

SENATE BILL NO. 506

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education

on February 21, 2024)

(Patron Prior to Substitute--Senator Surovell)

A BILL to amend and reenact §§ 2.2-507, 23.1-1303, and 23.1-1304 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 23.1-102.2, relating to public institutions of higher education; governing boards; duties and powers; legal counsel.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-507, 23.1-1303, and 23.1-1304 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 23.1-102.2 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. The governing

27 board of each public institution of higher education shall be responsible for all decisions relating to the
28 employment of legal counsel for such institution, provided, however, that the Attorney General shall
29 provide legal service for a public institution of higher education only (i) upon the request of the governing
30 board, as defined in § 23.1-100, of such institution; (ii) in the case of any legal settlement involving
31 consideration in excess of \$5 million; or (iii) in accordance with the provisions of subsection D of § 23.1-
32 102.2. Nothing herein shall be construed to prohibit the Attorney General from, upon timely application,
33 intervening as a separate party on behalf of the Commonwealth in any matter, subject to a showing that
34 the Commonwealth has a separate and independent interest in the matter.

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

- 38 1. Members, agents, or employees of the Virginia Alcoholic Beverage Control Authority;
- 39 2. Agents inspecting or investigators appointed by the State Corporation Commission;
- 40 3. Agents, investigators, or auditors employed by the Department of Taxation;
- 41 4. Members, agents, or employees of the State Board of Behavioral Health and Developmental
42 Services, the Department of Behavioral Health and Developmental Services, the State Board of Health,
43 the State Department of Health, the Department of General Services, the State Board of Social Services,
44 the Department of Social Services, the State Board of Local and Regional Jails, the Department of
45 Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole
46 Board, or the Department of Agriculture and Consumer Services;
- 47 5. Persons employed by the Commonwealth Transportation Board, the Department of
48 Transportation, or the Department of Rail and Public Transportation;
- 49 6. Persons employed by the Commissioner of Motor Vehicles;
- 50 7. Persons appointed by the Commissioner of Marine Resources;
- 51 8. Police officers appointed by the Superintendent of State Police;
- 52 9. Conservation police officers appointed by the Department of Wildlife Resources;
- 53 10. Hearing officers appointed to hear a teacher's grievance pursuant to § 22.1-311;

54 11. Staff members or volunteers participating in a court-appointed special advocate program
55 pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;

56 12. Any emergency medical services agency that is a licensee of the Department of Health in any
57 civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged
58 errors or omissions in the discharge of his court-appointed duties;

59 13. Conservation officers of the Department of Conservation and Recreation; or

60 14. A person appointed by written order of a circuit court judge to run an existing corporation or
61 company as the judge's representative, when that person is acting in execution of a lawful order of the
62 court and the order specifically refers to this section and appoints such person to serve as an agent of the
63 Commonwealth.

64 Upon request of the affected individual, the Attorney General may represent personally or through
65 one of his assistants (i) any basic or advanced emergency medical care attendant or technician possessing
66 a valid certificate issued by authority of the State Board of Health in any civil matter in which a defense
67 of immunity from liability is raised pursuant to § 8.01-225 or (ii) any member of the General Assembly
68 in any civil matter alleging that such member in his official capacity violated the Virginia Freedom of
69 Information Act (§ 2.2-3700 et seq.) pursuant to § 2.2-3713 or 2.2-3714.

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

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

79 § 23.1-102.2. Legal counsel; office of general counsel; employment; duties and
80 administration.

81 A. The governing board of each public institution of higher education shall have the authority to
82 hire or retain legal counsel for the provision of all legal services, including to appear, commence,
83 prosecute, or defend any action, suit, matter, cause, or proceeding in any court; to enter, terminate, or alter
84 contracts on behalf of the institution; to purchase and sell real estate and other tangible and intellectual
85 property on behalf of the institution; to audit, supervise, and administer funds appropriated to the
86 institution by governmental and nongovernmental entities; or to otherwise provide legal advice and
87 counsel on questions, legal risks, and opportunities the governing board determines are related to the
88 affairs of the institution. The governing board of each public institution of higher education shall, in
89 consultation with the chief executive officer, appoint a general counsel to serve as the chief legal officer
90 of such institution. The chief legal officer and the vice president or similarly situated executive officer of
91 such institution shall, under the direction of the governing board of such institution, conduct the legal
92 affairs of and provide legal advice and representation for such institution on any matter the governing
93 board determines to be in the interest of the institution. The chief legal officer and the vice president or
94 similarly situated executive office of such institution shall have the authority to contract for and manage
95 outside legal services when deemed necessary and appropriate by the governing board of such institution.
96 The chief legal officer shall report solely to the governing board and chief executive officer of such
97 institution in conducting and overseeing the legal affairs and services set forth in this subsection.

