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## HOUSE BILL NO. 389

Offered January 8, 2020

Prefiled January 2, 2020

A BILL to establish the Hurricane and Flooding Risk Reduction and Bond Rating Protection Act of 2020.

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Patron—Miyares

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Referred to Committee on Agriculture, Chesapeake and Natural Resources

Whereas, the Commonwealth of Virginia has historically suffered severe floods in mountainous areas, along rivers, and on coasts that have taken hundreds of lives and caused extensive property and environmental damage; and

Whereas, the Commonwealth remains under constant threat of additional such floods; and

Whereas, it is the first responsibility of any state to provide for the safety and security of its citizens; and

Whereas, the Commonwealth is organized to support management but not reduction and elimination of existing and future federally designated flood plains; and

Whereas, Virginia's mountains and rivers have been plagued by deadly and destructive floods throughout all of recorded history; floods have caused almost 200 deaths and \$3.7 billion in damage in those areas since 1969 alone, and the hardest-hit areas in that timeframe have been the basins of the Roanoke, James, Potomac, Tye, Rockfish, Rivanna, Maury, and Shenandoah Rivers and the mountains of the Counties of Nelson, Page, and Rockingham; and

Whereas, for a recent, major example of coastal and estuary flooding, consider Hurricane Isabel (September 18, 2003), which affected the entire Chesapeake Bay areas of Hampton Roads, the Eastern Shore, Northern Neck, and the tidal estuaries of the James, York, Rappahannock, and Potomac. Hurricane Isabel had a peak water level only 0.13 feet (1.5 inches) below the record-setting 1933 hurricane event in Norfolk. Had Hurricane Isabel occurred one week later, its peak water level would have exceeded that record by 0.8 feet (10 inches). The streets of Norfolk and surrounding cities were flooded with over five and one-half feet of water above normal high tide. The same storm 25 years from now may flood Hampton Roads with over six and one-half feet of water above normal high tide according to rising sea level forecasts. The average ground elevation of Norfolk is 10 feet above mean sea level (MSL), and the average ground elevation of Virginia Beach is about 12 feet above MSL; and

Whereas, proven civil engineering and environmental restoration methods to mitigate the effects of hurricanes and floods and reduce or eliminate individual flood plains can be completed at costs far less than their measurable benefits, and such methods include both structural and nonstructural alternatives; and

Whereas, the most threatened flood plains require structural flood barrier measures such as storm surge barriers, flood walls, levees, seawalls, revetments, bulkheads, and beach restoration and protection measures in addition to integrated green infrastructure; and

Whereas, the federal government through the Flood Control Act of 1936 brought flood control projects under federal control and officially recognized the U.S. Army Corps of Engineers (USACE) as the major federal flood control agency. USACE is one of the world's largest public engineering, design, and construction management agencies; and

Whereas, the federal Water Resources Development Act and recurring associated appropriations have directed USACE to plan, issue permits for, partially fund, and build such structures and develop and manage projects in partnership with nonfederal sponsors under its Civil Works program; and

Whereas, USACE Civil Works boundaries are defined by coastlines and river watersheds rather than state boundaries. Virginia is drained by nine major river systems; USACE Civil Works projects in Virginia are, depending upon the location, the responsibility of the North Atlantic Division's Norfolk or Baltimore District, the South Atlantic Division's Wilmington District, or the Great Lakes and Ohio River Division's Nashville or Huntington District; and

Whereas, each USACE Civil Works project must have a nonfederal sponsor. Section 221 of the federal 1970 Flood Control Act defines a nonfederal sponsor for a USACE water resources project as a nonfederal interest that is "a legally constituted public body with full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform." Nonfederal sponsors are required to provide political coordination; economic investments such as land, rights of way, transportation and utility infrastructure changes, and cash; and engineering, economic assessment, and management support to USACE in such projects. These investments all count toward

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59 the nonfederal sponsor's share; and

60 Whereas, a sponsor can be a state or any other political subpart of a state or group of states, or an  
61 Indian tribe, provided that it has the legal and financial authority and capability to provide the support  
62 and investments needed for a project; Louisiana and Texas, for example, have acted at the state level to  
63 protect their coasts. A sponsor can also be an interstate agency, established under a compact between  
64 two or more states with the consent of Congress under Article I, Section 10 of the United States  
65 Constitution. New York and New Jersey have done this with the "New York/New Jersey Harbor &  
66 Tributaries Focus Area Feasibility Study," whose nonfederal sponsors are the New York State  
67 Department of Environmental Conservation and the New Jersey Department of Environmental  
68 Protection; and

