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SENATE BILL NO. 494
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on _____)
(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact §§ 2.2-507, 23.1-1300, 23.1-1303, and 23.1-2303 of the Code of Virginia, relating to public institutions of higher education; governing boards; powers and duties relating to legal counsel; membership appointment, terms, and composition; duties relating to shared governance; requirements; work group.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-507, 23.1-1300, 23.1-1303, and 23.1-2303 of the Code of Virginia are amended and reenacted 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.

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;

- 32 2. Agents inspecting or investigators appointed by the State Corporation Commission;
- 33 3. Agents, investigators, or auditors employed by the Department of Taxation;
- 34 4. Members, agents, or employees of the State Board of Behavioral Health and Developmental Services,
35 the Department of Behavioral Health and Developmental Services, the State Board of Health, the State
36 Department of Health, the Department of General Services, the State Board of Social Services, the
37 Department of Social Services, the State Board of Local and Regional Jails, the Department of Corrections,
38 the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the
39 Department of Agriculture and Consumer Services;
- 40 5. Persons employed by the Commonwealth Transportation Board, the Department of Transportation, or
41 the Department of Rail and Public Transportation;
- 42 6. Persons employed by the Commissioner of Motor Vehicles;
- 43 7. Persons appointed by the Commissioner of Marine Resources;
- 44 8. Police officers appointed by the Superintendent of State Police;
- 45 9. Conservation police officers appointed by the Department of Wildlife Resources;
- 46 10. Hearing officers appointed to hear a teacher's grievance pursuant to § 22.1-311;
- 47 11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to
48 Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;
- 49 12. Any emergency medical services agency that is a licensee of the Department of Health in any civil
50 matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors
51 or omissions in the discharge of his court-appointed duties;
- 52 13. Conservation officers of the Department of Conservation and Recreation; or
- 53 14. A person appointed by written order of a circuit court judge to run an existing corporation or company
54 as the judge's representative, when that person is acting in execution of a lawful order of the court and the
55 order specifically refers to this section and appoints such person to serve as an agent of the Commonwealth.

56 Upon request of the affected individual, the Attorney General may represent personally or through one of
57 his assistants (i) any basic or advanced emergency medical care attendant or technician possessing a valid
58 certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity
59 from liability is raised pursuant to § 8.01-225 or (ii) any member of the General Assembly in any civil matter
60 alleging that such member in his official capacity violated the Virginia Freedom of Information Act
61 (§ 2.2-3700 et seq.) pursuant to § 2.2-3713 or 2.2-3714.

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

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

71 *E. If the governing board of any public institution of higher education, the Governor, or the General*
72 *Assembly or a committee thereof with relevant oversight responsibility determines that the applicable*
73 *institution's Office of General Counsel or other legal counsel is not acting in the best interests of the*
74 *institution, including due to a conflict of interest, failure to defend the lawful authority of the institution, or*
75 *failure to comply with state law, such entity may request the Attorney General to review the adequacy of such*
76 *legal representation. Upon a determination by the Attorney General or the General Assembly or a committee*
77 *thereof that a public institution of higher education is not receiving adequate legal representation, the*
78 *governing board may request additional representation or approve alternate counsel as necessary to protect*
79 *the interests of the institution.*

80 **§ 23.1-1300. Members of governing boards; removal; terms; faculty, staff, and student**
81 **representatives; residency.**

82 A. Members appointed by the Governor to the governing boards of public institutions of higher education
83 shall serve for terms of ~~four~~ six years. Vacancies occurring other than by expiration of a term shall be filled
84 for the unexpired term. No member appointed by the Governor to such a governing board shall serve for
85 more than two consecutive ~~four-year~~ six-year terms; however, a member appointed by the Governor to serve
86 an unexpired term is eligible to serve two consecutive ~~four-year~~ six-year terms immediately succeeding such
87 unexpired term. Except as otherwise provided in § 23.1-2601, all appointments are subject to confirmation by
88 the General Assembly. *As a part of the confirmation process, the Senate and House Committees on Privileges*
89 *and Elections shall meet as soon as practicable upon receiving from the Secretary of the Commonwealth*
90 *copies of the resume and statement of economic interests for each gubernatorial appointee pursuant to*
91 *subsection A of § 2.2-107 to begin considering such appointees for confirmation. The appointment of each*
92 *member appointed by the Governor shall be effective upon approval by the Senate and House Committees on*