98 B. The governing board of each public institution of higher education shall ensure that any legal
99 counsel it hires or retains using public funds is hired or retained solely for the provision of legal services
100 for or relating to the interests of the public institution of higher education served by such governing board
101 and not for the provision of legal services for or relating to the interests of any private entity, organization,
102 or venture with which such institution may have a partnership or other business relationship.

103 C. The Attorney General may, in accordance with § 2.2-507, appear, commence, prosecute, or
104 defend any action, suit, matter, cause, or proceeding in any court or provide legal advice on questions
105 related to the affairs of the public institution of higher education only upon request of the governing board
106 of such institution or upon the governing board's delegation of authority pursuant to subsection D. Any

107 legal settlement involving consideration in excess of \$5 million shall be subject to the approval of the
108 Attorney General.

109 D. Notwithstanding the provisions of subsection A or B, the governing board of any public
110 institution of higher education with fewer than 7,500 full-time students may choose to delegate all
111 authority conferred pursuant to subsection A to the Attorney General in accordance with the provisions of
112 § 2.2-507. Any such governing board intending to delegate the authority conferred pursuant to subsection
113 A shall submit to the Council, the Chairmen of the House Committees on Appropriations and Education
114 and the Senate Committees on Finance and Appropriations and Education and Health notice of such
115 intention no later than January 1, 2025. Any such governing board intending thereafter to delegate the
116 authority conferred pursuant to subsection A or to rescind a prior delegation of such authority made
117 pursuant to this subsection shall submit to the Council, the Chairmen of the House Committees on
118 Appropriations and Education and the Senate Committees on Finance and Appropriations and Education
119 and Health notice of such intention no later than January 1 of the immediately succeeding odd-numbered
120 year.

121 E. The governing board of each public institution of higher education shall report annually to the
122 Attorney General and the Council on such institution's use of outside legal services for any legal services
123 for or relating to the interests of such institution. Any information in such report may be altered as
124 necessary to protect the privacy interests of students and faculty and to comply with the federal Family
125 Educational Rights and Privacy Act (20 U.S.C. § 1232g). Such report shall include:

- 126 1. The types of matters handled by outside legal services;
- 127 2. The number of litigation matters handled by outside legal services; and
- 128 3. The total financial cost of outside legal services, disaggregated by the type of matter handled by
129 any such outside legal services.

130 **§ 23.1-1303. Governing boards; duties.**

131 A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine,
132 article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued
133 patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

134 B. The governing board of each public institution of higher education shall:

135 1. Adopt and post conspicuously on its website bylaws for its own governance, including
136 provisions that (i) establish the requirement of transparency, to the extent required by law, in all board
137 actions; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700
138 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board
139 record minutes of each open meeting and post the minutes on the board's website, in accordance with
140 subsection I of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically
141 exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in
142 accordance with subsection D of § 2.2-3707, and (d) any action taken in a closed meeting be approved in
143 an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711;
144 and (iii) require that the board invite the Attorney General's appointee or representative to all meetings of
145 the board, executive committee, and board committees;

146 2. Establish and maintain on the institution's website (i) a listing of all board members, including
147 the name of the Governor who made each appointment and the date of each appointment; (ii) a listing of
148 all committees created by the board and the membership of each committee; (iii) a schedule of all
149 upcoming meetings of the full board and its committees and instructions for the public to access such
150 meetings; (iv) an archive of agendas and supporting materials for each meeting of the governing board
151 and its committees that was held; and (v) an email address or email addresses that allow board members
152 to receive public communications pertaining to board business;

