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SENATE BILL NO. 371

Offered January 12, 2022

Prefiled January 11, 2022

A *BILL to amend and reenact §§ 2.2-106 and 24.2-102 of the Code of Virginia, relating to State Board of Elections; membership; appointment of Commissioner of Elections.*

Patron—Vogel

Referred to Committee on Privileges and Elections

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-106 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.

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

A. The State Board of Elections is continued and shall consist of ~~five~~ *eight* members appointed by the Governor from the qualified voters of the Commonwealth, subject to confirmation by the General Assembly. In the appointment of the Board, *equal* representation shall be given to each of the political

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parties having the highest and next highest number of votes in the Commonwealth for Governor at the last preceding gubernatorial election. ~~Three Board members shall be of the political party that east the highest number of votes for Governor at that election.~~ When the Governor was not elected as the candidate of a political party, *equal* representation shall be given to each of the political parties having 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.

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 six of the eight Board members. The Commissioner may be removed by the Board upon an affirmative vote of six of the eight Board members.*

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 Board~~ 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 Board~~ 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 initial appointments of members of the State Board of Elections 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, shall be appointed for a term of one year; 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, shall be appointed for a term of two years; 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, shall be appointed for a term of three years; and 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, shall be appointed for a term of four years. After the initial appointments

121 of members of the State Board of Elections pursuant to this enactment, appointments shall be for
122 terms of four years beginning on February 1 of the year of the appointment.

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