

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 89

An Act to amend and reenact §§ 10.1-105, 10.1-106, 10.1-107, 10.1-111, 10.1-112, 10.1-113, 10.1-202, 10.1-705, 10.1-707, 10.1-709, and 28.2-1100 of the Code of Virginia, and to repeal Chapter 2.1 (§§ 10.1-218 through 10.1-225) of Title 10.1 of the Code of Virginia, relating to the consolidation of boards, and the establishment of certain special funds.

[H 2393]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-105, 10.1-106, 10.1-107, 10.1-111, 10.1-112, 10.1-113, 10.1-202, 10.1-705, 10.1-707, 10.1-709, and 28.2-1100 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-105. Board of Conservation and Recreation.

The Board of Conservation and Recreation shall hereafter in this chapter be referred to as the Board *be reorganized and is established as a policy board in the executive branch in accordance with § 2.2-2100 and shall consist of 12 members to be appointed by the Governor. The Board shall consist of nine members appointed by the Governor shall be the successor to the Board on Conservation and Development of Public Beaches and the Virginia State Parks Foundation.* The members of the board Board shall initially be appointed for terms of office as follows: three for a one-year term, ~~two~~ three for a two-year term, ~~two~~ three for a three-year term, and ~~two~~ three for a four-year term. *The Governor shall designate the term to be served by each appointee at the time of appointment.* Appointments thereafter shall be made for four-year terms. No person shall serve more than two consecutive full terms. Any vacancy shall be filled by the Governor for the unexpired term. All terms shall begin July 1. Board members shall serve at the pleasure of the Governor. In making appointments, the Governor shall endeavor to select persons suitably qualified to consider and act upon the various special interests and problems related to the programs of the Department. The Board may appoint subcommittees of not less than three to consider and deal with special interests and problems related to programs of the Department.

§ 10.1-106. Officers; meetings; quorum.

The Board shall elect one of its members chairman, and another as vice chairman. ~~A representative of the Department~~ *The Director or his designee shall serve as executive secretary to the Board.*

The Board shall meet at least ~~four~~ three times a year on the call of the chairman or the Director. The vice chairman shall fill the position of chairman in the event the chairman is not available. A majority of the members of the Board shall constitute a quorum of the Board.

§ 10.1-107. General powers and duties of the Board.

A. The Board shall advise the Governor and the Director on activities of the Department. Upon the request of the Governor, or the Director, the Board shall institute investigations and make recommendations.

The Board shall formulate recommendations to the Director concerning:

1. Requests for grants or loans pertaining to outdoor recreation.
2. Designation of recreational and historical sites eligible for recreational access road funds.
3. Designations proposed for scenic rivers, scenic highways, and Virginia byways.
4. Acquisition of real property by fee simple or other interests in property for the Department including, but not limited to, state parks, state recreational areas, state trails, greenways, natural areas and natural area preserves, and other lands of biological, environmental, historical, recreational or scientific interest.

5. Acquisition of bequests, devises and gifts of real and personal property, and the interest and income derived therefrom.

6. Stage one and stage two plans, master plans, and substantial acquisition or improvement amendments to master plans as provided in § 10.1-200.1.

B. The Board shall have the authority to promulgate regulations necessary for the execution of the Virginia Stormwater Management Act, Article 1.1 (§ 10.1-603.1 et seq.) of Chapter 6 of this title *and for the execution of the Public Beach Conservation and Development Act, Article 2 (§ 10.1-705 et seq.) of Chapter 7 of this title.*

C. *The Board shall assist the Department in the duties and responsibilities described in Subtitle 1 (§ 10.1-100 et seq.) of Title 10.1.*

D. *The Board is authorized to conduct fund-raising activities as deemed appropriate and will deposit such revenue into the State Parks Projects Fund pursuant to subsection D of § 10.1-202.*

§ 10.1-111. Removal of minerals.

The Director, with the approval of the Governor, is authorized to make and execute leases, contracts

or deeds in the name of the Commonwealth, for the removal or mining of minerals that may be found in Departmental lands whenever it appears to the Director that it would be in the best interest of the Commonwealth to dispose of these minerals. Before any deed, contract or lease is made or executed, it shall be approved as to form by the Attorney General, and bids therefor shall be received after notice by publication once each week for four successive weeks in two newspapers of general circulation. The Director shall have the right to reject any or all bids and to readvertise for bids. The accepted bidder shall give bond with good and sufficient surety to the satisfaction of the Director, and in any amount that the Director may fix for the faithful performance of all the conditions and covenants of the lease, contract or deed. The proceeds arising from any contract, deed, or lease shall be deposited into the state treasury to the credit of the *State Park Conservation Resources Fund* established in *subsection A of § 10.1-202*.

§ 10.1-112. Capital improvement projects.

The Director is authorized to make and execute leases and contracts in the name of the Commonwealth for the development and operation of revenue-producing capital improvement projects in Virginia state parks upon the written approval of the Governor. Prior to approval, the Governor shall consider the written recommendation of the Director of the Department of General Services and the Attorney General shall review such leases and contracts as to form.