153 3. Establish regulations or institution policies for the acceptance and assistance of students that
154 include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the
155 federal requirement to register for the selective service are not eligible to receive any state direct student
156 assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth shall
157 not be considered in making admissions determinations for students who have earned a diploma pursuant
158 to the requirements established by the Board of Education, and (iii) relating to the admission of certain
159 graduates of comprehensive community colleges as set forth in § 23.1-907;

160 4. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

161 5. Notwithstanding any other provision of state law, establish policies and procedures requiring
162 the notification of the parent of a dependent student when such student receives mental health treatment
163 at the institution's student health or counseling center and such treatment becomes part of the student's
164 educational record in accordance with the federal Health Insurance Portability and Accountability Act (42
165 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family
166 Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such
167 notification shall only be required if it is determined that there exists a substantial likelihood that, as a
168 result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or
169 others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to
170 his lack of capacity to protect himself from harm or to provide for his basic human needs. However,
171 notification may be withheld if any person licensed to diagnose and treat mental, emotional, or behavioral
172 disorders by a health regulatory board within the Department of Health Professions who is treating the
173 student has made a part of the student's record a written statement that, in the exercise of his professional
174 judgment, the notification would be reasonably likely to cause substantial harm to the student or another
175 person. No public institution of higher education or employee of a public institution of higher education
176 making a disclosure pursuant to this subsection is civilly liable for any harm resulting from such disclosure
177 unless such disclosure constitutes gross negligence or willful misconduct by the institution or its
178 employees;

179 6. Establish policies and procedures requiring the release of the educational record of a dependent
180 student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a
181 parent at his request;

182 7. Establish programs to seek to ensure that all graduates have the technology skills necessary to
183 compete in the twenty-first century and that all students matriculating in teacher-training programs receive
184 instruction in the effective use of educational technology;

185 8. Establish policies for the discipline of students who participate in varsity intercollegiate
186 athletics, including a provision requiring an annual report by the administration of the institution to the
187 governing board regarding enforcement actions taken pursuant to such policies;

188 9. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-
189 2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed
190 meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive officer's
191 performance. Any change to the chief executive officer's employment contract during any such meeting
192 or any other meeting of the board shall be made only by a vote of the majority of the board's members;

193 10. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations
194 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1
195 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human research
196 committee to submit to the Governor, the General Assembly, and the chief executive officer of the
197 institution or his designee at least annually a report on the human research projects reviewed and approved
198 by the committee and require the committee to report any significant deviations from approved proposals;

199 11. Submit and make publicly available on the institution's website the annual financial statements
200 for the fiscal year ending the preceding June 30 and the accounts and status of any ongoing capital projects
201 to the Auditor of Public Accounts for the audit of such statements pursuant to § 30-133;

202 12. No later than December 1 of each year, report to the Council and make publicly available on
203 the institution's website (i) the value of investments as reflected on the Statement of Net Position as of
204 June 30 of the previous fiscal year, excluding any funds derived from endowment donations, endowment
205 income, or other private philanthropy; (ii) the cash earnings on such balances in the previous fiscal year;
206 and (iii) the use of the cash earnings on such balances. In the event that the commitment of any such
207 investment earnings spans more than one fiscal year, the report shall reflect the commitments made in
208 each future fiscal year. The reports of the Boards of Visitors of Virginia Commonwealth University and
209 the University of Virginia shall exclude the value of and earnings on any investments held by the Virginia
210 Commonwealth University Health System Authority and the University of Virginia Medical Center,
211 respectively. As used in this subdivision, "investments" includes all short-term, long-term, liquid, and
212 illiquid Statement of Net Position accounts, and subaccounts thereof, in which moneys have been invested
213 in securities;

214 13. Submit to the General Assembly and the Governor and make publicly available on the
215 institution's website an annual executive summary of its interim activity and work no later than the first
216 day of each regular session of the General Assembly. The executive summary shall be submitted as
217 provided in the procedures of the Division of Legislative Automated Systems for the processing of
218 legislative documents and reports and shall be posted on the General Assembly's website;

219 14. Make available to any interested party upon request a copy of the portion of the most recent
220 report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in
221 Virginia" pertaining to institutions of higher education;

