

# VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

## CHAPTER 354

*An Act to amend the Code of Virginia by adding in Title 33.2 a chapter numbered 38, consisting of sections numbered 33.2-3800 through 33.2-3816, relating to creation of the New River Valley Passenger Rail Station Authority.*

[S 1212]

Approved March 25, 2021

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

**1. That the Code of Virginia is amended by adding in Title 33.2 a chapter numbered 38, consisting of sections numbered 33.2-3800 through 33.2-3816, as follows:**

### **CHAPTER 38.**

#### **NEW RIVER VALLEY PASSENGER RAIL STATION AUTHORITY.**

##### **§ 33.2-3800. Definitions.**

*As used in this chapter, unless the context requires a different meaning:*

*"Authority" means a regional passenger rail station authority created pursuant to this chapter.*

*"Board" means the board of directors of the authority.*

*"Facility" means any structure, including real estate and improvements, used for operating passenger rail service and complementary activities. "Facility" includes structures that are not owned by the authority or its members but are subject to a cooperative arrangement pursuant to subdivision 13 of § 15.2-6405.*

*"Governing bodies" means the county boards of supervisors, city and town councils, and boards of visitors of institutions of higher education that are members of the authority.*

*"Members" means the counties, cities, towns, and institutions of higher education that comprise the authority.*

*"Region" means Planning District 4.*

##### **§ 33.2-3801. Findings; purpose; governmental function.**

*The General Assembly finds that the creation of a regional passenger rail station authority will enable the members to cost share an economic development asset that is not affordable to individual members. A passenger rail station authority will directly benefit and enhance the economic base of the members by allowing the development, ownership, and operation of a facility on a cooperative basis. The exercise of powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the region and other areas of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience, and prosperity.*

##### **§ 33.2-3802. Creation of the authority.**

*The governing bodies of any three or more members within the region may, by ordinance, create a regional passenger rail station authority. The ordinance adopted by each participating governing body shall (i) set forth the name of the proposed passenger rail station authority, which shall include the words "passenger rail station authority"; (ii) name the members; (iii) contain findings that the economic growth and development of the member and the comfort, convenience, and welfare of its citizens require the development of facilities and that the creation of a regional passenger rail station authority will facilitate development of the needed facilities; and (iv) authorize the execution of an agreement establishing the respective rights and obligations of the members regarding the authority consistent with the provisions of this chapter. In the case of a member institution of higher education, the governing body shall adopt a resolution that includes such information and intent. Such ordinances, or resolutions, shall be filed with the Secretary of the Commonwealth. Upon certification by the Secretary of the Commonwealth that the ordinances and resolutions required by this chapter have been filed and, upon the basis of the facts set forth therein, satisfy such requirements, the proposed authority shall be and constitute an authority for all of the purposes of this chapter, to be known and designated by the name stated in the ordinances. Upon the issuance of such certificate, the authority shall be deemed to have been lawfully and properly created and established and authorized to exercise its powers under this chapter. At any time, subsequent to the creation of an authority under this chapter, the members of the authority may, with the approval of the authority's board, be expanded to include any locality or institution of higher education within the region that was eligible to be an initial member of the authority. The governing body seeking to become a member of the authority shall evidence its intent to become a member by adopting an ordinance proposing to join the authority that conforms, to the extent possible, to the requirements for an ordinance set forth in clauses (i), (iii), and (iv).*

##### **§ 33.2-3803. Board of the authority.**

*A. All powers, rights, and duties conferred by this chapter, or other provisions of law, upon the authority shall be exercised by a board of directors. The governing body of each member shall appoint*

two representatives to the board. However, if the authority consists of only two members, the governing body of each member may appoint three members. Representatives of member counties, cities, and towns shall be residents of the appointing member. In any instance in which the members are not contributing equal funding to the authority, and upon agreement by each member of the authority, the number of appointments to be made by each may be made based on the percentage of funds contributed by each of the members.

B. Representatives shall serve terms of four years and may be reappointed. The board may elect to provide for staggered terms, in which case some representatives may draw an initial two-year term. Any appointment to fill a vacancy shall be for the unexpired term.

C. Each member may appoint up to two alternate representatives of the board. Alternates shall be selected in the same manner as regular representatives and may serve as an alternate for any board representative appointed by the member. Alternates shall be appointed for terms that coincide with one or more of the regular representatives appointed by the member. If a representative is not present at a meeting of the authority, the alternate shall have all the voting and other rights of the representative not present and shall be counted for purposes of determining a quorum. Alternates are required to take an oath of office and are entitled to reimbursement for expenses in the same manner as regular representatives.

D. Each member of the board before entering upon the discharge of the duties of his office shall take and subscribe to the oath prescribed in § 49-1.

E. Representatives of the board shall serve without compensation but shall be eligible for reimbursement of actual expenses incurred in the performance of their duties from funds available to the authority.

