

12105265D

SENATE BILL NO. 473

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Local Government
on February 7, 2012)

(Patron Prior to Substitute—Senator Locke)

A *BILL to amend and reenact §§ 2.2-2337, 2.2-2339, and 2.2-2340 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 2.2-2339.1, 2.2-2341.1, and 2.2-2349.1, relating to the Fort Monroe Authority Act; declaration of policy.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2337, 2.2-2339, and 2.2-2340 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2339.1, 2.2-2341.1, and 2.2-2349.1 as follows:

§ 2.2-2337. Definitions.

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

"Area of Operation" means an area coextensive with the territorial boundaries of the land acquired or to be acquired from the federal government by the Authority or the Commonwealth.

"Authority" means the Fort Monroe Authority.

"Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by the Authority pursuant to this article.

"City of Hampton" means the City of Hampton, Virginia, a municipal corporation of the Commonwealth of Virginia.

"Design Standards" means the standards developed as a requirement of the Programmatic Agreement and referred to in that document as the "Historic Preservation Manual and Design Standards" which govern the restoration, rehabilitation, and renovation of the contributing elements to the Fort Monroe National Historic Landmark District and new construction, additions, and reconstruction of buildings so they are compatible with the overall character of the District, as they may be adopted or amended from time to time.

"Facility" means a particular building or structure or particular buildings or structures, including all equipment, appurtenances, and accessories necessary or appropriate for the operation of such facility.

"Fort Monroe Master Plan" or "Master Plan" means the plan that identifies the long-term vision for the reuse of the Area of Operation, key implementation projects, and a detailed implementation strategy for attracting new uses and investment to the Area of Operation as approved by the Authority and produced in accordance with the public participation plan as adopted by the Authority.

"Fort Monroe Reuse Plan" or "Reuse Plan" means the document created by the Fort Monroe Federal Area Development Authority and adopted as an official operating document on August 20, 2008, as it may be amended from time to time.

"Programmatic Agreement for the Closure and Disposal of Fort Monroe, Va." or "Programmatic Agreement" means that certain agreement, as it may be amended from time to time, entered into among the U.S. Army, the Virginia State Historic Preservation Officer, the Advisory Council on Historic Preservation, the Commonwealth of Virginia, the Fort Monroe Federal Area Development Authority and the National Park Service and signed by all Signatory Parties as of April 27, 2009, pursuant to § 106 of the National Historic Preservation Act.

"Project" means any specific enterprise undertaken by the Authority, including the facilities as defined in this article, and all other property, real or personal, or any interest therein, necessary or appropriate for the operation of such property.

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.

"State Memorandum of Understanding" means an agreement between the Authority, the Secretary of Administration, the State Historic Preservation Officer, and the Governor, on behalf of all state agencies, to protect Fort Monroe and its historic, cultural, and natural assets by carefully implementing the plans, stipulations, requirements, and obligations under the Programmatic Agreement for nonfederal lands following the transfer of properties from the United States Army to the Commonwealth.

"Trustees" means the members of the Board of Trustees of the Authority.

§ 2.2-2339. Duties of the Authority.

The Authority shall have the power and duty:

1. To do all things necessary and proper to further an appreciation of the contributions of the first permanent English-speaking settlers as well as the Virginia Indians to the building of our

60 Commonwealth and nation, to commemorate the establishment of the first coastal fortification in the
61 English-speaking New World, to commemorate the lives of prominent Virginians who were connected to
62 the largest moated fortification in the United States, to commemorate the important role of African
63 Americans in the history of the site, including the "Contraband" slave decision in 1861 that earned Fort
64 Monroe the designation as "Freedom's Fortress," to commemorate Old Point Comfort's role in
65 establishing international trade and British maritime law in Virginia, and to commemorate almost 250
66 years of continuous service as a coastal defense fortification of the United States of America;

67 2. To hire and develop a professional staff including an executive director and such other staff as is
68 necessary to discharge the responsibilities of the Authority;

