

# VIRGINIA ACTS OF ASSEMBLY -- 2013 RECONVENED SESSION

## CHAPTER 762

*An Act to amend and reenact §§ 2.2-4343, 33.1-1, 62.1-129, 62.1-132.1, 62.1-132.3, 62.1-132.4, 62.1-132.6, 62.1-132.19, 62.1-132.20, and 62.1-139 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 62.1-147.1:1, relating to the membership of the Board of Commissioners of the Virginia Port Authority; powers, duties, and procurement of the Virginia Port Authority; membership of the Commonwealth Transportation Board.*

[H 2276]

Approved April 3, 2013

### **Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-4343, 33.1-1, 62.1-129, 62.1-132.1, 62.1-132.3, 62.1-132.4, 62.1-132.6, 62.1-132.19, 62.1-132.20, and 62.1-139 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 62.1-147.1:1 as follows:**

#### **§ 2.2-4343. Exemption from operation of chapter for certain transactions.**

A. The provisions of this chapter shall not apply to:

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, actuarial services, and disability determination services. Selection of these services shall be governed by the standard set forth in § 51.1-124.30.

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant to § 23-44.1, 23-50.10:01, 23-76.1, or 23-122.1. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by §§ 23-44.1, 23-50.10:01, 23-76.1, and 23-122.1.

6. The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23-38.80.

7. Public institutions of higher education for the purchase of items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2011 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377.

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are

reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services set forth in subdivision 3 a of § 2.2-4301 in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

13. A public body that is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of services under this subdivision may deviate from the procurement procedures set forth in this chapter upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

14. Procurement of any construction or planning and design services for construction by a Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design or construction is funded by state appropriations of \$10,000 or less or (ii) the Virginia nonprofit corporation or organization is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether those federal procedures are in conformance with the provisions of this chapter.

15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Prudent Management of Institutional Funds Act (§ ~~55-268.14~~ 64.2-1100 et seq.).

17. The Department of Corrections in the selection of pre-release and post-incarceration services.

18. The University of Virginia Medical Center to the extent provided by subdivision B 3 of § 23-77.4.

19. The purchase of goods and services by a local governing body or any authority, board, department, instrumentality, institution, agency or other unit of state government when such purchases are made under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

20. The contract by community services boards or behavioral health authorities with an administrator or management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.

21. (Contingent expiration date) Procurement of any construction or planning and design services and contracts with or assigned to George Mason University by the corporation or other legal entity created by the board of visitors of George Mason University for the establishment and operation of the branch campus of George Mason University in the Republic of Korea, pursuant to § 23-91.29:1.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

**§ 33.1-1. State Highway and Transportation Board continued as Commonwealth Transportation Board; number and terms of members; removal from office; Commonwealth Transportation**

**Commissioner continued as Commissioner of Highways; vacancies.**

The State Highway and Transportation Board, formerly known as the State Highway and Transportation Commission, is continued and shall hereafter be known as the Commonwealth Transportation Board. Wherever either "Commission" or "Board" is used in this title referring to the State Highway and Transportation Board or the State Highway and Transportation Commission, it shall mean the Commonwealth Transportation Board.

The Board shall consist of ~~seventeen~~ 18 members: the Secretary of Transportation, the Commissioner of Highways, the Director of the Department of Rail and Public Transportation, *the Executive Director of the Virginia Port Authority*, and ~~fourteen~~ 14 citizen members. The citizen members shall be (i) appointed by the Governor as provided in § 33.1-2, (ii) subject to confirmation by the General Assembly, and (iii) removable from office during their respective terms by the Governor at his pleasure. Appointments of citizen members shall be for terms of four years commencing upon July 1, upon the expiration of the terms of the existing members, respectively. The initial terms of the members appointed in January, 1987, shall commence when appointed and shall be for terms ending June 30, 1988, June 30, 1989, and June 30, 1990, respectively. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term. No person shall be eligible to serve more than two successive terms of four years, other than the Secretary of Transportation, the Commissioner of Highways, ~~and~~ the Director of the Department of Rail and Public Transportation, *and the Executive Director of the Virginia Port Authority*. A person heretofore or hereafter appointed to fill a vacancy may serve two additional successive terms.

