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HOUSE BILL NO. 931

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee on Counties, Cities and Towns
 on February 10, 2006)

(Patron Prior to Substitute—Delegate Nutter)

A BILL to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 55.2, consisting of sections numbered 15.2-5516 through 15.2-5523, relating to Tourism Financing Development Authority.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 55.2, consisting of sections numbered 15.2-5516 through 15.2-5523, as follows:

CHAPTER 55.2.**TOURISM FINANCING DEVELOPMENT AUTHORITY.**

§ 15.2-5516. Short title.

This chapter shall be known and may be cited as the "Tourism Financing Development Authority."

§ 15.2-5517. One or more localities may create authority.

The governing body of a locality may by ordinance or resolution, or the governing bodies of two or more localities may by concurrent ordinances or resolutions or by agreement, create a tourism financing development authority for the purpose of supporting tourism infrastructure in localities. The name of the authority shall contain the word "authority." The authority shall be a public body politic and corporate. Any such locality that levies a transient occupancy tax pursuant to § 58.1-3819 shall designate any excess over two percent to be used for purposes of the authority except such revenues that are otherwise encumbered by the locality.

§ 15.2-5518. Directors; qualifications; terms; vacancies; compensation and expenses; quorum; records; certification and distribution of report concerning bond issuance.

A. The authority shall be governed by a board of directors in which all powers of the authority shall be vested and which board shall be composed of seven directors, appointed by the governing body of the locality. If the authority is created by two or more localities, the members of the board shall be appointed as agreed upon by the localities. The seven directors shall be appointed initially for terms of one, two, three and four years; two being appointed for one-year terms; two being appointed for two-year terms; two being appointed for three-year terms; and one being appointed for a four-year term. Subsequent appointments shall be for terms of four years, except appointments to fill vacancies, which shall be for the unexpired terms. All terms of office shall be deemed to commence upon the date of the initial appointment to the authority and thereafter, in accordance with the provisions of the immediately preceding sentence. If at the end of any term of office of any director a successor thereto has not been appointed, then the director whose term of office has expired shall continue to hold office until his successor is appointed and qualified.

B. Each director shall, upon appointment or reappointment, before entering upon his duties take and subscribe the oath prescribed by § 49-1.

C. Four members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the authority shall be leased or disposed of in any manner without a majority vote of the members of the board of directors. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board.

D. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of its financial transactions and, unless exempted by § 30-140, it shall arrange to have the records audited annually. Copies of each such audit shall be furnished to the governing body of the locality and shall be open to public inspection.

Two copies of the report concerning issuance of bonds required to be filed with the United States Internal Revenue Service shall be certified as true and correct copies by the secretary or assistant secretary of the authority. One copy shall be furnished to the governing body of the locality and the other copy mailed to the Department of Business Assistance.

§ 15.2-5519. 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 its pleasure;

3. To enter into contracts;

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60 4. To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain,
61 equip, and furnish one or more authority facilities including all real and personal properties that the
62 board of directors of the authority may deem necessary in connection therewith and regardless of
63 whether any such facilities shall then be in existence;

64 5. To lease to others any or all of its facilities and to charge and collect rent therefor and to
65 terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof;
66 and to include in any such lease, if desired, a provision that the lessee thereof shall have options to
67 renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the
68 indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with
69 or without consideration;

70 6. To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board
71 of directors shall find any such action to be in furtherance of the purposes for which the authority was
72 organized;

73 7. To issue its bonds in accordance with § 15.2-5520 for the purpose of carrying out any of its
74 powers;

75 8. As security for the payment of the principal of and interest on any bonds so issued and any
76 agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part
77 or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or
78 from any part thereof or from any loans made by the authority;

79 9. To employ and pay compensation to such employees and agents, including attorneys and real
80 estate brokers whether engaged by the authority or otherwise, as the board of directors shall deem
81 necessary in carrying on the business of the authority;