69 3. To establish personnel policies and benefits for staff;

70 4. To oversee the preservation, conservation, protection, and maintenance of the Commonwealth's
71 natural resources and real property interests at Fort Monroe and the renewal of Fort Monroe as a vibrant
72 and thriving community;

73 5. To adopt an annual budget, which shall be submitted to the Chairmen of the Senate Committee on
74 Finance and the House Committee on Appropriations and the Department of Planning and Budget by
75 July 1 of each year;

76 6. To provide for additional, more complete, or more timely services than are generally available in
77 the City of Hampton as a whole; and

78 7. To serve as the Commonwealth's management agent exercising all the Commonwealth's powers
79 over *public and private* land in the Area of Operation, including ~~but not limited to~~ regulation of land
80 use, zoning, and permitting ~~for the~~ and implementation of actions *and fulfillment of obligations* under
81 the Programmatic Agreement, Design Standards, Reuse Plan, *State Memorandum of Understanding*, and
82 any other agreements regarding Fort Monroe to which the Commonwealth is a party, ~~and~~ ensuring
83 adherence to the findings, declarations, and policies set forth in this article, unless the Commonwealth
84 and the Authority specifically agree in writing to the contrary.

85 § 2.2-2339.1. *Fort Monroe Master Plan; approval by Governor.*

86 *The Fort Monroe Master Plan shall be consistent with all preservation commitments and obligations*
87 *agreed to by the Commonwealth. The Master Plan shall be approved by the Governor before it becomes*
88 *effective.*

89 § 2.2-2340. Additional declaration of policy; powers of the Authority.

90 A. It is the policy of the Commonwealth that the historic, cultural, and natural resources of Fort
91 Monroe be protected in any conveyance or alienation of real property interests by the Authority. Real
92 property in the Area of Operation at Fort Monroe may be maintained as Commonwealth-owned land
93 that is leased, whether by short-term operating/revenue lease or long-term ground lease, to appropriate
94 public, private, or joint venture entities, with such historic, cultural, and natural resources being
95 protected in any such lease, to be approved as to form by the Attorney General of the Commonwealth
96 of Virginia. If sold as provided in this article, real property interests in the Area of Operation at Fort
97 Monroe may only be sold under covenants, historic conservation easements, *historic preservation*
98 *easements*, or other appropriate legal restrictions approved as to form by the Attorney General that
99 protect these historic and natural resources ~~and only with the consent of both the Governor and the~~
100 ~~General Assembly, except that any transfer to the National Park Service shall require only the approval~~
101 ~~of the Governor. Properties in the Wherry Quarter and Inner Fort areas identified in the Fort Monroe~~
102 ~~Reuse Plan may only be sold with the consent of both the Governor and the General Assembly, except~~
103 ~~that any transfer to the National Park Service shall require only the approval of the Governor. The~~
104 ~~proceeds from the sale or pre-paid lease of any property within the Area of Operation shall be retained~~
105 ~~by the Authority and used for infrastructure improvements in the Area of Operation.~~

106 B. The Authority shall have the power and duty:

107 1. To sue and be sued; to adopt and use a common seal and to alter the same as may be deemed
108 expedient; to have perpetual succession; to make and execute contracts and other instruments necessary
109 or convenient to the exercise of the powers of the Authority; and to make and from time to time amend
110 and repeal bylaws, rules, and regulations, not inconsistent with law, to carry into effect the powers and
111 purposes of the Authority;