69 Whereas, the strategic approach to the USACE Civil Works mission directs coordinated development  
70 and management of water and related resources that considers economic benefits, ecosystem quality, and  
71 public health and safety; and

72 Whereas, USACE works to establish comprehensive flooding solutions for coastal and riverine  
73 watersheds in compliance with all federal water engineering and environmental regulations; and

74 Whereas, USACE is required to assess the benefits and risks of water projects in partnership with the  
75 nonfederal sponsor before recommending them to Congress for authorization and funding. Investigations  
76 are conducted by USACE in partnership with the nonfederal sponsor and in collaboration with federal,  
77 state, and local partners. USACE and the nonfederal sponsor share equally the cost of each investigation;  
78 and

79 Whereas, any investigation plan must be forwarded to USACE headquarters for approval. Such  
80 approval is required before USACE will recommend any project to Congress for construction  
81 authorization and funding; and

82 Whereas, the investigation determines the feasibility of federal investment and establishes federal and  
83 nonfederal cost shares for the construction of the project per established guidance based on the authority.  
84 The standard for such cost shares in Coastal Storm Risk Management and Flood Risk Management  
85 projects is 65 percent for the federal government and 35 percent for the nonfederal sponsor; and

86 Whereas, unlike Louisiana, Texas, New Jersey, and New York, the Commonwealth does not partner  
87 with the federal government in flood hazard reduction through the USACE Civil Works program.  
88 Virginia currently has no state agency organized and staffed to partner with USACE across the full  
89 spectrum of USACE Civil Works Coastal Storm Risk Management and Flood Risk Management  
90 projects. One result is that Virginia is not positioned to serve as a nonfederal sponsor for broad and vital  
91 aspects of those programs. Another is that Virginia is unable to develop a portfolio of projects within  
92 the full scope of those federal programs that reflects the state's priorities for federal funding. Without  
93 such a portfolio, the Commonwealth will be unable to sponsor either pre-catastrophe or post-catastrophe  
94 legislation. An example of what must be done is seen in "Rebuild Texas," the State of Texas' 301-page  
95 request for \$61 billion in federal assistance after Hurricane Harvey that included almost \$37 billion for  
96 USACE Civil Works projects, each of which is described and priced in considerable preliminary detail.  
97 It was signed on October 31, 2017, two months after Harvey's destruction. Without exhaustive planning  
98 led by the Texas General Land Office (state nonfederal sponsor) with the full participation of local  
99 governments prior to the disaster, such a request could not have been formulated without years of study.  
100 The request resulted in USACE announcing relief funding of about \$5 billion to Texas on July 5, 2018;  
101 and

102 Whereas, Virginia currently leaves to local governments its flood hazard mitigation planning and  
103 execution with the USACE Civil Works program. However, there are two key obstacles:

104 1. Flooding does not recognize political jurisdictions: no single local government, regardless of its  
105 wealth, can deal effectively with watershed issues; and

106 2. Most local governments do not have the resources or expertise and funding to participate; and

107 Whereas, as a direct consequence, the 2019 Federal Civil Works Budget for USACE includes  
108 funding in fiscal year 2020 for only one investigation in Virginia, related to Norfolk Harbor and  
109 Channels Deepening. Flood damage mitigation studies are by federal law limited in scope to the borders  
110 of the nonfederal sponsor or sponsors; therefore, any flood damage mitigation study in the City of  
111 Norfolk could not consider Norfolk's adjacent cities (Portsmouth, Chesapeake, and Virginia Beach) in  
112 South Hampton Roads. In contrast, if the state were the nonfederal sponsor of subsequent studies, the  
113 studies could include multiple localities for a holistic watershed approach for improved efficiency and  
114 effectiveness; and

115 Whereas, Louisiana's Legislative Fiscal Office has reported that Louisiana's state and local tax  
116 receipts soared after Katrina. It has credited federal spending, including USACE Civil Works projects,  
117 for the increases, despite significant out-migration of residents, the Great Recession, additional floods,  
118 and significant damage to pre-Katrina tax sources, including the oil and gas industry, tourism, and its  
119 ports. The increased tax receipts enabled the state to actually lower tax rates during the period of the  
120 highest federal spending. Similar spending in Virginia without the damage of a storm will raise tax

receipts; and

Whereas, the Commonwealth, as was Louisiana post-Katrina, is forbidden by federal law from spending post-disaster Stafford Act funds to pay the nonfederal sponsor's share for the construction of authorized USACE Civil Works projects; and