82 10. To exercise all powers expressly given the authority by the governing body of the locality which
83 established the authority and to establish bylaws and make all rules and regulations, not inconsistent
84 with the provisions of this chapter, deemed expedient for the management of the authority's affairs;

85 11. To borrow money and to accept contributions, grants, and other financial assistance from the
86 United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political
87 subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction,
88 acquisition, ownership, maintenance, or repair of the authority facilities; for the payment of principal of
89 any bond of the authority, interest thereon, or other cost incident thereto; or in order to make loans in
90 furtherance of the purposes of this chapter of such money, contributions, grants, and other financial
91 assistance, and to this end the authority shall have the power to comply with such conditions and to
92 execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient,
93 or desirable and to agree to such terms and conditions as may be imposed;

94 12. To make loans or grants to any person, partnership, association, corporation, business, or
95 governmental entity in furtherance of the purposes of this chapter including for the purposes of
96 promoting economic development, provided that such loans or grants shall be made only from revenues
97 of the authority that have not been pledged or assigned for the payment of any of the authority's bonds,
98 and to enter into such contracts, instruments, and agreements as may be expedient to provide for such
99 loans and any security therefor. An authority may also be permitted to forgive loans or other
100 obligations if it is deemed to further economic development. The word "revenues" as used in this
101 subdivision includes contributions, grants, and other financial assistance, as set out in subdivision 11;
102 and

103 13. To establish a revolving loan fund or loan guarantee program to help carry out its powers and
104 promote establishment of tourism infrastructure.

105 § 15.2-5520. Issuance of bonds, notes and other obligations of authority.

106 A. Subject to any limitations of this chapter, the authority may issue bonds from time to time in its
107 discretion, for any of its purposes, including the payment of all or any part of the cost of authority
108 facilities and including the payment or retirement of bonds previously issued by it. All bonds issued by
109 the authority shall be payable solely from the revenues and receipts derived from the leasing or sale by
110 the authority of its facilities or any part thereof or from payments received by the authority in
111 connection with its loans, and the authority may issue such types of bonds as it may determine,
112 including, without limiting the generality of the foregoing, bonds payable, both as to principal and
113 interest: (i) from its revenues and receipts generally; (ii) exclusively from the revenues and receipts of a
114 particular facility or loan; or (iii) exclusively from the revenues and receipts of certain designated
115 facilities or loans whether or not they are financed in whole or in part from the proceeds of such bonds.
116 Unless otherwise provided in the proceeding authorizing the issuance of the bonds, or in the trust
117 indenture securing the bonds, all bonds shall be payable solely and exclusively from the revenues and
118 receipts of a particular facility or loan. Bonds may be executed and delivered by the authority at any
119 time and from time to time, may be in such form and denominations and of such terms and maturities,
120 may be in registered or bearer form either as to principal or interest or both, may be payable in such
121 installments and at such time or times not exceeding 40 years from the date thereof, may be payable at

such place or places whether within or outside the Commonwealth, may bear interest at such rate or rates, may be payable at such time or times, may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be determined by the board of directors. If deemed advisable by the board of directors, there may be retained in the proceedings under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof, at such price or prices and after such notice or notices and on such terms and conditions as may be determined by the board of directors and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds of the authority may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors of the authority to be most advantageous, and the authority may pay all costs, premiums and commissions which its board of directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facility or any other facility, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the authority at any time outstanding may from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, premiums or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby, with the consent of the holders of the bonds so to be refunded, and regardless of whether the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether the bonds proposed to be refunded are payable on the same date or on different dates or are due serially or otherwise. The determination of the form, denominations, maturities, redemption provisions, places of payment, interest rate or rates, payment installations, dates and all other terms and provisions of bonds as authorized in this section may be made by the board of directors in such manner as the board may provide, including the determination by reference to indices and formulas or by agents designated by the board of directors under guidelines established by it.