The Secretary of Transportation shall serve as Chairman of the Board. The Secretary shall have voting privileges only in the event of a tie. The Commissioner of Highways shall serve as Vice-Chairman of the Board. The Commissioner shall have voting privileges only in the event of a tie when he is presiding during the absence of the Chairman. The Director of the Department of Rail and Public Transportation *and the Executive Director of the Virginia Port Authority* shall serve without a vote.

Whenever in this title and in the Code of Virginia "State Highway Commission" or "State Highway and Transportation Board" is used, it shall mean "Commonwealth Transportation Board"; "State Highway Commissioner" or "State Highway and Transportation Commissioner" or "Commonwealth Transportation Commissioner" shall mean Commissioner of Highways; and all references to "Department of Highways and Transportation" shall refer to the Department of Transportation.

**§ 62.1-129. Board of Commissioners; members and officers; Executive Director; agents and employees.**

A. All powers, rights and duties conferred by this chapter, or other provisions of law, upon the Authority shall be exercised by the Board of Commissioners of the Virginia Port Authority, hereinafter referred to as Board or Board of Commissioners. The Board shall consist of the State Treasurer, *the Chief Executive Officer of the Virginia Economic Development Partnership*, and 11 members appointed by the Governor, subject to confirmation by the General Assembly, who shall serve at the pleasure of the Governor. The terms of members of the Board of Commissioners appointed or reappointed by the Governor on or after January 1, 1981, shall be for five years. Any appointment to fill a vacancy shall be for the unexpired term. Members of the Board shall receive their expenses and shall be compensated at the rate provided in § 2.2-2813 for each day spent on business of the Board. No member appointed by the Governor shall be eligible to serve more than two successive terms. A person heretofore or hereafter appointed to fill a vacancy may be appointed to serve two additional terms. Beginning with those members of the Board of Commissioners appointed or reappointed by the Governor on or after January 1, 1981: (i) appointments shall be made by the Governor in such a manner as to ensure the widest possible geographical representation of all parts of the Commonwealth, and (ii) no resident of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, or Virginia Beach shall be eligible for appointment or reappointment to the Board of Commissioners if his appointment or reappointment would increase or maintain the number of members of the Board of Commissioners residing in such cities above the number of ~~three~~ four. One of the members appointed or reappointed from the cities previously mentioned in this section shall be a resident of the City of Portsmouth or the City of Chesapeake, one of the members appointed or reappointed shall be a resident of the City of Norfolk or the City of Virginia Beach, ~~and~~ one of the members appointed or reappointed shall be a resident of the City of Newport News or the City of Hampton, *and one of the members appointed or reappointed shall be a resident of Greater Hampton Roads, but not a resident of any of the above-mentioned cities. Additionally, one member shall be appointed from the City of Richmond or the County of Chesterfield, Hanover, or Henrico to serve as a nonvoting ex officio member representing the Port of Richmond, and one member shall be appointed from the City of Winchester or the County of Clarke, Frederick, or Warren to serve as a nonvoting ex officio member representing the Virginia Inland Port.* Of the members appointed by the Governor, all members shall have executive level experience and represent one of the following industries: agriculture, distribution and warehousing, manufacturing, logistics and transportation, mining, marketing, legal, financial, or transportation infrastructure.

The Board shall elect from its membership a chairman and vice-chairman and may also elect from its membership, or appoint from its staff, a secretary and treasurer and prescribe their powers and duties.

The Board of Commissioners shall appoint the chief executive officer of the Authority, who shall not be a member of the Board, who shall be known as the Executive Director and who shall serve at the pleasure of the Board. The Executive Director's compensation from the Commonwealth shall be fixed by the Board in accordance with law. This compensation shall be established at a level which will enable the Authority to attract and retain a capable Executive Director.

The Board may also appoint from the staff an assistant secretary and an assistant treasurer, who shall, in addition to other duties, discharge such functions of the secretary and treasurer, respectively, as may be directed by the Board.

B. The Board may, at its discretion and from time to time, also form a Maritime Advisory Council, consisting of representatives from the maritime industry, to provide advice and counsel to the Board of Commissioners on all matters associated with the Authority with the exception of the annual budget and personnel matters.

