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SENATE BILL NO. 192

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Transportation
on February 9, 2006)

(Patron Prior to Substitute— Senator Williams)

A BILL to amend and reenact § 6, as amended, of Chapter 693 of the Acts of Assembly of 1954; to amend the Code of Virginia by adding in Title 33.1 a chapter numbered 10.2, consisting of sections numbered 33.1-391.6 through 33.1-391.13; and to repeal § 12 of Chapter 693 of the Acts of Assembly of 1954, relating to the Chesapeake Bay Bridge and Tunnel Commission, the Chesapeake Bay Bridge Tunnel, and the Hampton Roads Bridge and Tunnel Authority.

Be it enacted by the General Assembly of Virginia:

1. That § 6, as amended, of Chapter 693 of the Acts of Assembly of 1954 is amended and reenacted and that the Code of Virginia is amended by adding in Title 33.1 a chapter numbered 10.2, consisting of sections numbered 33.1-391.6 through 33.1-391.13 as follows:

§ 6. Chesapeake Bay Bridge and Tunnel Commission.-A Commission, to be known as the "Chesapeake Bay Bridge and Tunnel Commission," is hereby created as the governing board of the Chesapeake Bay Bridge and Tunnel District created by this act. ~~The~~ *Until July 1, 2006, the* Commission shall consist of the following eleven members: (i) one member of the Commonwealth Transportation Board, (ii) two members from Accomack County, (iii) two members from Northampton County, (iv) one member from the City of Portsmouth, (v) one member from the City of Chesapeake, (vi) one member from the City of Hampton, (vii) one member from the City of Newport News, (viii) one member from the City of Norfolk, and (ix) one member from the City of Virginia Beach. The members of said Commission appointed under the provisions of this section shall be residents of the counties or cities from which they are appointed. *Beginning on July 1, 2006, the Commission shall consist of the following seven members: (i) one resident of the County of Accomack, appointed by the Governor; (ii) one resident of County of Northampton, appointed by the Governor; (iii) one resident of the City of Virginia Beach, appointed by the Governor; (iv) one resident of the City of Norfolk, appointed by the Governor; (v) one resident of Virginia's Eastern Shore, at large, appointed by the Governor; (vi) the member of the Commonwealth Transportation Board appointed from the Hampton Roads highway construction district as provided in § 33.1-2, and (vii) one member of the Hampton Roads Bridge and Tunnel Authority, appointed as provided in § 33.1-391.12. All such members shall be full, voting members.*

~~Any member~~ *All members* of the Commission ~~appointed or reappointed on or after July 1, 1998,~~ shall be appointed by the Governor, ~~shall be~~ subject to confirmation by each house of the General Assembly. Commission members ~~appointed by the Governor~~ shall be appointed to four-year terms. Any member of the Commission shall be eligible for reappointment to a second four-year term, but, except for appointments for terms of less than four years and appointments to fill vacancies for portions of unexpired terms, shall be ineligible for appointment to any additional term. When a vacancy in the membership occurs, ~~the Governor shall appoint~~ a new member *shall be appointed* to complete the unexpired portion of the term, *in the same manner as the original appointment.* All gubernatorial appointments shall be subject to confirmation by each house of the General Assembly. *For the purpose of initial appointments and for the purpose of providing for staggered terms, the member appointed from the County of Accomack shall serve for a term of three years, the member appointed from the County of Northampton shall serve for a term of two years, and the member appointed from Virginia's Eastern Shore at large shall serve for a term of one year.*

The Commission shall select a chairman annually from its membership. Within thirty days after the appointment of the original members of the Commission, the Commission shall meet on the call of any member and elect one of its members as chairman and another as vice-chairman. The Commission shall employ a secretary and treasurer (who may or may not be a member of the Commission) and if not a member of the Commission, fix his compensation and duties. Any member of the Commission *appointed by the Governor* may be removed from office for cause by the Governor. Each member of the Commission, immediately following his appointment, shall take an oath of office, prescribed by Article II, Section 7 of the Constitution of Virginia, before any judge, clerk, or deputy clerk of any court of record; judge of a district court in the Commonwealth; the Secretary of the Commonwealth or his deputy; or a member of the State Corporation Commission. No member of the Commission shall receive any salary but shall be entitled to expenses and the per diem pay allowed members of the Commonwealth Transportation Board. ~~Six~~ *Four* members of the Commission shall constitute a quorum. The records of the Commission shall be public records. The Commission is authorized to do all things necessary or incidental to the performance of its duties and the execution of its powers under this act.