93 *Privileges and Elections provided, however, that no gubernatorial appointee shall assume a position on a*
94 *governing board except upon confirmation by the General Assembly. Members appointed by the Governor to*
95 *the governing board of a public institution of higher education shall continue to hold office until their*
96 *successors have been appointed and qualified. Ex officio members shall serve a term coincident with their*
97 *term of office.*

98 B. No member appointed by the Governor to the governing board of a public institution of higher
99 education who has served two consecutive ~~four-year~~ *six-year* terms on such board is eligible to serve on the
100 same board until at least ~~four~~ *six* years have passed since the end of his second consecutive ~~four-year~~ *six-year*
101 term.

102 C. Notwithstanding the provisions of subsection E or any other provision of law, the Governor may
103 remove from office for malfeasance, misfeasance, incompetence, or gross neglect of duty any member of the
104 board of any public institution of higher education and fill the vacancy resulting from the removal.

105 D. The Governor shall set forth in a written public statement his reasons for removing any member
106 pursuant to subsection C at the time the removal occurs. The Governor is the sole judge of the sufficiency of
107 the cause for removal as set forth in subsection C.

108 E. If any member of the governing board of a public institution of higher education fails to attend (i) the
109 meetings of the board for one year without sufficient cause, as determined by a majority vote of the board, or
110 (ii) the educational programs required by § 23.1-1304 in his first two years of membership without sufficient
111 cause, as determined by a majority vote of the board, the remaining members of the board shall record such
112 failure in the minutes at its next meeting and notify the Governor, and the office of such member shall be
113 vacated. No member of the board of visitors of a baccalaureate public institution of higher education or the
114 State Board for Community Colleges who fails to attend the educational programs required by § 23.1-1304
115 during his first ~~four-year~~ *six-year* term is eligible for reappointment to such board.

116 F. The governing board of each public institution of higher education shall adopt in its bylaws policies (i)
117 for removing members pursuant to subsection E and (ii) referencing the Governor's power to remove
118 members described in subsection C.

119 G. The governing board of each *baccalaureate* public institution of higher education and each local
120 community college board ~~may shall~~ appoint one ~~or more nonvoting, advisory voting~~ *faculty representatives*
121 *representative and one voting staff representative* to its respective board. ~~In the case of local community~~
122 ~~college boards and boards of visitors, such representatives, each of whom shall be chosen from individuals (i)~~
123 *elect*ed (a) *in the case of the faculty representative, by the majority of the institution's faculty or the*

124 institution's faculty senate or its equivalent. ~~In the case of the State Board, such representatives shall be~~
125 ~~chosen from individuals elected by the Chancellor's Faculty Advisory Committee. Such representatives shall~~
126 ~~be and (b) in the case of the staff representative, by the majority of the institution's staff and (ii) appointed to~~
127 ~~serve (i) (a) at least one term of at least 12 months, which shall be coterminous with the institution's fiscal~~
128 ~~year or (ii) (b) for such terms as may be mutually agreed to by the State Board and the Chancellor's Faculty~~
129 ~~Advisory Committee, or by the local community college board or the board of visitors, and the institution's~~
130 ~~faculty senate or its equivalent. Any vacancy of such a voting representative shall be filled in the same~~
131 ~~manner as the original selection, whether the vacancy occurs by expiration of a term or otherwise.~~

132 H. *The State Board may appoint one or more nonvoting, advisory faculty representatives to its board from*
133 *a list of individuals elected by the Chancellor's Faculty Advisory Committee. Such representatives shall be*
134 *appointed to serve for such terms as may be mutually agreed to by the State Board and the Chancellor's*
135 *Faculty Advisory Committee.*

136 I. *The governing board of visitors of any each baccalaureate public institution of higher education shall*
137 *appoint to its respective board one or more students as nonvoting, advisory representatives student*
138 *representative as a voting member, to be selected from a list of individuals nominated by such institution's*
139 *student government or an equivalent student governance organization or body. Such representatives student*
140 *representative shall be appointed under such circumstances and serve for such terms as the board of visitors*
141 *of the institution shall prescribe.*

