

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 681

An Act to amend and reenact §§ 2.2-2337, 2.2-2338, 2.2-2339, 2.2-2340, 2.2-2341, and 2.2-2343 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-2348.1, relating to the Fort Monroe Authority; powers and duties; land and utility ownership.

[S 166]

Approved April 6, 2014

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2337, 2.2-2338, 2.2-2339, 2.2-2340, 2.2-2341, and 2.2-2343 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-2348.1 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.

"Board" means the Board of Trustees created in § 2.2-2338.

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

"City of Hampton" or "City" 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.

§ 2.2-2338. Board of Trustees; membership.

There is hereby created a political subdivision and public body corporate and politic of the Commonwealth of Virginia to be known as the Fort Monroe Authority, to be governed by a Board of Trustees (Board) consisting of 12 voting members appointed as follows: the Secretary of Natural

Resources; ~~and the Secretary of Commerce and Trade, and the Secretary of Veterans Affairs and Homeland Security~~; or their successor positions if those positions no longer exist, from the Governor's cabinet; ~~the Lieutenant Governor~~; the member of the Senate of Virginia and the member of the House of Delegates representing the district in which Fort Monroe lies; two members appointed by the Hampton City Council; and five nonlegislative citizen members appointed by the Governor, four of whom shall have expertise relevant to the implementation of the Fort Monroe Reuse Plan, including but not limited to the fields of historic preservation, tourism, environment, real estate, finance, and education, and one of whom shall be a citizen representative from the Hampton Roads region. Cabinet members, ~~the Lieutenant Governor~~, and elected representatives shall serve terms commensurate with their terms of office. Citizen appointees shall initially be appointed for staggered terms of either one, two, or three years, and thereafter shall serve for four-year terms. Cabinet members shall be entitled to send their deputies or another cabinet member, and legislative members another legislator, to meetings as full voting members in the event that official duties require their presence elsewhere.

The Board so appointed shall enter upon the performance of its duties and shall initially and annually thereafter elect one of its members as chairman and another as vice-chairman. The Board shall also elect annually a secretary, who shall be a member of the Board, and a treasurer, who need not be a member of the Board, or a secretary-treasurer, who need not be a member of the Board. The chairman, or in his absence the vice-chairman, shall preside at all meetings of the Board, and in the absence of both the chairman and vice-chairman, the Board shall elect a chairman pro tempore who shall preside at such meetings. Seven Trustees shall constitute a quorum, and all action by the Board shall require the affirmative vote of a majority of the Trustees present and voting, except that any action to amend or terminate the existing Reuse Plan, or to adopt a new Reuse Plan, shall require the affirmative vote of 75 percent or more of the Trustees present and voting. The members of the Board shall be entitled to reimbursement for expenses incurred in attendance upon meetings of the Board or while otherwise engaged in the discharge of their duties. Such expenses shall be paid out of the treasury of the Authority in such manner as shall be prescribed by 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 Commonwealth and nation, to commemorate the establishment of the first coastal fortification in the English-speaking New World, to commemorate the lives of prominent Virginians who were connected to the largest moated fortification in the United States, to commemorate the important role of African Americans in the history of the site, including the "Contraband" slave decision in 1861 that earned Fort Monroe the designation as "Freedom's Fortress," to commemorate Old Point Comfort's role in establishing international trade and British maritime law in Virginia, and to commemorate almost 250 years of continuous service as a coastal defense fortification of the United States of America;

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

3. To establish personnel policies and benefits for staff;

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

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

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

7. To serve as the Commonwealth's management agent ~~exercising all the Commonwealth's powers over public and private for all the land in the Area of Operation, including regulation of land use, zoning, and permitting~~ and for the implementation of actions and fulfillment of ~~federal and state obligations for public and private land~~ under the *Fort Monroe Master Plan*, Programmatic Agreement, Design Standards, Reuse Plan, State Memorandum of Understanding, and any other agreements regarding Fort Monroe to which the Commonwealth is a party, ensuring adherence to the findings, declarations, and policies set forth in this article, unless the Commonwealth and the Authority specifically agree in writing to the contrary.

