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SENATE BILL NO. 1089

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on January 30, 2019)

(Patron Prior to Substitute—Senator Locke)

A *BILL to amend and reenact § 2.2-2342 of the Code of Virginia, relating to Fort Monroe Authority; payments to the City of Hampton in lieu of real property taxes.*

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-2342 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-2342. Payments to Commonwealth or political subdivisions thereof; payments to the City of Hampton.

A. The Authority may agree to make such payments to the Commonwealth or any political subdivision thereof, which payments such bodies are hereby authorized to accept, for any goods, services, licenses, concessions or franchises as the Authority finds consistent with the purposes for which the Authority has been created.

B. ~~On or before January 15, 2012, the Authority shall pay to the City of Hampton a fee in an amount to be determined by the formula defined below for the period September 15, 2011, through December 31, 2011. Thereafter, fees~~ *It is the intent of this section that the Authority shall pay a fee in lieu of taxes as provided in this section. Such fee shall be payable by the Authority to the City of Hampton and shall be payable, in arrears, for the period January 1 through June 30 on each June 30, and for the period July 1 through December 31 on each December 31. The amount of such fee shall be determined as follows: (i) all property in the Fort Monroe Area of Operation shall be assessed as if it was privately owned property; (ii) property exempt from taxation by classification under § 58.1-3606 that would not be taxed if located elsewhere in the City of Hampton by virtue of the ownership, control, or use of the property, other than property classified solely under subdivision A 1 of § 58.1-3606, based on the use of the property and regardless of ownership of the property, shall be excluded from the calculation of the fee in lieu of taxes; and (iii) property designated by ordinance of the City of Hampton as exempt from taxation pursuant to § 58.1-3651, or pursuant to any other applicable action of the City Council, based on the use of the property and regardless of ownership of the property, shall be excluded from the calculation of the fee; (iv) property owned or leased and exclusively used by the National Park Service or the City of Hampton, property remaining under the ownership of the federal government, and any other property that would not be taxed if it was located elsewhere in the City of Hampton by virtue of the ownership, control, or use of the property, except as otherwise provided herein, shall be excluded from the calculation of the fee; and (v) the total assessed value of the property, less any exclusions as indicated herein exemptions, shall then be divided by \$100, multiplied by the then-current real estate tax rate set by the City of Hampton, minus the real estate taxes (a) owed to the City of Hampton directly from taxpayers other than the Authority within the Authority's Area of Operation. This shall be the amount of the fee payable to the City of Hampton. It is the intent of this section that for properties at Fort Monroe that would be taxed by the City of Hampton if privately held, the Authority shall pay a fee in lieu of taxes, but that properties at Fort Monroe that would not be taxed by the City if privately held shall be exempt from the fee, taking into account the current limitations on the transfer of properties at Fort Monroe, including lessees subject to taxation and billed to the lessee pursuant to subsection E, and (b) collected by the Authority and remitted to the City of Hampton pursuant to subsection E in the calendar year prior to the year for which the fee in lieu of taxes is then determined. The Authority or its qualifying lessees shall may apply to the assessor of real estate for the City of Hampton and follow the process for recognition of the an exemption applicable to other such properties in the City for any property subject to the fee in lieu of taxes, other than property subject to taxation and billed directly to the lessee pursuant to subsection E.*

C. The Authority shall use all funds available and manage its finances and take all necessary and prudent actions to ensure that the fee in lieu of taxes provided in subsection B is paid when due and shall notify the City of Hampton and the Trustees as soon as practical if the funds will not be available to pay the fee in lieu of taxes when due and the Trustees shall take all necessary actions to remedy any deficiency. In the event the fee in lieu of taxes is not paid when due, interest thereon shall at that time accrue at the rate, not to exceed the maximum amount allowed by § 2.2-4355, determined by the City of Hampton until such time as the overdue payment and interest are paid. Unpaid fees in lieu of taxes and interest thereon shall rank in parity with liens for unpaid taxes and may be collected by the City of Hampton as taxes are collected; however, no real property of the Commonwealth or the Authority may be sold in such collection efforts.

~~C.~~ D. The Authority shall have the right to contest the assessments made on property at Fort Monroe

60 owned by the Commonwealth or ~~itself~~ the Authority or any property for which the Commonwealth or
61 the Authority shall be responsible for payment of the fee *in lieu of taxes*, using the procedures utilized
62 by other citizens of the City of Hampton, including appeals to the Board of Review of Real Estate
63 Assessments for the City of Hampton and appeals therefrom to the Circuit Court of the City of
64 Hampton, which is hereby granted jurisdiction to adjudicate any such appeal by the Authority in the
65 same manner as applicable to private property owners or lessees in the ~~city~~ City.

66 *E. Notwithstanding the provisions of § 58.1-3203, all real property in the Area of Operation that is*
67 *leased, whether by short-term operating/revenue lease or long-term ground lease, shall be assessed as if*
68 *it were privately owned, and each lessee thereof shall be subject to taxation to be billed and collected*
69 *by the City of Hampton as if the lessee were the owner, regardless of the term; however, leases for a*
70 *cumulative term of less than 20 years shall be billed to and collected from the Authority by the City of*
71 *Hampton. For purposes of this subsection, "cumulative term" includes the original term plus any*
72 *optional extensions or renewals of that term. The City of Hampton shall have no obligation to assess*
73 *any leased property that may be subject to taxation pursuant to this subsection unless and until it has*
74 *received from the Authority a complete and fully executed copy of the lease, which shall include a*
75 *description of the property comparable to that which would be required for the fee simple conveyance of*
76 *such leased property. Any property not assessed by the City of Hampton pursuant to this subsection*
77 *shall remain subject to the provisions of subsection B. This subsection shall not apply to leases of any*
78 *term with other government entities.*

79 *F. The Authority and any lessee that is directly billed by the City of Hampton (i) may apply to the*
80 *assessor of real estate for the City of Hampton and follow the process for recognition of an exemption*
81 *applicable to other such properties in the City and (ii) shall have the right to contest the assessments*
82 *made on property taxed to the lessee pursuant to this section using the procedures utilized by other*
83 *citizens of the City of Hampton, including appeals to the Board of Review of Real Estate Assessments*
84 *for the City of Hampton and appeals therefrom to the Circuit Court of the City of Hampton, which is*
85 *hereby granted jurisdiction to adjudicate any such appeal by a qualifying lessee in the same manner*
86 *applicable to private property owners and other lessees in the City.*