Any contract or lease for the development and operation of the capital improvement project shall be in accordance with the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.). The accepted bidder shall give a performance bond for the construction, operation and maintenance of the project with good and sufficient surety in an amount fixed by the Director for the faithful performance of the conditions and covenants of such lease or contract.

Such lease or contract, with an initial term not exceeding ~~thirty~~ 30 years, shall be subject to terms, conditions, and limitations as the Director may prescribe and may be renewed with the approval of the Director. The proceeds arising from a contract or lease executed pursuant to this section shall be paid into the *State Park Conservation Resources Fund* established in *subsection A of § 10.1-202*.

§ 10.1-113. Sale of trees.

For the purpose of maintaining the production of forest products in Departmental lands, the Director, upon the recommendation of the State Forester, may designate and appraise trees to be cut under the principles of scientific forest management, and may sell them for not less than their appraised value. When the appraised value of the trees to be sold is more than \$10,000, the Director, before selling them, shall receive bids, after notice by publication once a week for two weeks in two newspapers of general circulation; but the Director shall have the right to reject any and all bids and to readvertise for bids. The proceeds arising from the sale of the timber and trees shall be paid into the *State Park Conservation Resources Fund* established in *subsection A of § 10.1-202*.

§ 10.1-202. Gifts, funds, and fees designated for state parks; establishment of funds.

~~Gifts of money.~~ *A. The State Park Conservation Resources Fund shall consist of all entrance fees, fees from contractor-operated concessions, civil penalties assessed pursuant to § 10.1-200.2 and under § 10.1-200.3, and all funds accruing from, on account of, or to the use of state parks acquired or held by the Department shall constitute the Conservation Resources Fund. This special fund shall be noninterest bearing. The Fund shall be under the direction and control of the Director and may be expended for the conservation, development, maintenance, and operations of state parks acquired or held by the Department, but the amount to be expended shall be annually approved by the Secretary of Natural Resources and shall be reported on a quarterly basis to the Chairmen of the House Committee on Appropriations and Senate Committee on Finance. However, expenditures from the Fund for operation of state parks shall not exceed, in any fiscal year, an amount equal to twenty-five percent of the revenues deposited into the Fund from fees and charges paid by visitors to state parks. The remainder of the revenues deposited into the Fund from fees and charges paid by visitors to state parks shall be expended for the conservation and development of state parks. Unexpended portions of the fund shall not revert to the state treasury at the close of any fiscal year unless specified by an act of the General Assembly.*

B. The State Park Operated Concessions Fund shall consist of revenues generated from state park concessions operated by the Department shall be deposited into a separate special fund. This special fund shall be noninterest bearing. The fund shall be under the direction and control of the Director for use in operating such concessions. Unexpended portions of the Fund shall not revert to the state treasury at the close of any fiscal year unless specified by an act of the General Assembly. The Fund shall not include any gifts of money to the Virginia Land Conservation Foundation or other funds deposited in the Virginia Land Conservation Fund.

C. The State Park Acquisition and Development Fund shall consist of the proceeds from the sales sale of surplus property. This special fund shall be noninterest bearing. The fund shall be under the direction and control of the Director and shall be used exclusively for the acquisition and development of state parks. Unexpended portions of the fund shall not revert to the state treasury at the close of any fiscal year unless specified by an act of the General Assembly.

D. The State Park Projects Fund shall consist of all income, including grants from any source, gifts

and bequests of money, securities and other property, and gifts and devises of real property or interests therein given or bequeathed to the Department for the conservation, development, maintenance, or operations of state parks. This special fund shall be interest bearing and any income earned from these gifts, bequests, securities or other property shall be deposited to the credit of the fund. This fund shall be under the control of the Director and may be expended with advice from the Board for the conservation, development, maintenance, or operations of state parks. Unexpended portions of the fund shall not revert to the state treasury at the close of any fiscal year unless specified by an act of the General Assembly.

E. The Director is authorized to receive and to sell, exchange, or otherwise dispose of or invest as he deems proper the moneys, securities, or other real or personal property or any interest therein given or bequeathed to the Department for any of the funds established under this section, unless such action is restricted by the terms of a gift or bequest. The Director may enter into contracts and agreements, as approved by the Attorney General, to accomplish the purposes of these funds. The Director may do any and all lawful acts necessary or appropriate to carry out the purposes for which the above funds were established.

F. These funds shall not include any gifts of money to the Virginia Land Conservation Foundation or other funds deposited in the Virginia Land Conservation Fund.

§ 10.1-705. Definitions.

As used in this article, unless the context requires a different meaning:

"Agency of this Commonwealth" includes the government of this Commonwealth and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this Commonwealth.

"Board" means the Board on Conservation and Development of Public Beaches Recreation.

"Develop" or "development" means the replenishment and restoration of existing public beaches.

"Erosion" means the process of destruction by the action of wind, water, or ice of the land bordering the tidal waters of the Commonwealth.

"Government" or "governmental" includes the government of this Commonwealth, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

"Locality" means a county, city or town.

"Program" means the provisions of the Public Beach Conservation and Development Act.

"Public beach" means a sandy beach located on a tidal shoreline suitable for bathing in a county, city or town and open to indefinite public use.