B. All bonds shall be signed by the chairman or vice-chairman of the authority or shall bear his facsimile signature, and the corporate seal of the authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) or the assistant secretary (or assistant secretary-treasurer) of the authority or shall bear his facsimile signature, and any coupons attached thereto shall bear the facsimile signature of the chairman. In case any officer whose signature or a facsimile signature appears on any bonds or coupons ceases to be an officer before delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. When the signatures of both the chairman or the vice-chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds shall be authenticated by a corporate trustee or other authenticating agent approved by the authority.

C. If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, are less than the cost of the authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements or enlargements of the authority facilities for which such bonds shall have been issued.

D. Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which are mutilated, destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter; however, nothing contained in this chapter shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

E. All bonds issued under the provisions of this chapter shall have and are hereby declared to have

183 all the qualities and incidents of and shall be and are hereby made negotiable instruments under the
184 Uniform Commercial Code of Virginia (§ 8.1A-101 et seq.), subject only to provisions respecting
185 registration of the bonds.

186 F. In addition to all other powers granted to the authority by this chapter, the authority may issue,
187 from time to time, notes or other obligations of the authority for any of its authorized purposes. The
188 provisions of this chapter which relate to bonds or revenue bonds shall apply to such notes or other
189 obligations insofar as such provisions may be appropriate.

190 § 15.2-5521. Liability of Commonwealth, political subdivisions, directors and officers.

191 A. Bonds issued pursuant to this chapter shall not be deemed to constitute a debt or a pledge of the
192 faith and credit of the Commonwealth, or any political subdivision thereof, including the locality that
193 created the authority issuing such bonds, but such bonds shall be payable solely from the funds
194 provided therefor as herein authorized. All such bonds shall contain on the face thereof a statement to
195 the effect that neither the Commonwealth, nor any political subdivision thereof, nor the authority shall
196 be obligated to pay the same or the interest thereon or other costs incident thereto except from the
197 revenues and moneys pledged therefor and that neither the faith and credit nor the taxing power of the
198 Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of such
199 bonds or the interest thereon or other costs incident thereto.

200 B. Neither the directors of the authority nor any person executing the bonds shall be liable
201 personally on the bonds by reason of the issuance thereof.

202 C. All expenses incurred in carrying out the provisions of this chapter shall be payable solely from
203 the funds of the authority and no liability or obligation shall be incurred by the authority hereunder
204 beyond the extent to which moneys shall be available to the authority.

205 D. Bonds issued pursuant to the provisions of this chapter shall not constitute an indebtedness within
206 the meaning of any debt limitation or restriction.

207 § 15.2-5522. Dissolution of authority; disposition of property.

208 Whenever the board of directors of the authority by resolution determines that the purposes for
209 which the authority was formed have been substantially complied with and all bonds theretofore issued
210 and all obligations theretofore incurred by the authority have been fully paid, the then members of the
211 board of directors of the authority shall thereupon execute and file for record with the governing body
212 of the locality that created the authority, a resolution declaring such facts. If the governing body of the
213 locality that created the authority is of the opinion that the facts stated in the authority's resolution are
214 true and that the authority should be dissolved, it shall so resolve and the authority shall stand
215 dissolved. Upon such dissolution, the title to all funds and properties owned by the authority at the time
216 of such dissolution shall vest in the locality creating the authority and possession of such funds and
217 properties shall forthwith be delivered to such locality.

218 § 15.2-5523. Powers, etc., severable; provisions of chapter controlling over other statutes and
219 charters.

220 The powers granted and the duties imposed in this chapter are independent and severable. If any one
221 or more sections, subsections, sentences, or parts of any of this chapter are adjudged unconstitutional or
222 invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof, but
223 shall be confined in its operation to the specific provisions so held unconstitutional or invalid. Any
224 provision of this chapter that is found to be in conflict with any other statute or charter shall be
225 controlling and shall supersede such other statute or charter to the extent of such conflict.