60 The route for any bridge or tunnel or combination thereof, built by the Commission, shall be selected,
61 subject to the approval of the Commonwealth Transportation Board.

62 *CHAPTER 10.2.*

63 *HAMPTON ROADS BRIDGE AND TUNNEL AUTHORITY.*

64 *§ 33.1-391.6. Short title.*

65 *This chapter shall be known and may be cited as the Hampton Roads Bridge and Tunnel Authority*
66 *Act.*

67 *§ 33.1-391.7. Authority created.*

68 *There is hereby created a body corporate and a political subdivision of the Commonwealth to be*
69 *known as the Hampton Roads Bridge and Tunnel Authority, hereinafter in this chapter known as "the*
70 *Authority."*

71 *§ 33.1-391.8. Authority to impose and collect tolls.*

72 *Notwithstanding any contrary provision of this title and in accordance with all applicable federal*
73 *statutes and requirements, the Authority may impose and collect tolls in amounts established by the*
74 *Authority for the use of any or all of the bridges and tunnels enumerated in this section. The amount of*
75 *any such toll may be varied from facility to facility, by lane, by time of day, and by day of the week, or*
76 *some combination thereof.*

77 *1. The George P. Coleman Memorial Bridge (U.S. Route 17 bridge across the York River between*
78 *Gloucester County and Yorktown);*

79 *2. The James River Bridge (U.S. Routes 17 and 258 and Virginia Route 32 bridge between Newport*
80 *News and Isle of Wight County);*

81 *3. The Monitor Merrimac Memorial Bridge-Tunnel (Interstate Route 664 bridge-tunnel*
82 *across/beneath Hampton Roads between Newport News and Suffolk);*

83 *4. The Hampton Roads Bridge-Tunnel (Interstate Route 64 and U.S. Route 60 bridge-tunnel*
84 *across/beneath Hampton Roads between Hampton and Norfolk);*

85 *5. The Midtown Tunnel (U.S. Route 58 tunnel beneath the Elizabeth River between Norfolk and*
86 *Portsmouth);*

87 *6. The Downtown Tunnel (Interstate Route 264 tunnel beneath the Elizabeth River between Norfolk*
88 *and Portsmouth); and*

89 *7. The Interstate Route 64 bridge over the Elizabeth River between Chesapeake and Suffolk.*

90 *The Authority's ability to impose tolls for use of the George P. Coleman Memorial Bridge shall be*
91 *subject to requirements of any bond indenture applicable to any tolls imposed immediately prior to July*
92 *1, 2006.*

93 *Proceeds from any such tolls shall be used in accordance with federal requirements and to fund the*
94 *Authority's expenses in carrying out its duties and obligations.*

95 *§ 33.1-391.9. Payments by Chesapeake Bay Bridge Tunnel Commission.*

96 *The Authority may require the Chesapeake Bay Bridge and Tunnel Commission to remit, and the*
97 *Chesapeake Bay Bridge Tunnel Commission shall thereafter remit to the Authority, for each vehicle that*
98 *crosses the Chesapeake Bay Bridge Tunnel during the previous quarter, an amount equal to the average*
99 *toll per vehicle which is imposed by the Authority on vehicles crossing the other facilities identified in*
100 *§ 33.1-391.8. The average toll per vehicle shall be determined by dividing the tolls collected during*
101 *each quarter by the number of vehicles crossing each of the facilities listed in § 33.1-391.8 during that*
102 *quarter. In no event shall such charge exceed \$1.00 per vehicle. No such toll shall be imposed or*
103 *collected unless and until a toll, in addition to any toll being collected immediately prior to July 1,*
104 *2006, is imposed and collected for use of one or more of the bridges and tunnels enumerated in*
105 *§ 33.1-391.8, other than any toll being collected immediately prior to July 1, 2006.*

106 *§ 33.1-391.10. Transfer of control of and responsibility for the Chesapeake Bay Bridge Tunnel;*
107 *expansion of Authority membership.*

108 *Control of and responsibility for the Chesapeake Bay Bridge Tunnel shall pass from the Chesapeake*
109 *Bay Bridge and Tunnel Commission to the Virginia Department of Transportation and the Chesapeake*
110 *Bay Bridge and Tunnel facility shall be subject to the provisions of § 33.1-391.8 when the following*
111 *terms and conditions shall have been met:*

