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## SENATE BILL NO. 1305

Offered January 17, 2013

A *BILL 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, and 62.1-132.20 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 10 of Title 62.1 a section numbered 62.1-147.1:1, relating to the Virginia Port Authority, the Virginia Economic Development Partnership, and the Commonwealth Transportation Board.*

Patrons—Wagner, Black, Lucas and McWaters

Referred to Committee on General Laws and Technology

**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, and 62.1-132.20 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 (§ 55-268.11 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

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59 and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town.  
60 Such policies and standards may provide for incentive contracting that offers a contractor whose bid is  
61 accepted the opportunity to share in any cost savings realized by the locality when project costs are  
62 reduced by such contractor, without affecting project quality, during construction of the project. The fee,  
63 if any, charged by the project engineer or architect for determining such cost savings shall be paid as a  
64 separate cost and shall not be calculated as part of any cost savings.

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

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

72 12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of  
73 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,  
74 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  
75 and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

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

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

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

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

99 16. The Eastern Virginia Medical School in the selection of services related to the management and  
100 investment of its endowment and other institutional funds. The selection of these services shall, however,  
101 be governed by the Uniform Prudent Management of Institutional Funds Act (§ 55-268.11 et seq.).

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

103 18. The University of Virginia Medical Center to the extent provided by subdivision B 3 of  
104 § 23-77.4.

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

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

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

115 B. Where a procurement transaction involves the expenditure of federal assistance or contract funds,  
116 the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or  
117 regulations not in conformance with the provisions of this chapter, a public body may comply with such  
118 federal requirements, notwithstanding the provisions of this chapter, only upon the written determination  
119 of the Governor, in the case of state agencies, or the governing body, in the case of political  
120 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 for malfeasance, misfeasance, incompetence, or gross neglect of duty~~. 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*

182 *be a resident of Greater Hampton Roads, but not a resident of any of the above-mentioned cities.* Of the  
 183 members appointed by the Governor, all members shall have executive level experience and represent  
 184 one of the following industries: agriculture, distribution and warehousing, manufacturing, logistics and  
 185 transportation, mining, marketing, legal, financial, or transportation infrastructure.

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

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

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

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

200 **§ 62.1-132.1. General powers.**

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

- 202 1. Sue and be sued;
- 203 2. Make contracts;
- 204 3. Adopt and use a common seal, and alter such seal at its pleasure;
- 205 4. Procure insurance, participate in insurance plans, and provide self-insurance. The purchase of  
 206 insurance, participation in an insurance plan, or the creation of a self-insurance plan by the Authority  
 207 shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its  
 208 officers, directors, employees, or agents are otherwise entitled; ~~and~~

- 209 5. Develop policies and procedures generally applicable to the procurement of goods, services and  
 210 construction based on competitive principles; *and*

- 211 6. *Exercise all the powers that are conferred upon industrial development authorities created*  
 212 *pursuant to Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.*

213 **§ 62.1-132.3. Stimulation of commerce.**

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

222 **§ 62.1-132.4. Rates and rate structures.**

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

231 **§ 62.1-132.6. Powers not restrictive; exemptions from Public Procurement Act and the Virginia**  
 232 **Personnel Act.**

233 A. The Authority shall have the power to perform any act or carry out any function not inconsistent  
 234 with state law, whether included in the provisions of this chapter, which may be, or tend to be, useful in  
 235 carrying out the provisions of this chapter. The provisions of the Virginia Public Procurement Act  
 236 (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any of its powers in accordance  
 237 with this chapter, provided the Authority implement, by policy or regulation adopted by the Board of  
 238 Commissioners ~~and approved by the Department of General Services,~~ procedures to ensure fairness and  
 239 competitiveness in the procurement of goods and services and in the administration of its capital outlay  
 240 program. *Specifically, the provisions of § 2.2-4301 shall not apply to the Authority.* This exemption shall  
 241 be applicable only so long as such policies and procedures meeting the requirements remain in effect.

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

243 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.

**§ 62.1-147.1:1. 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.**