222 15. Adopt policies or institution regulations regarding the ownership, protection, assignment, and
223 use of intellectual property and provide a copy of such policies or institution regulations to the Governor
224 and the Joint Commission on Technology and Science. All employees, including student employees, of
225 public institutions of higher education are bound by the intellectual property policies or institution
226 regulations of the institution employing them;

227 16. Adopt policies that are supportive of the intellectual property rights of matriculated students
228 who are not employed by such institution; ~~and~~

229 17. Solicit the input of representatives of the institution's faculty senate or its equivalent (i) at least
230 twice per academic year on topics of general interest to the faculty and (ii) in advance of decisions to be
231 made on the search for the institution's new chief executive officer; and

232 18. Exercise in its collective capacity best judgment in carrying out the powers and duties of the
233 governing board and act at all times in accordance with the duty of loyalty owed primarily to such
234 institution and secondarily to the citizens of the Commonwealth, and each member shall, in his individual
235 capacity, stay informed on such institution's developments in order to make educated decisions, act with
236 loyalty to such institution and the Commonwealth, and exercise his own individual best judgment in
237 carrying out the powers and duties of the governing board.

238 **§ 23.1-1304. Governing boards; additional duties; educational programs.**

239 A. From such funds as are appropriated for such purpose, the Council shall develop, in consultation
240 with public institutions of higher education and members of their governing boards, and annually deliver

241 educational programs for the governing boards of such institutions. New members of such governing
242 boards shall participate, at least once during their first two years of membership, in the programs, which
243 shall be designed to address the role, duties, and responsibilities of the governing boards and may include
244 in-service programs on current issues in higher education. In developing such programs, the Council may
245 consider similar educational programs for institutional governing boards in other states. In addition, the
246 Council shall develop educational materials for board members with more than two years of service on
247 the governing board. Each such board member shall participate in further training on board governance at
248 least once every two years, and the Council shall develop criteria by which such board members shall
249 demonstrate compliance with this requirement.

250 B. Educational programs for the governing boards of public institutions of higher education shall
251 include presentations relating to:

252 1. Board members' ~~primary duty to the citizens of the Commonwealth~~ duties set forth in subsection
253 B of § 23.1-1303;

254 2. Governing board committee structure and function;

255 3. The duties of the executive committee set forth in § 23.1-1306;

256 4. Professional accounting and reporting standards;

257 5. Methods for meeting the statutory, regulatory, and fiduciary obligations of the board;

258 6. The requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), developed
259 and delivered in conjunction with the Freedom of Information Advisory Council;

260 7. Institutional ethics and conflicts of interest;

261 8. Creating and implementing regulations and institution policies;

262 9. Business operations, administration, budgeting, financing, financial reporting, and financial
263 reserves, including a segment on endowment management;

264 10. Fixing student tuition, mandatory fees, and other necessary charges, including a review of
265 student debt trends;

266 11. Overseeing planning, construction, maintenance, expansion, and renovation projects that affect
267 the institution's consolidated infrastructure, physical facilities, and natural environment, including its
268 lands, improvements, and capital equipment;

269 12. Workforce planning, strategy, and investment;

270 13. Institutional advancement, including philanthropic giving, fundraising initiatives, alumni
271 programming, communications and media, government and public relations, and community affairs;

272 14. Student welfare issues, including academic studies; curriculum; residence life; student
273 governance and activities; and the general physical and psychological well-being of undergraduate and
274 graduate students;

275 15. Current national and state issues in higher education;

276 16. Future national and state issues in higher education;

277 17. Relations between the governing board and the chief executive officer of the institution,
278 including perspectives from chief executive officers of public institutions of higher education;

279 18. Best practices for board governance, including perspectives from current board members; and

280 19. Any other topics that the Council, public institutions of higher education, and members of their
281 governing boards deem necessary or appropriate.

282 C. The Council shall submit to the General Assembly and the Governor an annual executive
283 summary of the interim activity and work of the Council pursuant to this section no later than the first day
284 of each regular session of the General Assembly. The executive summary shall be submitted as provided
285 in the procedures of the Division of Legislative Automated Systems for the processing of legislative
286 documents and reports and shall be posted on the General Assembly's website.

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