

SENATE BILL NO. 371

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Vogel

on February 2, 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

26 Governor pursuant to this section shall (i) be subject to confirmation by the General Assembly, (ii) have
27 the professional qualifications prescribed by law, and (iii) serve at the pleasure of the Governor.

28 B. As part of the confirmation process for each administrative head and Secretary, the Secretary
29 of the Commonwealth shall provide copies of the resumes and statements of economic interests filed
30 pursuant to § 2.2-3117 to the chairs of the House of Delegates and Senate Committees on Privileges and
31 Elections. For appointments made before January 1, copies shall be provided to the chairs within 30 days
32 of the appointment or by January 7 whichever time is earlier; and for appointments made after January 1
33 through the regular session of that year, copies shall be provided to the chairs within seven days of the
34 appointment. Each appointee shall be available for interviews by the Committees on Privileges and
35 Elections or other applicable standing committee. For the purposes of this section and § 2.2-107, there
36 shall be a joint subcommittee of the House of Delegates and Senate Committees on Privileges and
37 Elections consisting of five members of the House Committee and three members of the Senate Committee
38 appointed by the respective chairs of the committees to review the resumes and statements of economic
39 interests of gubernatorial appointees. The members of the House of Delegates shall be appointed in
40 accordance with the principles of proportional representation contained in the Rules of the House of
41 Delegates. No appointment confirmed by the General Assembly shall be subject to challenge by reason of
42 a failure to comply with the provisions of this subsection pertaining to the confirmation process.

43 C. For the purpose of this section, "agency" includes all administrative units established by law or
44 by executive order that are not (i) arms of the legislative or judicial branches of government; (ii)
45 institutions of higher education as classified under §§ 22.1-346, 23.1-1100, 23.1-3210, and 23.1-3216;
46 (iii) regional planning districts, regional transportation authorities or districts, or regional sanitation
47 districts; and (iv) assigned by law to other departments or agencies, not including assignments to
48 secretaries under Article 7 (§ 2.2-215 et seq.) of Chapter 2 of this title.

49 D. The resumes and applications for appointment submitted by persons who are appointed by the
50 Governor pursuant to this section shall be available to the public upon request.

51 E. Severance benefits provided to any departing agency head, whether or not appointed by the
52 Governor, shall be publicly announced by the appointing authority prior to such departure.

53 **§ 2.2-2905. Certain officers and employees exempt from chapter.**

54 The provisions of this chapter shall not apply to:

- 55 1. Officers and employees for whom the Constitution specifically directs the manner of selection;
- 56 2. Officers and employees of the Supreme Court and the Court of Appeals;
- 57 3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either
58 house thereof is required or not;
- 59 4. Officers elected by popular vote or by the General Assembly or either house thereof;
- 60 5. Members of boards and commissions however selected;
- 61 6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of
62 accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and
63 notaries public;
- 64 7. Officers and employees of the General Assembly and persons employed to conduct temporary
65 or special inquiries, investigations, or examinations on its behalf;
- 66 8. The presidents and teaching and research staffs of state educational institutions;
- 67 9. Commissioned officers and enlisted personnel of the National Guard;
- 68 10. Student employees at institutions of higher education and patient or inmate help in other state
69 institutions;
- 70 11. Upon general or special authorization of the Governor, laborers, temporary employees, and
71 employees compensated on an hourly or daily basis;
- 72 12. County, city, town, and district officers, deputies, assistants, and employees;
- 73 13. The employees of the Virginia Workers' Compensation Commission;
- 74 14. The officers and employees of the Virginia Retirement System;
- 75 15. Employees whose positions are identified by the State Council of Higher Education and the
76 boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown
77 Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History, the New
78 College Institute, the Southern Virginia Higher Education Center, and The Library of Virginia, and

79 approved by the Director of the Department of Human Resource Management as requiring specialized
80 and professional training;

81 16. Employees of the Virginia Lottery;

82 17. Employees of the Department for the Blind and Vision Impaired's rehabilitative manufacturing
83 and service industries who have a human resources classification of industry worker;

84 18. Employees of the Virginia Commonwealth University Health System Authority;

85 19. Employees of the University of Virginia Medical Center. Any changes in compensation plans
86 for such employees shall be subject to the review and approval of the Board of Visitors of the University
87 of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia
88 Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the
89 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

90 20. In executive branch agencies, except for the Department of Elections, the employee who has
91 accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving
92 in the capacity of a confidential assistant for policy or administration. An employee serving in either one
93 of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed
94 two employees who serve in this exempt capacity;

95 21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the
96 provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

97 22. Officers and employees of the Virginia Port Authority;

98 23. Employees of the Virginia College Savings Plan;

99 24. Directors of state facilities operated by the Department of Behavioral Health and
100 Developmental Services employed or reemployed by the Commissioner after July 1, 1999, under a
101 contract pursuant to § 37.2-707. Such employees shall remain subject to the provisions of the State
102 Grievance Procedure (§ 2.2-3000 et seq.);

103 25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as
104 state employees for purposes of participation in the Virginia Retirement System, health insurance, and all
105 other employee benefits offered by the Commonwealth to its classified employees;

106 26. Employees of the Virginia Indigent Defense Commission;

107 27. Any chief of a campus police department that has been designated by the governing body of a
108 public institution of higher education as exempt, pursuant to § 23.1-809;

109 28. The Chief Executive Officer, agents, officers, and employees of the Virginia Alcoholic
110 Beverage Control Authority; and

111 29. Officers and employees of the Fort Monroe Authority.

