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HOUSE BILL NO. 2369

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegate Berg
on February 9, 2015)

(Patron Prior to Substitute—Delegate Berg)

A BILL to amend and reenact § 19.2-13 of the Code of Virginia, relating to special conservators of the peace, orders of appointment.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-13 of the Code of Virginia is amended and reenacted as follows:

§ 19.2-13. Special conservators of the peace; authority; jurisdiction; registration; bond; liability of employers; penalty; report.

A. Upon the application of (i) any sheriff or chief of police of any county, city, or town; (ii) any corporation authorized to do business in the Commonwealth; (iii) the owner, proprietor, or authorized custodian of any place within the Commonwealth; or (iv) any museum owned and managed by the Commonwealth, a circuit court judge of any county or city shall appoint special conservators of the peace who shall serve as such for such length of time as the court may designate, but not exceeding four years under any one appointment, *during which time the court shall retain jurisdiction over the appointment order*, upon a showing by the applicant of a necessity for the security of property or the peace and presentation of evidence that the person or persons to be appointed as a special conservator of the peace possess a valid registration issued by the Department of Criminal Justice Services in accordance with the provisions of subsection B. However, a judge may deny the appointment for good cause, and shall state the specific reasons for the denial in writing in the order denying the appointment. *A judge also may revoke the appointment order for good cause shown, upon the filing of a sworn petition by the attorney for the Commonwealth, sheriff, or chief of police for any locality in which the special conservator of the peace is authorized to serve or by the Department of Criminal Justice Services. Prior to revocation, a hearing shall be set and the special conservator of the peace shall be given notice and the opportunity to be heard. The judge may temporarily suspend the appointment pending the hearing for good cause shown. A hearing on the petition shall be given precedence on the docket of the court.*

The order of appointment may provide that a special conservator of the peace shall have all the powers, functions, duties, responsibilities and authority of any other conservator of the peace within such geographical limitations as the court may deem appropriate within the confines of the county, city or town that makes application or within the county, city or town where the corporate applicant is located, limited, except as provided in subsection E, to the judicial circuit wherein application has been made, whenever such special conservator of the peace is engaged in the performance of his duties as such. The order may also provide that the special conservator of the peace is a "law-enforcement officer" for the purposes of Article 4 (§ 37.2-808 et seq.) of Chapter 8 of Title 37.2 or Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1. The order may also provide that the special conservator of the peace is authorized to use the seal of the Commonwealth in a badge or other credential of office as the court may deem appropriate. The order may also provide that the special conservator of the peace may use the title "police" on any badge or uniform worn in the performance of his duties as such. The order may also provide that a special conservator of the peace who has completed the minimum training standards established by the Department of Criminal Justice Services, has the authority to affect arrests, using up to the same amount of force as would be allowed to a law-enforcement officer employed by the Commonwealth or any of its political subdivisions when making a lawful arrest. The order also may (a) require the local sheriff or chief of police to conduct a background investigation which may include a review of the applicant's school records, employment records, or interviews with persons possessing general knowledge of the applicant's character and fitness for such appointment and (b) limit the use of flashing lights and sirens on personal vehicles used by the conservator in the performance of his duties. Prior to granting an application for appointment, the circuit court shall ensure that the applicant has met the registration requirements established by the Criminal Justice Services Board.

B. Effective September 15, 2004, no person shall seek appointment as a special conservator of the peace from a circuit court judge without possessing a valid registration issued by the Department of Criminal Justice Services, except as provided in this section. Applicants for registration may submit an application on or after January 1, 2004. A temporary registration may be issued in accordance with regulations established by the Criminal Justice Services Board while awaiting the results of a state and national fingerprint search. However, no person shall be issued a temporary registration until he has (i) complied with, or been exempted from the compulsory minimum training standards as set forth in this section, (ii) submitted his fingerprints on a form provided by the Department to be used for the conduct

60 of a national criminal records search and a Virginia criminal history records search, and (iii) met all
61 other requirements of this article and Board regulations. No person with a criminal conviction for a
62 misdemeanor involving (a) moral turpitude, (b) assault and battery, (c) damage to real or personal
63 property, (d) controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247
64 et seq.) of Chapter 7 of Title 18.2, (e) prohibited sexual behavior as described in Article 7 (§ 18.2-61 et
65 seq.) of Chapter 4 of Title 18.2, or (f) firearms, or ~~(g)~~ for any felony, shall be registered as a special
66 conservator of the peace. *Any appointment for a special conservator of the peace shall be eligible for*
67 *suspension and revocation after a hearing pursuant to subsection A if the special conservator of the*
68 *peace is convicted of any offense listed in subdivisions (a) through (f) or of any felony.* All appointments
69 for special conservators of the peace shall become void on September 15, 2004, unless they have
70 obtained a valid registration issued by the Department of Criminal Justice Services.