**§ 62.1-132.1. General powers.**

The Authority is vested with the powers of a body corporate, including, without limitation, to:

1. Sue and be sued;
2. Make contracts;
3. Adopt and use a common seal, and alter such seal at its pleasure;
4. Procure insurance, participate in insurance plans, and provide self-insurance. 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; ~~and~~
5. Develop policies and procedures generally applicable to the procurement of goods, services and construction based on competitive principles; *and*
6. *Exercise all the powers that are conferred upon industrial development authorities created pursuant to Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2, except that the power to effect a change in ownership or operation of the Port of Virginia shall be subject to the provisions of § 62.1-132.19.*

**§ 62.1-132.3. Stimulation of commerce.**

It shall be the duty of the Authority, on behalf of the Commonwealth, to foster and stimulate the commerce of the ports of the Commonwealth *and related facilities by serving as the United States Eastern Seaboard gateway for the global import and export of freight throughout the world*, to promote the shipment of ~~goods and cargoes~~ *freight* through the *maritime and inland* ports, to seek to secure necessary improvements of navigable tidal waters within the Commonwealth, and in general to perform any act or function ~~which~~ *that* may be useful in developing, improving, or increasing the commerce, both foreign and domestic, of ~~the all maritime and inland~~ *maritime and inland* ports of the Commonwealth *and related facilities*.

**§ 62.1-132.4. Rates and rate structures.**

The Authority shall have power to establish a traffic bureau or other office to investigate and seek improvement in any rates, rate structures, practices, and charges affecting or tending to affect the commerce of the ports of the Commonwealth. Notwithstanding any provision of law to the contrary, the Authority shall not disclose proprietary information and data furnished to it in confidence, including but not limited to *customer contracts, agreements, or information; ship tally sheets; ship manifests; information relating to tonnages and cargoes; information; and; annual budgets; and other information* furnished to it by any entity, including but not limited to any entity operating a terminal on behalf of the Virginia Port Authority.

**§ 62.1-132.6. Powers not restrictive; exemptions from Public Procurement Act and the Virginia Personnel Act.**

A. The Authority shall have the power to perform any act or carry out any function not inconsistent with state law, whether included in the provisions of this chapter, which may be, or tend to be, useful in carrying out the provisions of this chapter. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any of its powers in accordance with this chapter, provided the Authority implement, by policy or regulation adopted by the Board of Commissioners ~~and approved by the Department of General Services~~, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

B. The provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 shall not apply to the Authority.

C. Additionally, the provisions of §§ 2.2-1124, 2.2-1131.1, 2.2-1136, 2.2-1149, 2.2-1153, 2.2-1154, and 2.2-1156 shall not apply to the Authority provided that (i) the Authority adopts and the Board approves regulations governing the acquisition, lease, or sale of surplus and real property consistent with the provisions of the above-referenced sections; and (ii) any acquisition, lease, or sale of real property valued in excess of \$20 million shall be approved by the Governor.

D. *Additionally, the provisions of §§ 2.2-1117 and 53.1-47 shall not apply to the Authority.*

**§ 62.1-132.19. Acquisition and lease of property.**

A. ~~The~~ *Except as provided in subsection D, the Authority is empowered to rent, lease, buy, own, acquire, construct, reconstruct, and dispose of harbors, seaports, port facilities, and such property, whether real or personal, as it may find necessary or convenient and issue revenue bonds therefor without pledging the faith and credit of the Commonwealth.*

B. The Authority may lease to another such part or all of its real or personal property for such period and upon such terms and conditions as the Authority may determine.

C. The Authority shall neither expend funds nor incur any indebtedness for any improvement, repair, maintenance, or addition to any real or personal property owned by anyone other than the Authority, the Commonwealth, or a political subdivision of the Commonwealth, unless either (i) the use of such property is guaranteed to the Authority or the Commonwealth by a lease extending beyond the useful life of the improvement, repair, maintenance, addition, or new facility, or (ii) such expenditure or indebtedness is approved in writing by the Governor.