F. A quorum shall exist when a majority of the members of the authority are represented by at least one representative of the board. The affirmative vote of a quorum of the board shall be necessary for any action taken by the board. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board.

G. The board shall determine the times and places of its regular meetings, which may be adjourned or continued, without further public notice. Special meetings of the board shall be held when requested by representatives of the board representing two or more members. Any such request for a special meeting shall be in writing, and the request shall specify the time and place of the meeting and the matters to be considered at the meeting. An effort shall be made to provide members reasonable notice of any special meeting. No matter not specified in the notice shall be considered at such special meeting unless all of the representatives of the board are present. Special meetings may be adjourned or continued without further public notice.

H. The board shall annually elect from its membership a chairman. The board may also appoint an executive director and staff to discharge such functions as may be directed by the board. The executive director and staff shall be paid from funds received by the authority.

I. At the close of each fiscal year, the board shall submit to each governing body an annual report of the authority's activities of the preceding year. Such report shall include a complete operating and financial statement covering the operation of the authority during the preceding year.

#### **§ 33.2-3804. Office of authority; title to property.**

A. The principal office of the authority shall be within the boundaries of Planning District 4. All records of the authority shall be kept at such office.

B. The title to all property of every kind belonging to the authority shall be titled to the authority and shall be held for the benefit of its members.

#### **§ 33.2-3805. Powers of the authority.**

An authority created pursuant to this chapter is vested with the powers of a body corporate, including the power to sue and be sued in its own name, plead and be impleaded, and adopt and use a common seal and alter the same as may be deemed expedient. In addition to the powers set forth elsewhere in this chapter, the authority may:

1. Adopt bylaws and rules and regulations to carry out the provisions of this chapter;
2. Employ, either as regular employees or as independent contractors, consultants, engineers, architects, accountants, attorneys, financial experts, construction experts and personnel, superintendents, managers, and other professional personnel, personnel, and agents as may be necessary in the judgment of the authority and fix their compensation;
3. Determine the locations of, develop, establish, construct, erect, repair, remodel, add to, extend, improve, equip, operate, regulate, and maintain facilities to the extent necessary or convenient to accomplish the purposes of the authority;
4. Acquire, own, hold, lease, use, sell, encumber, transfer, or dispose of, in its own name, any real or personal property or interests therein. However, nothing in this subdivision shall be construed to provide the authority with the power of condemnation;
5. Invest and reinvest funds of the authority;
6. Enter into contracts of any kind and execute all instruments necessary or convenient with respect to its carrying out the powers in this chapter to accomplish the purposes of the authority;

7. Expend such funds as may be available to it for the purpose of developing facilities, including but not limited to (i) purchasing real estate; (ii) grading sites; (iii) improving, replacing, and extending water, sewer, natural gas, electrical, and other utility lines; (iv) constructing, rehabilitating, and expanding buildings; (v) constructing parking facilities; (vi) constructing access roads, streets, and rail lines; (vii) purchasing or leasing machinery and tools; and (viii) making any other improvements deemed necessary by the authority to meet its objectives;

8. Fix and revise from time to time and charge and collect rates, rents, fees, or other charges for the use of facilities or for services rendered in connection with the facilities;

9. Borrow money from any source for any valid purpose, including working capital for its operations, reserve funds, or interest; mortgage, pledge, or otherwise encumber the property or funds of the authority; and contract with or engage the services of any person in connection with any financing, including financial institutions, issuers of letters of credit, or insurers;

10. Issue bonds under this chapter;

11. Accept funds and property from the Commonwealth, persons, counties, cities, towns, and institutions of higher education, and use the same for any of the purposes for which the authority is created;

12. Apply for and accept grants or loans of money or other property from any federal agency for any of the purposes authorized in this chapter and expend or use the same in accordance with the directions and requirements attached thereto or imposed thereon by any such federal agency;

13. Make loans and grants to, and enter into cooperative arrangements with, any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this chapter, for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the authority that have not been pledged or assigned for the payment of any of the authority's bonds, and enter into such contracts, instruments, and agreements as may be expedient to provide for such loans, and any security therefor. For the purposes of this subdivision, "revenues" includes grants, loans, funds, and property, as set out in subdivisions 11 and 12;

14. Enter into agreements with any other political subdivision of the Commonwealth for joint or cooperative action in accordance with § 15.2-1300; and

15. Do all things necessary or convenient to carry out the purposes of this chapter.

**§ 33.2-3806. Donations to authority; remittance of tax revenue.**

Authority members are hereby authorized to lend or donate money or other property to the authority for any of its purposes. The member making the grant or loan may restrict the use of such grants or loans to a specific facility owned by the authority, within or outside the geographical area of the member.