"Reach" means a shoreline segment wherein there is mutual interaction of the forces of erosion, sediment transport and accretion.

"United States" or "agencies of the United States" includes the United States of America, the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

§ 10.1-707. Board duties; allocation of funds.

A. ~~The Board on Conservation and Development of Public Beaches is continued and shall be composed of eight members as follows: the Directors of the Virginia Marine Resources Commission, and the Department of Conservation and Recreation or their designees and six members-at-large appointed by the Governor for four-year terms. Members-at-large who have served two successive full terms shall be ineligible for reappointment until four years have elapsed since their last appointment. All terms shall begin July 1, and appointments to fill vacancies occurring shall be for the unexpired term. A chairman shall be selected from among the members-at-large.~~

B. A. The Board shall (i) review the financial needs of localities for implementation of this article; (ii) determine successful applicants; (iii) determine the equitable allocation of funds among participating localities except for allocations provided for in the current general appropriations act; and (iv) oversee local implementation of approved projects.

C. ~~The Board shall meet once prior to the beginning of each fiscal year to receive applications for grants from localities and to determine the allocation of such grants, and as often throughout the year as necessary.~~

D. B. The Department shall provide the Board with staff assistance and shall maintain necessary financial records.

E. ~~Board members shall be compensated at the rate and manner provided by § 2.2-2813.~~

§ 10.1-709. Establishment of fund; unexpended money.

A. A special fund to be known as the Public Beach Maintenance and Development Fund shall be established to provide grants to local governments covering up to one-half of the costs of erosion abatement measures designed to conserve, protect, improve, maintain and develop public beaches. No grants to any locality shall exceed ~~thirty~~ 30 percent of the money appropriated to such fund for the biennium unless otherwise provided for in the current general appropriations act. Money appropriated from such fund shall be matched equally by local funds. Federal funds shall not be used by localities to match money given from the fund. Localities may, however, combine state and local funds to match

federal funds for purposes of securing federal grants. *Interest earned or moneys received by the Fund shall remain in the Fund and be credited to it. Any money remaining in the Fund at the close of the first fiscal year of a biennium shall not revert to the general fund and shall be reappropriated and allotted.*

B. Up to \$250,000 per year of the money deposited to the Fund including interest accrued may be used for the Board's administrative and operating expenses including but not limited to expenses of the Board and its members, and expenses related to duties outlined in §§ 10.1-701, 10.1-702, 10.1-703, 10.1-706, and 10.1-707. All such expenditures shall be subject to approval by the Board.

~~B C. Money which that remains unexpended~~ *unobligated by the Board from the fund at the end of the biennium for which it was appropriated shall be retained and shall become a Special Emergency Assistance Fund to be used at the discretion of the Governor for the emergency conservation and development of public beaches damaged or destroyed by an unusually severe storm, hurricane or other natural disaster.*

§ 28.2-1100. Virginia Institute of Marine Science continued; duties.

The Virginia Institute of Marine Science shall hereafter be referred to as the Institute. The Institute shall:

1. Conduct studies and investigations of the seafood and commercial fishing and sport fishing industries;
2. Consider ways to conserve, develop and replenish fisheries resources and advise the Marine Resources Commission and other agencies and private groups on these matters;
3. Conduct studies of problems pertaining to the other segments of the maritime economy;
4. Conduct studies of marine pollution in cooperation with the State Water Control Board and the Department of Health and make the data and their recommendations available to the appropriate agencies;
5. Conduct hydrographic and biological studies of the Chesapeake Bay, its tributaries, and all the tidal waters of the Commonwealth and the contiguous waters of the Atlantic Ocean;
6. Engage in research in the marine sciences;
7. Conduct such special studies and investigations concerning these subjects as requested by the Governor; and
8. Engage in research and provide training, technical assistance and advice to the Board ~~on~~ of Conservation and ~~Development of Public Beaches~~ *Recreation* on erosion along tidal shorelines, the Soil and Water Conservation Board on matters relating to tidal shoreline erosion, and to other agencies upon request.

These studies shall include consideration of the seafood and other marine resources, such as the waters, bottoms, shore lines, tidal wetlands, and beaches, and all matters related to marine waters and the means by which marine resources might be conserved, developed and replenished.

2. That Chapter 2.1 (§§ 10.1-218 through 10.1-225) of Title 10.1 of the Code of Virginia is repealed.

3. That all rules and regulations adopted by the Board on Conservation and Development of Public Beaches that are in effect as of the effective date of this act shall remain in full force and effect until amended or rescinded by the Board of Conservation and Recreation. The Board of Conservation and Recreation shall promulgate as soon as practicable any necessary changes to the regulations to complete the consolidation of the Boards.

4. That of the members currently serving on the Board of Conservation and Recreation, the Virginia State Parks Foundation, and the Board on Conservation and Development of Public Beaches, a minimum of two members of each shall be appointed by the Governor to new first-term appointments to the reconstituted Board of Conservation and Recreation.

5. That all assets remaining in the Virginia State Parks Foundation Fund, established pursuant to former § 10.1-221, shall be deposited in the State Park Projects Fund established pursuant to subsection D of § 10.1-202.