112 2. To foster and stimulate the economic and other development of Fort Monroe, including without
113 limitation development for business, employment, housing, commercial, recreational, educational, and
114 other public purposes; to prepare and carry out plans and projects to accomplish such objectives; to
115 provide for the construction, reconstruction, rehabilitation, reuse, improvement, alteration, maintenance,
116 removal, equipping, or repair of any buildings, structures, or land of any kind; to lease or rent to others
117 or to develop, operate, or manage with others in a joint venture or other partnering arrangement, on such
118 terms as it deems proper and which are consistent with the provisions of the Programmatic Agreement,
119 Design Standards, and Reuse Plan governing any lands, dwellings, houses, accommodations, structures,
120 buildings, facilities, or appurtenances embraced within Fort Monroe; to establish, collect, and revise the
121 rents charged and terms and conditions of occupancy thereof; to terminate any such lease or rental

obligation upon the failure of the lessee or renter to comply with any of the obligations thereof; to arrange or contract for the furnishing by any person or agency, public or private, of works, services, privileges, or facilities in connection with any activity in which the Authority may engage, provided, however, that if services are provided by the City of Hampton pursuant to § 2.2-2341 for which the City is compensated pursuant to subsection B of § 2.2-2342, then the Authority may provide for additional, more complete, or more timely services than are generally available in the City of Hampton as a whole if deemed necessary or appropriate by the Authority; to acquire, own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, easement, dedication, or otherwise any real or personal property or any interest therein, which purchase, lease, or acquisition may *only* be made for less than fair market value *if the Board of Trustees determines, upon the advice of the Attorney General, that the transaction is consistent with the fiduciary obligation of the Authority to the Commonwealth* and if necessary or appropriate to further the purposes of the Authority; as provided in this article, to sell, lease, exchange, transfer, assign, or pledge any real or personal property or any interest therein, which sale, lease, or other transfer or assignment may be made for less than fair market value; as provided in this article, to dedicate, make a gift of, or lease for a nominal amount any real or personal property or any interest therein to the Commonwealth, the City of Hampton, or other localities or agencies, public or private, within the Area of Operation or adjacent thereto, jointly or severally, for public use or benefit, such as, but not limited to, game preserves, playgrounds, park and recreational areas and facilities, hospitals, clinics, schools, and airports; to acquire, lease, maintain, alter, operate, improve, expand, sell, or otherwise dispose of onsite utility and infrastructure systems or sell any excess service capacity for offsite use; to acquire, lease, construct, maintain, and operate and dispose of tracks, spurs, crossings, terminals, warehouses, and terminal facilities of every kind and description necessary or useful in the transportation and storage of goods, wares, and merchandise; and to insure or provide for the insurance of any real or personal property or operation of the Authority against any risks or hazards;

3. To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursements, in property or security in which fiduciaries may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled;

4. To undertake and carry out examinations, investigations, studies, and analyses of the business, industrial, agricultural, utility, transportation, and other economic development needs, requirements, and potentialities of its Area of Operation or offsite needs, requirements, and potentialities that directly affect the success of the Authority at Fort Monroe, and the manner in which such needs and requirements and potentialities are being met, or should be met, in order to accomplish the purposes for which it is created; to make use of the facts determined in such research and analyses in its own operation; and to make the results of such studies and analyses available to public bodies and to private individuals, groups, and businesses, except as such information may be exempted pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.);

5. To administer, develop, and maintain at Fort Monroe permanent commemorative cultural and historical museums and memorials;

6. To adopt names, flags, seals, and other emblems for use in connection with such shrines and to copyright the same in the name of the Commonwealth;

7. To enter into any contracts not otherwise specifically authorized in this article to further the purposes of the Authority, after approval as to form by the Attorney General;

8. To establish nonprofit corporations as instrumentalities to assist in administering the affairs of the Authority;

9. To exercise the power of eminent domain in the manner provided by Chapter 3 (§ 25.1-300 et seq.) of Title 25.1 within the Authority's Area of Operation; however, eminent domain may only be used to obtain easements across property on Fort Monroe for the provision of water, sewer, electrical, ingress and egress, and other necessary or useful services to further the purposes of the Authority, unless the Governor has expressly granted authority to obtain interests for other purposes;