The governing body of the member in which a facility owned by the authority is located may direct, by resolution or ordinance, that all tax revenue collected with respect to the facility shall be remitted to the authority. Such revenues may be used for the payment of debt service on bonds of the authority and other obligations of the authority incurred with respect to such facility. The action of such governing body shall not constitute a pledge of credit or taxing power of such member.

**§ 33.2-3807. Revenue sharing agreements.**

Notwithstanding the requirements of Chapter 34 (§ 15.2-3400 et seq.) of Title 15.2, the members may agree to a revenue and economic growth-sharing arrangement with respect to tax revenues and other income and revenues generated by any facility owned by the authority. Such members may be located in any jurisdiction participating in the Appalachian Region Interstate Compact or a similar agreement of interstate cooperation for economic development authorized by law. The obligations of the parties to any such agreement shall not be construed to be debt within the meaning of Article VII, Section 10 of the Constitution of Virginia. Any such agreement shall be approved by a majority vote of the governing bodies of the members reaching such an agreement but shall not require any other approval.

**§ 33.2-3808. Applicability of land use regulations.**

In any locality where planning, zoning, and development regulations may apply, the authority shall comply with and is subject to those regulations to the same extent as a private commercial or industrial enterprise.

**§ 33.2-3809. Bond issues; contesting validity of bonds.**

A. The authority may at any time and from time to time issue bonds for any valid purpose, including the establishment of reserves and the payment of interest. For purposes of this chapter, "bonds" includes notes of any kind, interim certificates, refunding bonds, or any other evidence of obligation.

B. The bonds of any issue shall be payable solely from the property or receipts of the authority, including but not limited to:

1. Taxes, rents, fees, charges, or other revenues payable to the authority;
2. Payments by financial institutions, insurance companies, or others pursuant to letters or lines of credit, policies of insurance, or purchase agreements;
3. Investment earnings from funds or accounts maintained pursuant to a bond resolution or trust agreement; and
4. Proceeds of refunding bonds.

*C. Bonds shall be authorized by resolution of the authority and may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or outside the Commonwealth. The bonds shall:*

*1. Be issued at, above, or below par value, for cash or other valuable consideration, and mature at a time or times, whether as serial bonds or as term bonds or both, not exceeding 40 years from their respective dates of issue;*

*2. Bear interest at the fixed or variable rate or rates determined by the method provided in the resolution or trust agreement;*

*3. Be payable at a time or times, in the denominations and form, and carry the registration and privileges as to conversion and for the replacement of mutilated, lost, or destroyed bonds as the resolution or trust agreement may provide;*

*4. Be payable in lawful money of the United States at a designated place;*

*5. Be subject to the terms of purchase, payment, redemption, refunding, or refinancing that the resolution or trust agreement provides;*

*6. Be executed by the manual or facsimile signatures of the officers of the authority designated by the authority, which signatures shall be valid at delivery even for one who has ceased to hold office; and*

*7. Be sold in the manner and upon the terms determined by the authority including private (negotiated) sale.*

*D. Any resolution or trust agreement may contain provisions that shall be a part of the contract with the holders of the bonds as to:*

*1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the authority or proceeds or benefits of any contract and conveying or otherwise securing any property rights;*

*2. Setting aside loan funding deposits, debt service reserves, capitalized interest accounts, cost of issuance accounts and sinking funds, and the regulation, investment, and disposition thereof;*

*3. Limiting the purpose to which, or the investments in which, the proceeds of the sale of any issue of bonds may be applied and restrictions to investments of revenues or bond proceeds in government obligations for which principal and interest are unconditionally guaranteed by the United States of America;*

*4. Limiting the issuance of additional bonds and the terms upon which additional bonds may be issued and secured and may rank on a parity with, or be subordinate or superior to, other bonds;*

*5. Refunding or refinancing outstanding bonds;*

*6. Providing a procedure, if any, by which the terms of any contract with bondholders may be altered or amended and the amount of bonds the holders of which must consent thereto, and the manner in which consent shall be given;*

*7. Defining the acts or omissions that shall constitute a default in the duties of the authority to bondholders and providing the rights of or remedies for such holders in the event of a default, which may include provisions restricting individual right of action by bondholders;*

*8. Providing for guarantees, pledges of property, letters of credit, or other security or insurance for the benefit of the bondholders; and*

*9. Addressing any other matter relating to the bonds that the authority determines appropriate.*

*E. No member of the authority, member of the board, or any person executing the bonds on behalf of the authority shall be liable personally for the bonds or subject to any personal liability by reason of the issuance of the bonds.*

*F. The authority may enter into agreements with agents, banks, insurers, or others for the purpose of enhancing the marketability of, or as security for, its bonds.*