142 I. ~~Nothing in subsections G and H shall prohibit the governing board of any public institution of higher~~
143 ~~education or any local community college board from excluding such nonvoting, advisory faculty or student~~
144 ~~representatives from discussions of faculty grievances, faculty or staff disciplinary matters or salaries, or any~~
145 ~~other matter.~~

146 J. *The president or any one of the vice presidents of the board of visitors of Virginia Military Institute, the*
147 *chairman or the vice-chairman of the State Board, and the rector or vice-rector of the governing board of each*
148 *other public institution of higher education shall be a resident of the Commonwealth.*

149 K. *No baccalaureate public institution of higher education shall employ an individual appointed by the*
150 *Governor to the board of visitors of such institution within two years of the expiration of his term. Such*
151 *prohibition shall not apply to the employment of an individual to serve as an institution president or, in the*
152 *case of Virginia Military Institute, the Superintendent.*

153 **§ 23.1-1303. Governing boards; duties.**

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

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

158 1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions that
159 (i) establish the requirement of transparency, to the extent required by law, in all board actions; (ii) describe
160 the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as set forth in
161 subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record minutes of each open
162 meeting and post the minutes on the board's website, in accordance with subsection I of § 2.2-3707 and
163 § 2.2-3707.1, (b) discussions and actions on any topic not specifically exempted by § 2.2-3711 be held in an
164 open meeting, (c) the board give public notice of all meetings, in accordance with subsection D of
165 § 2.2-3707, and (d) any action taken in a closed meeting be approved in an open meeting before it can have
166 any force or effect, in accordance with subsection B of § 2.2-3711; and (iii) require that the board invite the
167 Attorney General's appointee or representative to all meetings of the board, executive committee, and board
168 committees;

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

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

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

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

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

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

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

210 9. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-2900 et
211 seq.), meet with the chief executive officer of the institution at least once annually, in a closed meeting
212 pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive officer's

213 performance. Any change to the chief executive officer's employment contract during any such meeting or
214 any other meeting of the board shall be made only by a vote of the majority of the board's members;

215 10. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations
216 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1
217 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human research
218 committee to submit to the Governor, the General Assembly, and the chief executive officer of the institution
219 or his designee at least annually a report on the human research projects reviewed and approved by the
220 committee and require the committee to report any significant deviations from approved proposals;

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

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

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

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

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

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

250 17. ~~Solicit the input of representatives of the institution's faculty senate or its equivalent (i) at least twice~~
251 ~~per academic year on topics of general interest to the faculty and (ii) in advance of decisions to be made on~~
252 ~~the search for the institution's new~~ *Adopt policies defining and implementing shared governance among the*
253 *components of such institution's organizational structure, including the governing board, chief executive*
254 *officer, and the faculty, staff, and students of such institution.*

255 **§ 23.1-2303. Membership.**

256 A. The board shall consist of 16 members appointed by the Governor.

257 B. Notwithstanding § 23.1-1300, members are eligible to serve for a total of two ~~four-year~~ *six-year* terms
258 which may be served consecutively; however, a member appointed by the Governor to serve an unexpired
259 term is eligible to serve two additional ~~four-year~~ *six-year* terms.

260 **2. That the unexpired term of any person serving as a member of the governing board of any public**
261 **institution of higher education, pursuant to §§ 23.1-1401, 23.1-1501, 23.1-1601, 23.1-1701, 23.1-1801,**
262 **23.1-1901, 23.1-2001, 23.1-2101, 23.1-2106, 23.1-2201, 23.1-2303, 23.1-2501, 23.1-2601, 23.1-2701, and**
263 **23.1-2801 of the Code of Virginia, prior to the effective date of this act, shall expire on the effective date**
264 **of this act.**

265 **3. That the Governor's initial appointments of members to the governing board of Richard Bland**
266 **College pursuant to § 23.1-2106 of the Code of Virginia shall be staggered as follows: three members**
267 **for a term of six years, three members for a term of four years, and three members for a term of two**
268 **years. After the initial staggering of terms, members shall be appointed by the Governor for terms of**
269 **six years in accordance with § 23.1-1300 of the Code of Virginia, as amended by this act.**

270 **4. That the Governor's initial appointments of members to the governing board of the University of**
271 **Mary Washington pursuant to § 23.1-1801 of the Code of Virginia shall be staggered as follows: four**
272 **members for a term of six years, four members for a term of four years, and four members for a term**
273 **of two years. After the initial staggering of terms, members shall be appointed by the Governor for**

274 terms of six years in accordance with § 23.1-1300 of the Code of Virginia, as amended by this act.

