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SENATE BILL NO. 371

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Privileges and Elections
on January 18, 2022)

(Patron Prior to Substitute—Senator Vogel)

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

60 candidate of a political party, representation shall be given to each of the political parties having the
61 highest and next highest number of members of the General Assembly at the time of the appointment
62 and ~~three~~ four Board members shall be of the political party having the highest number of members in
63 the General Assembly. Each political party entitled to an appointment may make and file
64 recommendations with the Governor for the appointment. Its recommendations shall contain the names
65 of at least three qualified voters of the Commonwealth. Appointments shall be made with due
66 consideration of geographical representation, and no two Board members shall reside in the same
67 congressional district.

68 After the initial staggering of terms, Board members shall serve terms of four years, which shall
69 begin on February 1 of the year of the appointment. *Upon expiration of his term, a Board member shall*
70 *continue to serve on the Board until the appointment of his successor by the Governor.* Vacancies shall
71 be filled for the unexpired terms. No member shall be eligible for more than two successive four-year
72 terms. A member appointed for an unexpired term may be appointed for the two succeeding four-year
73 terms.

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

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

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

83 B. The ~~Governor~~ Board shall appoint a Commissioner of Elections, subject to confirmation by the
84 General Assembly, to head the Department of Elections and to act as its principal administrative officer.
85 The Commissioner shall be appointed to a term of four years, which shall begin on July 1 of the year
86 following a gubernatorial election. The Commissioner shall be a qualified voter of the Commonwealth.
87 *Such appointment shall require an affirmative vote of six of the seven Board members. The*
88 *Commissioner may be removed by the Board upon an affirmative vote of six of the seven Board*
89 *members.*

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

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

95 The ~~Governor~~ Board shall not appoint as Commissioner (i) any person who is the spouse of a
96 member of the Board or of a person seeking election to an office or holding an elective office that is
97 filled in whole or in part by qualified voters in the Commonwealth; (ii) any person, or the spouse of any
98 person, who is the grandparent, parent, sibling, child, or grandchild of a member of the Board; or (iii)
99 any person, or the spouse of any person, who is the grandparent, parent, sibling, child, or grandchild of
100 a person seeking election to an office or holding an elective office that is filled in whole or in part by
101 qualified voters in the Commonwealth. The Commissioner shall submit his resignation to the ~~Governor~~
102 Board on the date that any such person files as a candidate for election to an office that is filled in
103 whole or in part by qualified voters in the Commonwealth.

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

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

108 **3. That the terms of persons currently serving as members of the Board of Elections shall expire**
109 **on February 1, 2023, or until their successors have been appointed by the Governor.**

110 **4. That the initial appointments of members of the State Board of Elections shall be staggered as**
111 **follows: two members, one representing the political party of the Governor and one representing**
112 **the political party that had the next highest number of votes in the Commonwealth for Governor**
113 **at the last preceding gubernatorial election, shall be appointed for a term of one year; two**
114 **members, one representing the political party of the Governor and one representing the political**
115 **party that had the next highest number of votes in the Commonwealth for Governor at the last**
116 **preceding gubernatorial election, shall be appointed for a term of two years; one member**
117 **representing the political party of the Governor shall be appointed for a term of three years; and**
118 **two members, one representing the political party of the Governor and one representing the**
119 **political party that had the next highest number of votes in the Commonwealth for Governor at**
120 **the last preceding gubernatorial election, shall be appointed for a term of four years. After the**
121 **initial appointments of members of the State Board of Elections pursuant to this enactment,**

122 appointments shall be for terms of four years beginning on February 1 of the year of the
123 appointment.