

26105297D

HOUSE BILL NO. 1385

Offered January 21, 2026

A BILL to amend and reenact §§ 2.2-105, 2.2-507, and 2.2-2519 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 23.1-102.2, relating to gubernatorial appointments; confirmation process; Virginia Commission on Higher Education Board Appointments; legal counsel for public institutions of higher education.

Patron—Franklin, L.V.

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-105, 2.2-507, and 2.2-2519 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:

§ 2.2-105. Appointments to office; effect of refusal to confirm by the General Assembly.

No person appointed to any office by the Governor, whose appointment is subject to confirmation by the General Assembly, shall enter upon, or continue in, office after the General Assembly has refused to confirm his appointment. Nor shall such person be eligible for reappointment during the recess of the General Assembly to fill the vacancy caused by the refusal to confirm. *Whenever the House or Senate Committee on Privileges and Elections or a subcommittee thereof, or other standing committee made responsible for confirming gubernatorial appointments by the rules of the applicable house, votes to reject an appointment by the Governor by a majority vote in accordance with the rules of its house, such rejection shall be deemed a refusal of the General Assembly to confirm such appointment for purposes of Article V, Section 11 of the Constitution of Virginia and this section.*

§ 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 board of each public institution of higher education shall be responsible for all decisions relating to the employment of legal counsel for such institution, provided, however, that the Attorney General shall provide legal service for a public institution of higher education only (i) upon the request of the governing board, as defined in § 23.1-100, of such institution or (ii) in accordance with the provisions of subsection E of § 23.1-102.2. Nothing herein shall be construed to prohibit the Attorney General from, upon timely application, intervening as a separate party on behalf of the Commonwealth in any matter, subject to a showing that the Commonwealth has a separate and independent interest in the matter.*

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 Local and Regional Jails, 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

INTRODUCED

HB1385

1/26/26 15:21

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 Wildlife Resources;

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

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

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

§ 2.2-2519. Membership; quorum.

The Commission shall ~~have a total membership consist of eight at least six but no more than 15 nonlegislative citizen members that shall consist of six nonlegislative citizen members~~ and two ex officio members. Nonlegislative citizen members shall be appointed by the Governor as follows: ~~two who shall be former members of either at least one former member of the board of visitors of a public institution of higher education or; at least one former member of the State Board for Community Colleges; at least one who shall be either a former president, provost, or executive vice-president of a public institution of higher education; at least one who shall be a faculty member of a public institution of higher education; and at least two who shall be~~ citizens at large. The Secretary of Education or his designee and the Secretary of the Commonwealth or his designee shall serve as ex officio members of the Commission with nonvoting privileges. The nonlegislative citizen member appointed who is a faculty member of a public institution of higher education shall serve without voting privileges. Nonlegislative citizen members of the Commission shall be citizens of the Commonwealth. ~~Three~~ A majority of the voting members of the Commission shall constitute a quorum.

Nonlegislative citizen members shall serve at the pleasure of the Governor, and ex officio members of the Commission shall serve terms coincident with their terms of office.

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

A. The governing board of each public institution of higher education shall have the authority to hire or retain legal counsel for the provision of all legal services, subject to the provisions of subsection B, including to (i) appear for, commence, prosecute, or defend any action, suit, matter, cause, or proceeding in any court; (ii) enter into, terminate, or alter contracts on behalf of the institution; (iii) purchase and sell real estate and other tangible and intellectual property on behalf of the institution; (iv) audit, supervise, and administer funds appropriated to the institution by governmental and nongovernmental entities; or (v) otherwise provide legal advice and counsel on questions, legal risks, and opportunities that, as determined by the governing board, are related to the affairs of the institution.

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

C. The governing board of each public institution of higher education shall, in consultation with the chief executive officer, appoint a general counsel to serve as the chief legal officer of such institution. The chief legal officer shall, under the direction of the governing board of such institution, conduct the legal affairs of

and provide legal advice and representation for such institution on any matter the governing board determines to be in the interest of the institution. The chief legal officer shall have the authority to contract for and manage outside legal services when deemed necessary and appropriate by the governing board of such institution. The chief legal officer shall report solely to the governing board and chief executive officer of such institution in conducting and overseeing the legal affairs and services set forth in this subsection.

D. The Attorney General may, in accordance with § 2.2-507, appear for, commence, prosecute, or defend any action, suit, matter, cause, or proceeding in any court or provide legal advice on questions related to the affairs of the public institution of higher education only upon (i) request of the governing board of such institution or (ii) the governing board's delegation of authority pursuant to subsection E. Approval of the Attorney General shall be required for any (a) legal settlement involving consideration in excess of \$5 million and (b) agreement with the U.S. Department of Education or the U.S. Department of Justice.

E. Notwithstanding the provisions of subsections A, B, and C, the governing board of any public institution of higher education with fewer than 7,500 full-time students may choose to delegate all authority conferred pursuant to subsection A or C to the Attorney General in accordance with the provisions of § 2.2-507. Any such governing board intending to delegate the authority conferred pursuant to subsection A shall submit notice of such intention to the Council and the Chairs of the Senate Committees on Finance and Appropriations and Education and Health and the House Committees on Appropriations and Education no later than January 1, 2027, or by January 1 of the immediately succeeding odd-numbered year thereafter. Any governing board intending thereafter to rescind a prior delegation of such authority made pursuant to this subsection shall submit notice of such intention to the Council and the Chairs of the Senate Committees on Finance and Appropriations and Education and Health and the House Committees on Appropriations and Education no later than January 1 of the immediately succeeding odd-numbered year.

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

1. The name of and total financial amount paid to each individual law firm hired or retained to provide legal services relating to the interests of such institution;
2. The types of matters handled by outside legal services;
3. The number of litigation matters handled by outside legal services; and
4. The total financial cost of outside legal services, disaggregated by the type of matter handled by any such outside legal services.