D. *Notwithstanding any provision of law to the contrary, neither the Commonwealth nor the Authority shall accept any unsolicited proposal under the Public-Private Transportation Act (§ 56-556 et seq.) or the Public-Private Education Facilities and Infrastructure Act (§ 56-575.1 et seq.) regarding the ownership or operation of any seaport or port facility.*

**§ 62.1-132.20. Craney Island Disposal Area.**

A. No agency of the Commonwealth, including the Virginia Port Authority, shall have the authority to expand the Craney Island Disposal Area northward or westward ~~or beyond its present capacity or to cause activities which will result in such expansion of the Craney Island Disposal Area. In addition, no state funds shall be expended for any activities which will result in the expansion of Craney Island northward or westward or beyond its present capacity as a disposal area for material dredged from any site, including the Hampton Roads Harbor.~~ However, the Commonwealth and the Virginia Port Authority are authorized to expend state funds for a ~~feasibility study and an environmental impact study related to the potential expansion~~ *the construction and development* of Craney Island to the east for an additional marine terminal.

B. The Virginia Port Authority is hereby directed, in coordination with other state and federal agencies, including the United States Army Corps of Engineers, to locate, establish, and use ocean disposal areas for ocean-suitable dredge materials from the Hampton Roads Harbor, or some other suitable site, and to use the existing Craney Island Disposal Area for dredge material suitable or unsuitable for alternate disposal, including ocean disposal, with priority given to materials dredged from the Southern Branch of the Elizabeth River. The construction of a marine terminal on the eastern side of Craney Island Disposal Area using dredge material to extend the disposal area eastward, as defined in the U.S. Army Corps of Engineers Feasibility Study approved on October 24, 2006, and authorized by Congress in the Water Resources Development Act of 2007, is hereby authorized.

C. Prior to the disposal of any dredged material either at an ocean area or on the Craney Island Disposal Area, after the Craney Island Disposal Area has attained its capacity limit, the appropriate state agencies shall investigate and consider the cost and availability of beneficial uses of the dredged material. The appropriate state agencies shall consult with state and federal agencies to ensure the environmental acceptability of any beneficial use. When such environmentally acceptable beneficial use is available and economically feasible, the appropriate state agencies shall pursue such use.

For purposes of this section, "Craney Island Disposal Area" means that parcel of land lying and being in the body of water known as Hampton Roads Harbor, within the City of Portsmouth and adjacent to the City of Suffolk.

**§ 62.1-139. Forms of accounts and records; annual report.**

A. The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in a form prescribed by governmental generally accepted accounting principles. Such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by enterprises.

B. The accounts of the Authority shall be audited annually by a certified public accounting firm selected by the Auditor of Public Accounts with the assistance of the Authority through a process of competitive negotiation. The cost of such audit and review shall be borne by the Authority.

C. The General Assembly may request the Auditor of Public Accounts to conduct audits at any time.

D. The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the preceding June 30.

E. *The Authority shall submit a detailed annual operating plan and budget to the Secretary of Transportation and the Director of the Department of Planning and Budget by November 1 of each year. Notwithstanding any other provision of this chapter, the form and content of the operating plan and budget shall be determined by the Director of the Department of Planning and Budget and shall include information on salaries, expenditures, indebtedness, and other information as determined by the Director of the Department of Planning and Budget.*

F. *The Board of Commissioners, the General Assembly, or the Governor may at any time request*

*that the Office of the Inspector General, created pursuant to § 2.2-308, review any area of the Authority's finances or operations.*

**§ 62.1-147.1:1. Exemption of Authority from certain technology procedures.**

*The provisions regulating the Virginia Information Technologies Agency (§ 2.2-2005 et seq.) shall not apply to the Authority in the exercise of any power conferred under this chapter.*

**2. That the Virginia Port Authority shall exercise all powers and authority granted to it pursuant to Chapter 10 (§ 62.1-128 et seq.) of Title 62.1 of the Code of Virginia to ensure that all necessary and desirable changes, reforms, and reorganizations are promptly undertaken in order to ensure the effectiveness and efficiency of operation of Virginia International Terminals, Inc., including but not limited to the elimination of duplicative and redundant services, personnel, and positions. The Authority shall report to the 2014 Regular Session of the General Assembly actions taken to implement this undertaking.**