Whereas, Virginia's bond rating is at risk. Since 2017, Moody's, a major credit rating service, has considered in its assessment of bond risk the threat from climate change and actions taken or not taken by states and cities to mitigate storm and flood damage; now, therefore,

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

1. § 1. *This act shall be known as the Hurricane and Flooding Risk Reduction and Bond Rating Protection Act of 2020.*

§ 2. *Establishment of the Commonwealth of Virginia as a nonfederal sponsor of hurricane and flooding risk reduction projects.*

*The Commonwealth of Virginia is hereby established as a nonfederal sponsor of hurricane and flooding risk reduction projects in partnership with the U.S. Army Corps of Engineers (USACE) Civil Works program. The goals of this partnership are to support hazard mitigation actions through (i) mitigation of risk through structural, nonstructural, and natural and nature-based solutions; (ii) improvement of life safety through increased flood risk awareness, support of economic and environmental resilience, reduction of flood insurance premiums through the implementation of higher standards, and promotion of higher building standards to reduce flood risk; and (iii) enablement of Virginia communities currently threatened by flooding to wage more successful campaigns to attract economic investment and to retain and support the economic drivers they already possess.*

§ 3. *To meet these goals are hereby established the Virginia Hurricane and Flood Risk Reduction Authority (the Authority) and a board of directors for the Authority (the Board).*

§ 4. *Board of directors; composition; powers and duties.*

*The Board shall be composed of: one representative designated by the Speaker of the House of Delegates; one representative designated by the majority leader of the Senate; and nine representatives appointed by the Governor. A chairman and a vice-chairman shall be chosen by the Board.*

*The Secretary of Transportation, the Secretary of Natural Resources, and the Secretary of Public Safety and Homeland Security shall serve as ex officio members of the Board.*

*The Governor shall ensure that board appointees include residents of each of the major geographic areas of Virginia. Members, who shall serve without compensation, shall serve terms of four years and are eligible for reappointment. The Board shall exercise for the Governor executive authority over all phases of hurricane and flood risk reduction programs, including investigations, construction, and operations and maintenance; it shall be established and meet within 60 days of the effective date of this act.*

*Nothing in this act restricts local governments or state agencies from acting as nonfederal sponsors of projects entirely within their jurisdiction. The current authorities for Virginia local governments and state agencies to act in such capacity are retained, but they shall act in collaboration with the Board to promote and encourage watershed solutions and ensure that Virginia speaks with one voice to the federal government on USACE Civil Works program flooding and storm risk reduction projects.*

*The Board shall:*

1. *Represent the state's position in policy relative to reducing the risks to its people, public and private property, and economy from hurricanes and floods;*

2. *Establish a strategic plan aligned where feasible and appropriate with the USACE Civil Works Strategic Plan;*

3. *Develop a master plan for the integrated and prioritized protection of the Commonwealth's coastal, river system, and mountain communities from storms and flood damage through the construction and management of risk reduction projects in alignment with activities identified in regional or state hazard mitigation plans and in partnership with federal, state, and local partners that have knowledge, expertise, and data regarding current and future flood risk;*

4. *Enforce compliance with the master plan throughout the state government;*

5. *Provide mission guidance, operational direction, and oversight to the Authority;*

6. *Design program structure, including organization design, policies, standards, performance measures, processes, and terminologies, in consultation with the (i) USACE Districts as well as headquarters of the USACE and its North Atlantic Division, South Atlantic Division, and Great Lakes and Ohio River Divisions and (ii) Board of Louisiana's Coastal Protection and Restoration Authority (CPRA), a state model for this program;*

7. *After coordination with USACE HQ and its North Atlantic Division, South Atlantic Division, and Great Lakes and Ohio River Divisions, direct the Authority to establish working relationships with the Norfolk, Baltimore, Huntington, Nashville, and Wilmington, North Carolina District offices of USACE;*

8. *Request assistance through the federal Planning Assistance to States Program. The federal law*

governing that program provides authority for USACE to assist states, local governments, and other nonfederal entities in the preparation of comprehensive plans for the development, use, and conservation of water and related land resources. Upon written request, USACE will cooperate with the Commonwealth to prepare plans for the development, use, and conservation of water and related land resources within its bounds. Initial requests for assistance shall include the training of Board and Authority members in the appropriate courses offered by USACE to its own Civil Works leadership and planners;

9. Direct the Authority to coordinate investigations, construction, operations, and maintenance of projects with USACE, appropriate local and tribal governments, and regional planning district commissions;