275 5. That the Governor's initial appointments of members to the governing board of Longwood
276 University pursuant to § 23.1-1701 of the Code of Virginia, the governing board of Norfolk State
277 University pursuant to § 23.1-1901 of the Code of Virginia, and the governing board of Virginia
278 Polytechnic Institute and State University pursuant to § 23.1-2601 of the Code of Virginia, shall be
279 staggered as follows: five members for a term of six years, four members for a term of four years, and
280 four members for a term of two years. After the initial staggering of terms, members shall be
281 appointed by the Governor for terms of six years in accordance with § 23.1-1300 of the Code of
282 Virginia, as amended by this act.

283 6. That the Governor's initial appointments of members to the governing board of Christopher
284 Newport University pursuant to § 23.1-1401 of the Code of Virginia shall be staggered as follows: five
285 members for a term of six years, five members for a term of four years, and four members for a term
286 of two years. After the initial staggering of terms, members shall be appointed by the Governor for
287 terms of six years in accordance with § 23.1-1300 of the Code of Virginia, as amended by this act.

288 7. That the Governor's initial appointments of members to the governing board of James Madison
289 University pursuant to § 23.1-1601 of the Code of Virginia, the governing board of Radford University
290 pursuant to § 23.1-2101 of the Code of Virginia, and the governing board of Virginia State University
291 pursuant to § 23.1-2701 of the Code of Virginia, shall be staggered as follows: five members for a term
292 of six years, five members for a term of four years, and five members for a term of two years. After the
293 initial staggering of terms, members shall be appointed by the Governor for terms of six years in
294 accordance with § 23.1-1300 of the Code of Virginia, as amended by this act.

295 8. That the Governor's initial appointments of members to the governing board of George Mason
296 University pursuant to § 23.1-1501 of the Code of Virginia, the governing board of Virginia
297 Commonwealth University pursuant to § 23.1-2303 of the Code of Virginia, and the governing board of
298 the Virginia Military Institute pursuant to § 23.1-2501 of the Code of Virginia, shall be staggered as
299 follows: six members for a term of six years, five members for a term of four years, and five members
300 for a term of two years. After the initial staggering of terms, members shall be appointed by the
301 Governor for terms of six years in accordance with § 23.1-1300 of the Code of Virginia, as amended by
302 this act.

303 9. That the Governor's initial appointments of members to the governing board of Old Dominion
304 University pursuant to § 23.1-2001 of the Code of Virginia, the governing board of the University of

305 Virginia pursuant to § 23.1-2201 of the Code of Virginia, and the governing board of the College of
306 William and Mary in Virginia pursuant to § 23.1-2801 of the Code of Virginia, shall be staggered as
307 follows: six members for a term of six years, six members for a term of four years, and five members
308 for a term of two years. After the initial staggering of terms, members shall be appointed by the
309 Governor for terms of six years in accordance with § 23.1-1300 of the Code of Virginia, as amended by
310 this act.

311 10. That the State Council of Higher Education for Virginia (the Council) shall convene a work group
312 consisting of members of governing boards of public institutions of higher education, administrators of
313 public institutions of higher education, and members of faculty, staff, and student governance bodies or
314 organizations at public institutions of higher education, for the purpose of developing model shared
315 governance policies in accordance with subdivision of B 17 of § 23.1-1303 of the Code of Virginia, as
316 amended by the first enactment of this act. Such model shared governance policies developed by the
317 Counsel pursuant to this enactment shall include provisions relating to the establishment, membership
318 and roles of elected faculty governance bodies for institutions of higher education. The Council shall
319 make available to the governing board of each public institution of higher education by January 1,
320 2027, the model shared governance policies developed in accordance with this enactment.