*G. A pledge by the authority of revenues as security for an issue of bonds shall be valid and binding from the time the pledge is made. The revenues pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and binding against any person having any claim of any kind in tort, contract, or otherwise against the authority, irrespective of whether the person has notice. No resolution, trust agreement or financing statement, continuation statement, or other instrument adopted or entered into by the authority need be filed or recorded in any public record other than the records of the authority in order to perfect the lien against third persons, regardless of any contrary provision of public general or local law.*

*H. Except to the extent restricted by an applicable resolution or trust agreement, any holder of bonds issued under this chapter or a trustee acting under a trust agreement entered into under this chapter, may, by any suitable form of legal proceedings, protect and enforce any rights granted under the laws of Virginia or by any applicable resolution or trust agreement.*

*I. The authority may issue bonds to refund any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase, or maturity of the bonds. Refunding bonds may be issued for the public purposes of realizing savings in the effective costs of debt service, directly or through a debt restructuring, for alleviating impending or actual default and may be issued in one or more series in an amount in excess of that of the bonds to be refunded.*

*J. For a period of 30 days after the date of the filing with the circuit court having jurisdiction over any of the political subdivisions that are members of the authority and in which the facility or any portion thereof being financed is located a certified copy of the initial resolution of the authority authorizing the issuance of bonds, any person in interest may contest the validity of the bonds, rates, rents, fees, and other charges for the services and facilities furnished by, for the use of, or in connection with, the facility or any portion thereof being financed, the pledge of revenues pledged to payment of the bonds, any provisions that may be recited in any resolution, trust agreement, indenture or other instrument authorizing the issuance of bonds, or any matter contained in, provided for, or done or to be done pursuant to the foregoing. If such contest is not given within the 30-day period, the authority to issue bonds, the validity of any other provision contained in the resolution, trust agreement, indenture, or other instrument, and all proceedings in connection with the authorization and the issuance of the bonds, shall be conclusively presumed to have been legally taken, and no court shall have authority to inquire into such matters and no such contest shall thereafter be instituted.*

*K. Upon the delivery of any bonds reciting that they are issued pursuant to this chapter and a resolution or resolutions adopted under this chapter, the bonds shall be conclusively presumed to be fully authorized by all of the laws of the Commonwealth and to have been sold, executed, and delivered by the authority in conformity with such laws, and the validity of the bonds shall not be questioned by a party plaintiff, a party defendant, the authority, or any other interested party in any court, anything in this chapter or in any other statutes to the contrary notwithstanding.*

**§ 33.2-3810. Investment in bonds.**

*Any financial institution, investment company, insurance company, or association, and any personal representative, guardian, trustee, or other fiduciary, may legally invest any moneys belonging to them or within their control in any bonds issued by the authority.*

**§ 33.2-3811. Bonds exempt from taxation.**

*The authority shall not be required to pay any taxes or assessments of any kind whatsoever, and its bonds, their transfer, the interest payable on them, and any income derived from them, including any profit realized in their sale or exchange, shall be exempt at all times from every kind and nature of taxation by the Commonwealth or by any of its political subdivisions, municipal corporations, or public agencies of any kind.*

**§ 33.2-3812. Tax revenues of the Commonwealth or any other political subdivisions not pledged.**

*Nothing in this chapter shall be construed as authorizing the pledging of the faith and credit of the Commonwealth, or any of its revenues, or the faith and credit of any other political subdivision of the Commonwealth, or any of its revenues, for the payment of any bonds issued by the authority.*

**§ 33.2-3813. Forms of accounts and records; audit of same.**

*The accounts and records of the authority showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes, provided that such accounts correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises. The accounts and records of the authority shall be subject to audit pursuant to § 30-140, and the costs of such audit services shall be borne by the authority. The authority's fiscal year shall be the same as the Commonwealth's.*

**§ 33.2-3814. Tort liability.**

*No pecuniary liability of any kind shall be imposed on the Commonwealth or on any other political subdivision of the Commonwealth because of any act, agreement, contract, tort, malfeasance, or nonfeasance by or on the part of the authority, its agents, servants, or employees.*

**§ 33.2-3815. Dissolution of authority.**

*A member of the authority may withdraw from the authority only upon dissolution of the authority as set forth herein. Whenever the board determines that the purpose for which the authority was created has been substantially fulfilled or is impractical or impossible to accomplish and that all obligations incurred by the authority have been paid or that cash or a sufficient amount of United States government securities has been deposited for their payment, or provisions satisfactory for the timely payment of all its outstanding obligations have been arranged, the board may adopt resolutions declaring and finding that the authority shall be dissolved. Appropriate attested copies of such resolutions shall be delivered to the Governor so that legislation dissolving such authority may be introduced in the General Assembly. The dissolution of the authority shall become effective according to the terms of such legislation. The title to all funds and other property owned by such authority at the time of such dissolution shall vest in the members that have contributed to the authority in proportion to their respective contributions.*

**§ 33.2-3816. Chapter liberally construed.**

*This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof.*