10. To fix, charge, and collect rents, fees, and charges for the use of, or the benefit derived from, the services or facilities provided, owned, operated, or financed by the Authority benefiting property within the Authority's Area of Operation. Such rents, fees, and charges may be charged to and collected by such persons and in such manner as the Authority may determine from (i) any person contracting for the services or using the Authority facilities or (ii) the owners, tenants, or customers of the real estate and improvements that are served by, or benefit from the use of, any such services or facilities, in such manner as shall be authorized by the Authority in connection with the provision of such services or facilities. Such rents, fees, and charges shall not be chargeable to the Commonwealth or, where such rents, fees or charges relate to services or facilities utilized by the City of Hampton to provide municipal services, to the City of Hampton except as may be provided by lease or other agreement and may be

183 used to fund the provision of the additional, more complete, or more timely services authorized under
184 subdivision 6 of § 2.2-2339, the payments provided under § 2.2-2342, or for other purposes as the
185 Authority may determine to be appropriate, subject to the provisions of subsection B of § 2.2-2342;

186 11. To receive and expend gifts, grants, and donations from whatever source derived for the purposes
187 of the Authority;

188 12. To employ an executive director and such deputies and assistants as may be required;

189 13. To elect any past chairman of the Board of Trustees to the honorary position of chairman
190 emeritus. Chairmen emeriti shall serve as honorary members for life. Chairmen emeriti shall be elected
191 in addition to the nonlegislative citizen member positions defined in § 2.2-2338;

192 14. To determine what paintings, statuary, works of art, manuscripts, and artifacts may be acquired
193 by purchase, gift, or loan and to exchange or sell the same if not inconsistent with the terms of such
194 purchase, gift, loan, or other acquisition;

195 15. To change the form of investment of any funds, securities, or other property, real or personal,
196 provided the same are not inconsistent with the terms of the instrument under which the same were
197 acquired, and to sell, grant, or convey any such property, subject to the provisions of subsection A of
198 § 2.2-2340;

199 16. To cooperate with the federal government, the Commonwealth, the City of Hampton, or other
200 nearby localities in the discharge of its enumerated powers;

201 17. To exercise all or any part or combination of powers granted in this article;

202 18. To do any and all other acts and things that may be reasonably necessary and convenient to carry
203 out its purposes and powers;

204 19. To adopt by the Board of Trustees of the Authority, or the executive committee thereof, and
205 from time to time to amend and repeal regulations concerning the use and visitation of properties under
206 the control of the Fort Monroe Authority to protect or secure such properties and the public enjoyment
207 thereof;

208 20. To provide parking and traffic rules and regulations on property owned by the Authority; and

209 21. To provide that any person who knowingly violates a regulation of the Authority may be
210 requested by an agent or employee of the Authority to leave the property and upon the failure of such
211 person so to do shall be guilty of a trespass as provided in § 18.2-119.

212 *§ 2.2-2341.1. Control over the use of certain vehicles.*

213 *Notwithstanding the provisions of § 46.2-916.3, the Authority shall be solely responsible for*
214 *regulating the operation of golf carts and utility vehicles within the Area of Operation. Regulations of*
215 *the Authority shall provide that golf carts and utility vehicles may only be used by Authority staff and*
216 *contractors engaged by the Authority while such staff and contractors are conducting the official*
217 *business of the Authority.*

218 *§ 2.2-2349.1. Chapter controlling over inconsistent laws.*

219 *Insofar as the provisions of this chapter are inconsistent with the provisions of any other law,*
220 *general, special, or local, or parts thereof, the provisions of this chapter shall be controlling.*

221 **2. That the provisions of this act shall not become effective until the completion of the Fort**
222 **Monroe Master Plan, except that §§ 2.2-2341.1 and 2.2-2349.1 of this act shall become effective on**
223 **July 1, 2012.**

224 **3. That the Executive Director of the Fort Monroe Authority shall advise the Governor and the**
225 **Chairmen of the House Committee on General Laws and the Senate Committee on Finance when**
226 **the Fort Monroe Master Plan is completed.**