112 **§ 24.2-102. Appointment; terms; Commissioner of Elections; prohibited activities.**

113 A. The State Board of Elections is continued and shall consist of ~~five~~ eight members appointed by
114 the Governor from the qualified voters of the Commonwealth, subject to confirmation by the General
115 Assembly. In the appointment of the Board, equal representation shall be given to each of the political
116 parties having the highest and next highest number of votes in the Commonwealth for Governor at the last
117 preceding gubernatorial election. ~~Three Board members shall be of the political party that cast the highest~~
118 ~~number of votes for Governor at that election.~~ When the Governor was not elected as the candidate of a
119 political party, equal representation shall be given to each of the political parties having the highest and
120 next highest number of members of the General Assembly at the time of the appointment ~~and three Board~~
121 ~~members shall be of the political party having the highest number of members in the General Assembly.~~
122 Each political party entitled to an appointment may make and file recommendations with the Governor
123 for the appointment. Its recommendations shall contain the names of at least three qualified voters of the
124 Commonwealth. Appointments shall be made with due consideration of geographical representation, and
125 no two Board members shall reside in the same congressional district.

126 After the initial staggering of terms, Board members shall serve terms of four years, which shall
127 begin on February 1 of the year of the appointment. Vacancies shall be filled for the unexpired terms. No
128 member shall be eligible for more than two successive four-year terms. A member appointed for an
129 unexpired term may be appointed for the two succeeding four-year terms.

130 Each year the Governor shall designate one Board member to be the chair of the Board and one
131 Board member to be the vice-chair. The chair and vice-chair shall be members of opposite political parties.

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

138 No member of the Board shall be eligible to offer for or hold an office to be filled in whole or in
139 part by qualified voters in the Commonwealth. If a member resigns to offer for or hold such office, the
140 vacancy shall be filled as provided in this section.

141 No member of the Board shall serve as the chairman of a state, local, or district level political party
142 committee or as a paid or volunteer worker in the campaign of a candidate for nomination or election to
143 an office filled by election in whole or in part by qualified voters in the Commonwealth.

144 B. ~~The Governor~~ Board shall appoint a Commissioner of Elections, subject to confirmation by the
145 General Assembly, to head the Department of Elections and to act as its principal administrative officer.
146 The Commissioner shall be appointed to a term of four years, which shall begin on July 1 of the year
147 following a gubernatorial election. The Commissioner shall be a qualified voter of the Commonwealth.
148 Such appointment shall require an affirmative vote of five of the eight Board members. The Commissioner
149 may be removed by the Board upon an affirmative vote of five of the eight Board members.

150 In the event a vacancy occurs in the office of the Commissioner, the highest ranking deputy officer
151 at the Department shall be vested with the powers and shall perform all of the duties of the Commissioner
152 until the Board appoints a person to fill the vacancy. Vacancies shall be filled in the manner of the original
153 appointment and shall be for the unexpired term.

154 The Commissioner shall receive the salary fixed by law. He may employ the personnel required
155 to carry out the duties required by law and imposed by the Board.

156 The Commissioner shall not be eligible to offer for or hold an office to be filled in whole or in part
157 by qualified voters in the Commonwealth. His candidacy for or election to such office shall vacate his
158 position as Commissioner, ~~and the Governor shall fill the vacancy for the unexpired term.~~

159 The ~~Governor~~ Board shall not appoint as Commissioner (i) any person who is the spouse of a
160 member of the Board or of a person seeking election to an office or holding an elective office that is filled
161 in whole or in part by qualified voters in the Commonwealth; (ii) any person, or the spouse of any person,
162 who is the grandparent, parent, sibling, child, or grandchild of a member of the Board; or (iii) any person,
163 or the spouse of any person, who is the grandparent, parent, sibling, child, or grandchild of a person
164 seeking election to an office or holding an elective office that is filled in whole or in part by qualified
165 voters in the Commonwealth. The Commissioner shall ~~submit his resignation to the Governor~~ vacate his
166 position as Commissioner on the date that any such person files as a candidate for election to an office
167 that is filled in whole or in part by qualified voters in the Commonwealth.

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

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

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

175 **4. That the terms of the six members of the State Board of Elections who are appointed for terms**
176 **beginning on February 1, 2023, shall be staggered as follows: two members, one representing the**
177 **political party of the Governor and one representing the political party that had the next highest**
178 **number of votes in the Commonwealth for Governor at the last preceding gubernatorial election,**
179 **shall be appointed for a term of one year, to expire January 31, 2024; two members, one**
180 **representing the political party of the Governor and one representing the political party that had**
181 **the next highest number of votes in the Commonwealth for Governor at the last preceding**
182 **gubernatorial election, shall be appointed for a term of three years, to expire January 31, 2026; and**
183 **two members, one representing the political party of the Governor and one representing the political**
184 **party that had the next highest number of votes in the Commonwealth for Governor at the last**
185 **preceding gubernatorial election, shall be appointed for a term of four years, to expire January 31,**

186 2027. After the initial appointments of members of the State Board of Elections pursuant to this
187 enactment, appointments shall be for terms of four years beginning on February 1 of the year of the
188 appointment.

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