71 C. Each person registered as or seeking registration as a special conservator of the peace shall be
72 covered by (i) a cash bond, or a surety bond executed by a surety company authorized to do business in
73 the Commonwealth, in a reasonable amount to be fixed by the Board, not to be less than \$10,000,
74 conditioned upon the faithful and honest conduct of his business or employment; or (ii) evidence of a
75 policy of liability insurance or self-insurance in an amount and with coverage as fixed by the Board.
76 Any person who is aggrieved by the misconduct of any person registered as a special conservator of the
77 peace and recovers a judgment against the registrant, which is unsatisfied in whole or in part, may bring
78 an action in his own name against the bond or insurance policy of the registrant.

79 D. Individuals listed in § 19.2-12, individuals who have complied with or been exempted pursuant to
80 subsection A of § 9.1-141, individuals employed as law-enforcement officers as defined in § 9.1-101
81 who have met the minimum qualifications set forth in § 15.2-1705 shall be exempt from the
82 requirements in subsections A through C. Further, individuals appointed under subsection A and
83 employed by a private corporation or entity that meets the requirements of subdivision (ii) of the
84 definition of criminal justice agency in § 9.1-101, shall be exempt from the registration requirements of
85 subsection A and from subsections B and C provided they have met the minimum qualifications set
86 forth in § 15.2-1705. The Department of Criminal Justice Services shall, upon request by the circuit
87 court, provide evidence to the circuit court of such employment prior to appointing an individual special
88 conservator of the peace. The employing agency shall notify the circuit court within 30 days after the
89 date such individual has left employment and all powers of the special conservator of the peace shall be
90 void. Failure to provide such notification shall be punishable by a fine of \$250 plus an additional \$50
91 per day for each day such notice is not provided.

92 E. When the application is made, the circuit court shall specify in the order of appointment the name
93 of the applicant authorized under subsection A and the geographic jurisdiction of the special conservator
94 of the peace. Court appointments shall be limited to the judicial circuit wherein application has been
95 made. In the case of a corporation or other business, the court appointment may also include, for good
96 cause shown, any real property owned or leased by the corporation or business, including any
97 subsidiaries, in other specifically named cities and counties, but shall provide that the powers of the
98 special conservator of the peace do not extend beyond the boundaries of such real property. Effective
99 July 1, 2004, the clerk of the appointing circuit court shall transmit a copy of the order of appointment
100 that shall specify the following information: the person's complete name, address, date of birth, social
101 security number, gender, race, height, weight, color of hair, color of eyes, firearm authority or limitation
102 as set forth in subsection F, date of the order, and other information as may be required by the
103 Department of State Police. The Department of State Police shall enter the person's name and other
104 information into the Virginia Criminal Information Network established and maintained by the
105 Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. The Department of State Police may
106 charge a fee not to exceed \$10 to cover its costs associated with processing these orders. Each special
107 conservator of the peace so appointed on application shall present his credentials to the chief of police
108 or sheriff or his designee of all jurisdictions where he has conservator powers. If his powers are limited
109 to certain areas owned or leased by a corporation or business, he shall also provide notice of the exact
110 physical addresses of those areas. Each special conservator shall provide a temporary registration letter
111 issued by the Department of Criminal Justice Services prior to seeking an appointment by the circuit
112 court. Once the applicant receives the appointment from the circuit court the applicant shall file the
113 appointment order with the Department of Criminal Justice Services in order to receive his special
114 conservator of the peace photo registration card.

115 If any such special conservator of the peace is the employee, agent or servant of another, his
116 appointment as special conservator of the peace shall not relieve his employer, principal or master, from
117 civil liability to another arising out of any wrongful action or conduct committed by such special
118 conservator of the peace while within the scope of his employment.

119 Effective July 1, 2002, no person employed by a local school board as a school security officer, as
120 defined in § 9.1-101, shall be eligible for appointment as a conservator for purposes of maintaining
121 safety in a public school in the Commonwealth. All appointments of special conservators of the peace

122 granted to school security officers as defined in § 9.1-101 prior to July 1, 2002 are void.

123 F. The court may limit or prohibit the carrying of weapons by any special conservator of the peace
124 initially appointed on or after July 1, 1996, while the appointee is within the scope of his employment
125 as such.