
81 as requiring specialized and professional training;
82 16. Employees of the Virginia Lottery;
83 17. Employees of the Department for the Blind and Vision Impaired's rehabilitative manufacturing
84 and service industries who have a human resources classification of industry worker;
85 18. Employees of the Virginia Commonwealth University Health System Authority;
86 19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for
87 such employees shall be subject to the review and approval of the Board of Visitors of the University of
88 Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia
89 Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the
90 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
91 20. In executive branch agencies, *except for the Department of Elections*, the employee who has
92 accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted
93 serving in the capacity of a confidential assistant for policy or administration. An employee serving in
94 either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency
95 may not exceed two employees who serve in this exempt capacity;
96 21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the
97 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);
98 22. Officers and employees of the Virginia Port Authority;
99 23. Employees of the Virginia College Savings Plan;
100 24. Directors of state facilities operated by the Department of Behavioral Health and Developmental
101 Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to
102 § 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure
103 (§ 2.2-3000 et seq.);
104 25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as
105 state employees for purposes of participation in the Virginia Retirement System, health insurance, and
106 all other employee benefits offered by the Commonwealth to its classified employees;
107 26. Employees of the Virginia Indigent Defense Commission;
108 27. Any chief of a campus police department that has been designated by the governing body of a
109 public institution of higher education as exempt, pursuant to § 23.1-809;
110 28. The Chief Executive Officer, agents, officers, and employees of the Virginia Alcoholic Beverage
111 Control Authority; and
112 29. Officers and employees of the Fort Monroe Authority.
113 **§ 24.2-102. Appointment; terms; Commissioner of Elections; prohibited activities.**
114 A. The State Board of Elections is continued and shall consist of ~~five~~ *eight* members appointed by
115 the Governor from the qualified voters of the Commonwealth, subject to confirmation by the General
116 Assembly. In the appointment of the Board, *equal* representation shall be given to each of the political
117 parties having the highest and next highest number of votes in the Commonwealth for Governor at the
118 last preceding gubernatorial election. ~~Three Board members shall be of the political party that cast the~~
119 ~~highest number of votes for Governor at that election.~~ When the Governor was not elected as the
120 candidate of a political party, *equal* representation shall be given to each of the political parties having
121 the highest and next highest number of members of the General Assembly at the time of the

appointment and 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 terms 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.

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.

On or before February 1 of each year, the Chief Justice of the Supreme Court of Virginia shall designate a retired judge of the circuit courts of Virginia to serve as the tie breaker for the Board for a term of one year. The retired judge designated as the tie breaker shall serve ex officio with nonvoting privileges except in the case of a tie vote of the Board. Any vacancy in the position of tie breaker shall be promptly filled in the manner of the original designation for the unexpired term. No person shall serve as the tie breaker for consecutive terms.

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~~ Board 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. *Such appointment shall require an affirmative vote of five of the eight Board members. The Commissioner may be removed by the Board upon an affirmative vote of five of the eight Board members.*

In the event a vacancy occurs in the office of the Commissioner, the Director of Operations at the Department shall be vested with the powers and shall perform all of the duties of the Commissioner until the Board appoints a person to fill the vacancy. Vacancies shall be filled in the manner of the original appointment and shall be for the unexpired term.

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~~ Board 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~~ vacate his position as Commissioner 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.

2. That the provisions of this act shall become effective on January 1, 2023.

3. That the two members of the State Board of Elections who are serving a term that began prior to the effective date of this act and is set to expire January 31, 2025, shall continue to serve for the remainder of their terms.

4. That the terms of the six members of the State Board of Elections who are appointed for terms beginning on February 1, 2023, shall be staggered as follows: two members, one representing the political party of the Governor and one representing the political party that had the next highest number of votes in the Commonwealth for Governor at the last preceding gubernatorial election,

183 shall be appointed for a term of one year, to expire January 31, 2024; two members, one
184 representing the political party of the Governor and one representing the political party that had
185 the next highest number of votes in the Commonwealth for Governor at the last preceding
186 gubernatorial election, shall be appointed for a term of three years, to expire January 31, 2026;
187 and two members, one representing the political party of the Governor and one representing the
188 political party that had the next highest number of votes in the Commonwealth for Governor at
189 the last preceding gubernatorial election, shall be appointed for a term of four years, to expire
190 January 31, 2027. After the initial appointments of members of the State Board of Elections
191 pursuant to this enactment, appointments shall be for terms of four years beginning on February
192 1 of the year of the appointment.