10. Direct the Authority to act for Virginia as its representative in any interstate agency established for purposes of storm and flood risk reduction under a compact among Virginia and one or more other states with the consent of Congress under Article I, Section 10 of the United States Constitution;

11. Approve or disapprove with comments the annual budget request for the Authority prepared by the executive department to which it is assigned prior to submission to the Governor and General Assembly;

12. Direct the Authority as its first order of business after reaching initial operational capability to work with FEMA and USACE and Virginia's agencies to define potential USACE Civil Works projects targeting the most vulnerable areas in the Commonwealth using USACE Civil Works cost/benefit assessments. Candidates shall include mountain, riverine, and coastal Special Flood Hazard Areas (SFHA) in Virginia;

13. Direct the Authority to coordinate with USACE and FEMA Region 3 in characterizing relative flood risk among the SFHA. The desired output is information in a GIS format to support federal, state, and regional decision makers, planners, and policy analysts in determining investment priorities, responding to future conditions and flood risk drivers, improving resilience, and reducing risk in the long term;

14. Direct the Authority to support USACE Civil Works storm and flood risk reduction projects for which Virginia local governments serve as nonfederal sponsor;

15. Direct the Authority to report annually to the Board and to the General Assembly on the status of USACE Civil Works projects with Virginia local governments as a nonfederal sponsor and to recommend measures that the Commonwealth should consider taking in support; and

16. Coordinate with Louisiana and Texas to assess and apply lessons learned from their efforts as state sponsors of USACE Civil Works flood and storm damage mitigation projects.

§ 5. The Authority.

The Authority shall be established to fulfill the directives of the Board. The Authority shall employ the professional, technical, secretarial, and clerical employees necessary for the performance of its functions. The Authority shall initially be composed of a Director, a Deputy Director, three staff civil engineers, two staff economists, a staff chief scientist, and five direct administrative support personnel. The Authority as nonfederal sponsor shall comply with the laws, regulations, and policies governing the USACE Civil Works program. Due to the complexity of the program, to the degree feasible, the Authority staff shall have previous experience serving either in the USACE Civil Works program or in a role with a nonfederal sponsor within that program.

State nonfederal sponsor responsibilities in the assessment, planning, and execution of USACE Civil Works flooding and storm risk reduction projects shall regularly include transportation systems improvements, utilities relocation and improvements, and environmental planning. The costs of such work are integral to the success of USACE Civil Works projects and are therefore considered in-kind contributions and counted towards the nonfederal share of project assessment, planning, and construction costs.

There is no intention for this act to create redundant capabilities or overlapping responsibilities between the Authority and other Commonwealth agencies. The Secretary of Transportation, the Secretary of Natural Resources, and the State Corporation Commission shall each designate a senior official as Authority coordinator for agencies under their leadership and each shall provide professional assistance to the Authority as may be requested by the Director. The costs of professional assistance to the Authority on matters within the existing responsibilities of such agencies shall be assumed under the budgets of those agencies.

Given the regional solutions focus of the Authority, it shall establish working relationships with Virginia's planning district commissions.

The Authority shall be hosted by a department of the Commonwealth as designated by the Governor. That department shall provide support, including budgeting, work facilities, administrative management, logistics, human resources, legal, contracts, and information resources support, to the Authority.

§ 6. Virginia manages multiple programs for flood damage mitigation that involve coordination with USACE, FEMA, or both. These include (i) the flood mitigation project assessment, planning,

coordination, and construction support activities of the Authority as delineated in this act; (ii) the dam safety program, National Flood Insurance Program, and floodplain management program within the Department of Conservation and Recreation; (iii) assessing, planning, coordinating, and permitting for construction activities managed by the Department of Transportation; and (iv) FEMA's Flood Mitigation Assistance (FMA) grant program and the flooding component of the Threat and Hazard Identification and Risk Assessment program within the Department of Emergency Management.

The Governor shall assess and report to the General Assembly no later than November 1, 2020, his findings on the most efficient and effective future distribution of such responsibilities within the executive branch and recommend any changes in law required to execute that determination, including the designation of a department assigned to host the Authority.

§ 7. The Joint Legislative Audit and Review Commission shall consult with Louisiana's Legislative Fiscal Office to assess the increased state and local tax flows in Louisiana that resulted from post-Katrina federal spending, including USACE Civil Works storm and flooding risk reduction project spending. This will provide a basis for assessing the tax flow effects of similar investments in Virginia. The Joint Legislative Audit and Review Commission shall report to the General Assembly no later than November 1, 2020, on the results of its initial assessment.