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

A. It is the policy of the Commonwealth that the historic, cultural, and natural resources of Fort Monroe be protected in any conveyance or alienation of real property interests by the Authority. Real property in the Area of Operation at Fort Monroe may be maintained as Commonwealth-owned land that is leased, whether by short-term operating/revenue lease or long-term ground lease, to appropriate public, private, or joint venture entities, with such historic, cultural, and natural resources being protected in any such lease, to be approved as to form by the Attorney General of the Commonwealth of Virginia. If sold as provided in this article, real property interests in the Area of Operation at Fort

Monroe may only be sold under covenants, historic conservation easements, historic preservation easements, or other appropriate legal restrictions approved as to form by the Attorney General that protect these historic and natural resources. Properties in the Wherry Quarter and Inner Fort areas identified in the Fort Monroe Reuse Plan may only be sold with the consent of both the Governor and the General Assembly, except that any transfer to the National Park Service shall require only the approval of the Governor. The proceeds from the sale or pre-paid lease of any *real or personal* property within the Area of Operation shall be retained by the Authority and used for infrastructure improvements in the Area of Operation.

B. The Authority shall have the power and duty:

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

2. To foster and stimulate the economic and other development of Fort Monroe, including without limitation development for business, employment, housing, commercial, recreational, educational, and other public purposes; to prepare and carry out plans and projects to accomplish such objectives; to provide for the construction, reconstruction, rehabilitation, reuse, improvement, alteration, maintenance, removal, equipping, or repair of any buildings, structures, or land of any kind; to lease or rent to others or to develop, operate, or manage with others in a joint venture or other partnering arrangement, on such terms as it deems proper and which are consistent with the provisions of the Programmatic Agreement, Design Standards, and Reuse Plan governing any lands, dwellings, houses, accommodations, structures, buildings, facilities, or appurtenances embraced within Fort Monroe; to establish, collect, and revise the 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 used to fund the provision of the additional, more complete, or more timely services authorized under subdivision 6 of § 2.2-2339, the payments provided under § 2.2-2342, or for other purposes as the Authority may determine to be appropriate, subject to the provisions of subsection B of § 2.2-2342;

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

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

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

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

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

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

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

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

19. To adopt, *amend or repeal*, by the Board of Trustees of the Authority, or the executive committee thereof, *and from time to time to amend and repeal* regulations concerning the use of, access to and visitation of properties under the control of the Fort Monroe Authority in order to protect or secure such properties and the public enjoyment thereof, *with any violation of such regulations being punishable by a civil penalty of up to \$100 for the first violation and up to \$250 for any subsequent violation, such civil penalty to be paid to the Authority;*

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

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

§ 2.2-2341. Relationship to the City of Hampton.

A. All of Fort Monroe is within the City of Hampton's jurisdictional limits; therefore, the City of Hampton is the locality and Virginia municipal corporation for the Authority's Area of Operation. Nothing in this article is intended to limit or restrict the otherwise existing authority of the City of Hampton which, except as otherwise provided in this article, is reserved solely for the City of Hampton. As authorized in this article, the Authority may supplement in its Area of Operation the works, services, privileges, or facilities provided by the City of Hampton to provide additional, more complete, or more timely works, services, privileges, or facilities than provided by the City of Hampton.

B. The Authority shall adopt procedures for the implementation of required actions under the Programmatic Agreement and any other agreements regarding Fort Monroe to which the Commonwealth is a party, including adherence to the Reuse Plan and the Design Standards adopted by the Authority. Those procedures shall provide the City of Hampton a reasonable opportunity for review and comment

regarding any proposed actions.

C. The City shall be responsible for dealing directly with any taxpayers at Fort Monroe regarding the collection of any taxes or fees which the City believes are due based on real property interests, business activity, ownership of personal property, and other authorized taxes and fees, unless the City and the Authority agree differently in writing.

D. *In its comprehensive plan and in adopting a zoning ordinance for the Area of Operation, the City shall recognize the authority of the federal and state obligations for land use regulation placed upon the Fort Monroe Authority by the requirements of the Fort Monroe Master Plan, Programmatic Agreement, Design Standards, Reuse Plan, State Memorandum of Understanding, and any other agreements regarding Fort Monroe to which the Commonwealth is a party.*

§ 2.2-2343. Authority may borrow money, accept contributions, etc.

