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SENATE BILL NO. 1101

Offered January 9, 2019

Prefiled December 26, 2018

A BILL to amend and reenact §§ 2.2-507 and 2.2-510 of the Code of Virginia, relating to Office of the Attorney General; representation of members of the General Assembly for violations of the Virginia Freedom of Information Act.

Patron—DeSteph

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:**1. That §§ 2.2-507 and 2.2-510 of the Code of Virginia are amended and reenacted as follows:****§ 2.2-507. Legal service in civil matters.**

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity. The soil and water conservation district directors or districts may request legal advice from local, public, or private sources; however, upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

B. The Attorney General may represent personally or through one of his assistants any of the following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties:

1. Members, agents, or employees of the Virginia Alcoholic Beverage Control Authority;
2. Agents inspecting or investigators appointed by the State Corporation Commission;
3. Agents, investigators, or auditors employed by the Department of Taxation;
4. Members, agents, or employees of the State Board of Behavioral Health and Developmental Services, the Department of Behavioral Health and Developmental Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Corrections, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;
5. Persons employed by the Commonwealth Transportation Board, the Department of Transportation, or the Department of Rail and Public Transportation;
6. Persons employed by the Commissioner of Motor Vehicles;
7. Persons appointed by the Commissioner of Marine Resources;
8. Police officers appointed by the Superintendent of State Police;
9. Conservation police officers appointed by the Department of Game and Inland Fisheries;
10. Hearing officers appointed to hear a teacher's grievance pursuant to § 22.1-311;
11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;
12. Any emergency medical services agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties;
13. Conservation officers of the Department of Conservation and Recreation; or
14. A person appointed by written order of a circuit court judge to run an existing corporation or company as the judge's representative, when that person is acting in execution of a lawful order of the court and the order specifically refers to this section and appoints such person to serve as an agent of the Commonwealth.

Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants (i) any basic or advanced emergency medical care attendant or technician

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59 possessing a valid certificate issued by authority of the State Board of Health in any civil matter in
60 which a defense of immunity from liability is raised pursuant to § 8.01-225 or (ii) *any member of the*
61 *General Assembly in any civil matter alleging that such member in his official capacity violated the*
62 *Virginia Freedom of Information Act (§ 2.2-3700 et seq.) pursuant to § 2.2-3713 or 2.2-3714.*

63 C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal
64 service to be rendered by him or one of his assistants, he may employ special counsel for this purpose,
65 whose compensation shall be fixed by the Attorney General. The compensation for such special counsel
66 shall be paid out of the funds appropriated for the administration of the board, commission, division, or
67 department being represented or whose members, officers, inspectors, investigators, or other employees
68 are being represented pursuant to this section. Notwithstanding any provision of this section to the
69 contrary, the Supreme Court may employ its own counsel in any matter arising out of its official duties
70 in which it, or any justice, is a party.

71 D. Nothing herein shall limit the powers granted in § 16.1-88.03.

72 **§ 2.2-510. Employment of special counsel generally.**

73 No special counsel shall be employed for or by the Governor or any state department, institution,
74 division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of
75 any circuit court or district court except in the following cases:

76 1. When the Governor determines that, because of the nature of the legal service to be performed,
77 the Attorney General's office is unable to render such service, then the Governor shall issue an
78 exemption order stating with particularity the facts and reasons leading to the conclusion that the
79 Attorney General's office is unable to render such service. The Governor may then employ special
80 counsel to render such service as he may deem necessary and proper. The compensation for such special
81 counsel shall be paid out of the funds appropriated for the administration of the board, commission,
82 division, or department to be represented or whose members, officers, inspectors, investigators, or other
83 employees are to be represented pursuant to this section.

84 2. In cases of legal services in civil matters to be performed for the Commonwealth, where it is
85 impracticable or uneconomical for the Attorney General to render such service, he may employ special
86 counsel whose compensation shall be paid out of the appropriation for the Attorney General's office.

87 3. In cases of legal services in civil matters to be performed for any state department, institution,
88 division, commission, board, bureau, agency, entity, official, *member of the General Assembly*, justice of
89 the Supreme Court, or judge of any circuit court or district court where it is impracticable or
90 uneconomical for the Attorney General's office to render such service, special counsel may be employed
91 but only as set forth in subsection D of § 2.2-507, upon the written recommendation of the Attorney
92 General, who shall approve all requisitions drawn upon the Comptroller for warrants as compensation
93 for such special counsel before the Comptroller shall have authority to issue such warrants.

94 4. In cases where the Attorney General certifies to the Governor that he is unable to render certain
95 legal services, the Governor may employ special counsel or other assistance to render such services as
96 may be necessary.