112 *1. Such construction to provide two full traffic lanes in each direction for the full length of the*
113 *Chesapeake Bay Bridge Tunnel has been completed; and*

114 *2. All bonds and other evidences of debt issued by or on behalf of the Chesapeake Bay Bridge and*
115 *Tunnel Commission shall have been satisfied or paid in full.*

116 *Until both the forgoing terms and conditions shall have been met, the Authority shall have no control*
117 *of or responsibility for the Chesapeake Bay Bridge Tunnel.*

118 *Upon the transfer of responsibility contemplated by this section, the Authority shall be enlarged by*
119 *two members, one of whom shall be a resident of Accomack County, appointed by the Accomack County*
120 *Board of Supervisors, and one of whom shall be a resident of Northampton County, appointed by the*
121 *Northampton County Board of Supervisors.*

§ 33.1-391.11. Construction of additional facilities; funding of construction; ability to act as responsible public entity under Public-Private Transportation Act of 1995.

The Authority may also impose and collect tolls for use of any other bridge or tunnel within the geographical boundaries of the Authority as defined in § 33.1-391.12 whose construction or reconstruction is funded in whole or in part by the Authority under applicable federal law or any other required agreement. The amount of any such toll may be varied from facility to facility, by lane, by time of day, and by day of the week, vehicle type, weight, number of axles, size, or some combination thereof. The construction or reconstruction may include expansion, alteration, rehabilitation, relocation, or other improvements to operation of the bridge or tunnel that results in additional capacity.

The Authority is a responsible public entity as defined in the Public-Private Transportation Act of 1995 (§ 56-556 et seq.).

§ 33.1-391.12. Composition of Authority; chairman and vice-chairman; quorum; administrative support services and office space.

The Authority shall consist of 11 members as follows: (i) one member appointed by the City Council of the City of Chesapeake, (ii) one member appointed by the Board of Supervisors of Gloucester County, (iii) one member appointed by the City Council of the City of Hampton, (iv) one member appointed by the Board of Supervisors of Isle of Wight County, (v) one member appointed by the City Council of the City of Newport News, (vi) one member appointed by the City Council of the City of Norfolk, (vii) one member appointed by the City Council of the City of Portsmouth, (viii) one member appointed by the City Council of the City of Suffolk, (ix) one member appointed by the City Council of the City of Virginia Beach, (x) one member appointed by the Board of Supervisors of York County, and (xi) one member of the Chesapeake Bay Bridge and Tunnel Commission designated by the Chairman of the Commission. Members of local governing bodies shall be ineligible for appointment as members of the Authority. Each member shall be selected by a majority vote of the body by which he is appointed. Members of the Authority shall serve for terms of four years and may be reappointed for one additional term. For the initial appointments only: those members appointed by the City Council of the City of Chesapeake and by the Board of Supervisors of Gloucester County shall be appointed for terms of one year; those members appointed by the City Council of the City of Hampton and by the Board of Supervisors of Isle of Wight County shall be appointed for terms of two years; those members appointed by the City Council of the City of Newport News and by the City Council of the City of Norfolk shall be appointed for terms of three years; and the remaining members shall be appointed for terms of four years. Any such initial appointment of two years or less shall not count against the term limitation. Vacancies shall be filled by appointment for the unexpired term by the making the original appointment.

The Authority shall annually elect from its membership a chairman and vice-chairman, who shall continue to hold such office until their respective successors are elected. A majority of the Authority shall constitute a quorum.

The chairman of the Authority shall appoint one of the members of the Authority to serve as a member of the Chesapeake Bay Bridge and Tunnel Commission to serve a term of four years. No person so appointed shall serve for more than two successive terms, except for an appointment to fill a vacancy. In the event of a vacancy, the chairman of the Authority shall appoint a replacement for the unexpired term. Any person so appointed shall serve as a full, voting member of the Chesapeake Bay Bridge and Tunnel Commission.

The members of the Authority shall be reimbursed for their actual and necessary expenses incurred in carrying out their duties and, in addition, shall be paid a per diem equal to the amount paid members of the Commonwealth Transportation Board for each day or portion thereof when engaged in Authority official business.

§ 33.1-391.13. Additional powers of Authority.

The Authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

2. To adopt and use a corporate seal and to alter the same at pleasure;

3. To procure insurance, participate in insurance plans, and provide self-insurance; however, the purchase of insurance, participation in an insurance plan, or the creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled;

4. To establish bylaws and make all rules and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the Authority's affairs;

5. To apply for and accept money, materials, contributions, grants, or other financial assistance from the United States and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or instrumentality of the Commonwealth;

183 6. To acquire real and personal property or any interest therein by purchase, lease, gift, or
184 otherwise, and to hold, encumber, sell, or otherwise dispose of such land or interest, for purposes
185 consistent with this chapter;

186 7. To construct or acquire, by purchase, lease, contract, or otherwise, highways, bridges, tunnels,
187 railroads and rail facilities and other transportation-related facilities;

188 8. To enter into agreements or leases with public or private entities for the operation of bridges and
189 tunnels;

190 9. To make and execute contracts and all other instruments and agreements necessary or convenient
191 for the performance of its duties and the exercise of its powers and functions under this chapter;

192 10. To the extent funds are made available to the Authority to do so, to employ employees, agents,
193 advisors, and consultants, including without limitation, attorneys, financial advisers, engineers, and
194 other technical advisers and, the provisions of any other law to the contrary notwithstanding, to
195 determine their duties and compensation; and

196 11. To the extent not inconsistent with other provisions of this chapter, and without limiting or
197 restricting the powers otherwise given the Authority, to exercise all the powers given to transportation
198 district commissions by § 15.2-4518 and 15.2- 4519.

199 **2. That, except as otherwise explicitly provided in this act, until such time as all debt issued for or**
200 **on behalf of the Chesapeake Bay Bridge Tunnel and supported by tolls imposed and collected for**
201 **use of the Chesapeake Bay Bridge Tunnel shall have been satisfied and retired, the Chesapeake**
202 **Bay Bridge and Tunnel Commission shall continue to have full control of all revenues derived**
203 **from or in connection with the Chesapeake Bay Bridge Tunnel, provided that, except for any**
204 **charge levied pursuant to § 33.1-391.9 of the Code of Virginia, no such revenues shall be used or**
205 **expended for any purpose other than maintenance, reconstruction, operation, policing, and**
206 **expansion of and improvements to the Chesapeake Bay Bridge Tunnel.**

207 **3. That no expansion of the capacity of the Chesapeake Bay Bridge Tunnel facility shall be**
208 **undertaken by or on behalf of the Chesapeake Bay Bridge and Tunnel Commission unless the**
209 **Commission is able to pay or finance the full cost of any such expansion from its own funds and**
210 **proceeds, without cost or obligation to the Commonwealth.**

211 **4. That no provision of this act shall be so construed as to infringe any indenture or contract**
212 **associated with any bonds or other financial obligations entered into by the Chesapeake Bay**
213 **Bridge and Tunnel Commission prior to July 1, 2006.**

214 **5. That on and after July 1, 2006, the Chesapeake Bay Bridge and Tunnel Commission shall not**
215 **issue any bond with a maturity date that extends beyond the maturity date of any bond that it**
216 **refinances; provided, however, that this provision shall not apply to any bond issued to provide**
217 **for the payment of any temporary or interim financing.**

218 **6. That the staff of the Hampton Roads Planning District Commission, Chesapeake Bay Bridge**
219 **and Tunnel Commission, and the Virginia Department of Transportation shall work cooperatively**
220 **to assist the proper formation and effective organization of the Hampton Roads Bridge and**
221 **Tunnel Authority. Until such time as the Hampton Roads Bridge and Tunnel Authority is fully**
222 **established, the staff of the Hampton Roads Planning District Commission shall serve as its staff,**
223 **and its office facilities shall be used by the Hampton Roads Bridge and Tunnel Authority. The**
224 **Authority shall pay the costs of such staff and office facilities as appropriate.**

225 **7. That, except as otherwise explicitly provided in this act, until such time as the appropriate**
226 **parties agree in writing, the Commonwealth Transportation Board shall allocate funding to and**
227 **the Department of Transportation shall perform or caused to be performed all maintenance and**
228 **operation of the bridges and tunnels enumerated in § 33.1-391.8 of the Code of Virginia and any**
229 **other required activities and services in effect as of January 1, 2006.**

230 **8. That § 12 of Chapter 693 of the Acts of Assembly of 1954 is repealed.**