In addition to the powers conferred upon the Authority by other provisions of this article, the Authority shall have the power:

1. To borrow moneys or accept contributions, grants, or other financial assistance from the federal government, the Commonwealth, any locality or political subdivision, any agency or instrumentality thereof, including but not limited to the Virginia Resources Authority, or any source, public or private, for or in aid of any project of the Authority, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable;

2. To apply for grants from the Urban Public-Private Partnership Redevelopment Fund pursuant to Chapter 24.1 (§ 15.2-2414 et seq.) of Title 15.2. The Authority shall be considered a local government eligible for grants under that chapter. Funds from any source available to the Authority may be used to meet the matching requirement of any such grant;

3. To participate in local group pools authorized pursuant to § 15.2-2703 or to participate in the Commonwealth's risk pool administered by the Division of Risk Management;

4. To utilize the provisions of the Public-Private Transportation Act of 1995 (§ 56-556 et seq.) and the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) as a qualifying public entity under those statutes;

5. To apply for and receive enterprise zone designation under the Enterprise Zone Grant Act (§ 59.1-538 et seq.). Fort Monroe shall be considered an eligible area for such designation, although the Governor is not obligated to grant such a designation;

6. To act as a local cooperating entity pursuant to § 62.1-148; and

7. To enter into ~~privatized~~ agreements with any public or private utility for the ~~provisions of ownership or operation of utility services at Fort Monroe, as provided that the in § 2.2-2348.1.~~ The Authority and the City may mutually agree that such services should not or need not be included under any franchise agreement that the City has with that utility. The utility shall provide the same service generally available to its other customers in the City of Hampton at reasonable rates.

§ 2.2-2348.1. Ratification of the ownership of certain lands in the City of Hampton known as Fort Monroe; ownership and operation of utilities.

A. *Notwithstanding any other provision of law, the ownership of certain property located in the City of Hampton, Virginia, consisting of 312.75 acres, more or less, generally known as "Fort Monroe," shall be deemed validly vested in the Commonwealth, with all rights, title, and interest therein, being more particularly described as follows: All that certain lot, piece, or parcel of land situate, lying, and being in the City of Hampton, in the Commonwealth of Virginia, containing 312.75 acres, more or less, described in Exhibit A and illustrated in Exhibit B of that certain Quitclaim Deed recorded in the Clerk's Office of the Circuit Court of the City of Hampton on June 14, 2013, as Instrument No. 130009559.*

B. *Notwithstanding any other provision of law, the ownership of the roads, water, sewer, and other utility services on that certain property located in the City of Hampton, Virginia, consisting of 561.345 acres, more or less, generally known as "Fort Monroe," shall be deemed validly vested in the Commonwealth, being more particularly described as follows: All those certain lots, pieces, or parcels of land situate, lying, and being in the City of Hampton, in the Commonwealth of Virginia, containing 561.345 acres, more or less, described as Parcels A, B, C, D, E, F, G, and H on that certain survey by the Norfolk District Corps of Engineers dated July 20, 2009, last revised November 15, 2012, entitled "Plat Showing 8 Parcels of Land Totaling +/-561.345 Acres Situated on Fort Monroe, Virginia," and recorded in the Clerk's Office of the Circuit Court of the City of Hampton in Instrument No. 130009559 at Pages 286 and 287.*

1. *The Authority shall maintain such roads as public rights-of-way to ensure lawful access to the properties within said acreage; however, the Commonwealth may convey its right, title, and interests in such roads to the City of Hampton or the Virginia Department of Transportation, and thereby transfer the obligation to maintain such roads.*

2. *The Authority shall maintain and operate such water, sewer, and other utility services to ensure that the properties within said acreage have access to such utility services; however, the Commonwealth may convey its right, title, and interest in any such utility owned by the Commonwealth to a public or*

private entity and thereafter transfer the obligation to maintain and operate such utilities.