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SENATE BILL NO. 569

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on February 8, 2022)

(Patron Prior to Substitute—Senator Kiggans)

A BILL to amend and reenact §§ 2.2-215 and 10.1-603.25 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 22 of Title 2.2 an article numbered 13, consisting of sections numbered 2.2-2377 through 2.2-2387, relating to Virginia Resiliency Authority; established.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-215 and 10.1-603.25 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 22 of Title 2.2 an article numbered 13, consisting of sections numbered 2.2-2377 through 2.2-2387, as follows:

§ 2.2-215. Position established; agencies for which responsible.

The position of Secretary of Natural and Historic Resources (the Secretary) is created. The Secretary shall serve as the Chief Resilience Officer for the purposes of duties required pursuant to § 2.2-222.4, and shall be responsible to the Governor for the following agencies: Virginia Resiliency Authority, Department of Conservation and Recreation, Department of Historic Resources, Marine Resources Commission, Department of Wildlife Resources, and the Department of Environmental Quality. The Governor may, by executive order, assign any state executive agency to the Secretary of Natural and Historic Resources, or reassign any agency listed in this section to another Secretary.

Article 13.

Virginia Resiliency Authority.

§ 2.2-2377. Definitions.

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

"Authority" means the Virginia Resiliency Authority.

"Non-federal sponsor" shall have the meaning as set forth in 33 C.F.R. § 203.15.

"Planning district officer" means the chair, vice-chair, treasurer, or executive director of a planning district commission.

"Project" means activities located on public or private land or water that include the development of flood protection facilities, acquisition of land, restoration of natural features, or other activities that involve design, construction, or installation of facilities. "Project" includes design services necessary to ensure that projects meet their intended purpose.

§ 2.2-2378. Authority created.

The Virginia Resiliency Authority is created as a body politic and corporate, a political subdivision of the Commonwealth. As such, it shall have, and is hereby vested with, the powers and duties hereinafter conferred in this chapter.

§ 2.2-2379. Public purpose.

The General Assembly has determined that there exists in the Commonwealth the need for a single state entity to develop, manage, and integrate restoration and resilience projects.

§ 2.2-2380. Board of Directors; members and officers; executive director.

A. The Authority shall be governed by a Board of Directors (Board) consisting of 17 members as follows: (i) the Secretary of Natural and Historic Resources or his designee; (ii) the Secretary of Transportation or his designee; (iii) the Chair of the Senate Committee on Agriculture, Conservation and Natural Resources or his designee; (iv) the Chair of the House Committee on Agriculture, Chesapeake and Natural Resources or his designee; (v) two members of the Senate appointed by the Senate Committee on Rules; (vi) two members of the House of Delegates appointed by the Speaker of the House; (vii) six planning district officers, each selected from a different Planning District Commissions by the Governor; and (viii) three nonlegislative citizen members who reside in the Hampton Roads, Crater, Richmond Region, Middle Peninsula, Northern Neck, or Accomack-Norfolk Planning Districts appointed by the Joint Rules Committee.

B. The Board shall elect a chairman from any nonlegislative member of the Board, and the vice-chairman of the Board shall be the Secretary of Natural and Historic Resources or his designee.

C. After the initial staggering of terms, all nonlegislative members shall serve terms of four years, except that ex officio members of the Board shall serve terms coincident with their terms of office. No member shall be eligible to serve more than two terms; however, after the expiration of the term of a member appointed to serve three years or less, two additional terms may be served if appointed thereto. Any appointment to fill a vacancy shall be for the unexpired term. A person appointed to fill a vacancy may be appointed to serve two additional terms.

D. Members of the Board shall receive such compensation for the performance of their duties as

60 provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses
61 incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the
62 costs of compensation and expenses of the members shall be provided by the Authority.

63 E. The Board shall also elect a secretary and a treasurer, who need not be members of the Board,
64 and may also elect other subordinate officers, who need not be members of the Board. The chairman
65 and the vice-chairman, with approval by the Board, shall create an executive committee of the Board.
66 The Board may also form advisory committees, which may include representatives who are not members
67 of the Board, to undertake more extensive study and discussion of the issues before the Board.

68 F. A majority of the members shall constitute a quorum for the transaction of the Authority's
69 business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights
70 and perform all duties of the Authority. The meetings of the Board shall be held at least quarterly or at
71 the call of the chairman.

72 The Board shall appoint an executive director who shall not be a member of the Board and who
73 shall serve at the pleasure of the Board and carry out such powers and duties conferred upon him by
74 the Board.

75 **§ 2.2-2381. Powers of Authority.**

76 The Authority is granted all powers necessary or convenient for the carrying out of its statutory
77 purposes, including the power to:

78 1. Sue and be sued, implead and be impleaded, complain, and defend in all courts;

79 2. Adopt, use, and alter at will a common seal;

80 3. Acquire any project and property, real, personal, or mixed, tangible or intangible, or any interest
81 therein, by purchase, gift, or devise and to sell, lease (whether as lessor or lessee), transfer, convey, or
82 dispose of any project or property, real, personal, or mixed, tangible or intangible or any interest
83 therein, at any time acquired or held by the Authority on such terms and conditions as may be
84 determined by the Board;

85 4. Adopt a strategic plan pursuant to and plan, develop, undertake, carry out, construct, equip,
86 improve, rehabilitate, repair, furnish, maintain, and operate projects pursuant to such plan;

87 5. Adopt an annual budget for the Authority's capital improvements and operations;

88 6. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business
89 shall be transacted and the manner in which the power of the Authority shall be exercised and its duties
90 performed. Such bylaws, rules, and regulations may provide for such committees and their functions as
91 the Authority may deem necessary and expedient. Such bylaws, rules, and regulations shall be exempt
92 from the Administrative Process Act (§ 2.2-4000 et seq.);

93 7. Make and enter into all contracts and agreements necessary or incidental to the performance of
94 its duties, the furtherance of its purposes, and the execution of its powers under this article, including
95 interstate compacts that have been authorized by the General Assembly and where necessary consented
96 to by the United States Congress and agreements with any person or federal agency;

97 8. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial
98 experts, investment bankers, managers, and such other employees and agents as may be necessary, and
99 to fix their compensation to be payable from funds made available to the Authority; and

100 9. Receive and accept from any federal or private agency, foundation, corporation, association, or
101 person grants or donations of money, or real or personal property for the benefit of the Authority, and
102 to receive and accept from the Commonwealth or any state, and any municipality, county, or other
103 political subdivision thereof and from any other source, aid or contributions of either money, property,
104 or other things of value, to be held, used, and applied for the purposes for which such grants and
105 contributions may be made.

106 **§ 2.2-2382. Additional powers of Authority.**

107 The Authority shall have the following additional powers:

108 1. Borrow money, make and issue bonds including bonds as the Authority may determine to issue for
109 the purpose of accomplishing the purposes set forth in § 2.2-2381 or for refunding bonds previously
110 issued by the Authority, whether such outstanding bonds have matured or are then subject to
111 redemption, or any combination of such purposes; secure the payment of all bonds, or any part thereof,
112 by pledge, assignment, or deed of trust of all or any of its revenues, rentals, and receipts or of any
113 project or property, real, personal, or mixed, tangible or intangible, or any rights and interest therein;
114 make such agreements with the purchasers or holders of such bonds or with others in connection with
115 any such bonds, whether issued or to be issued, as the Authority shall deem advisable; and in general
116 to provide for the security for said bonds and the rights of holders thereof. However, the total principal
117 amount of bonds, including refunding bonds, outstanding at any time shall not exceed \$50 million,
118 excluding from such limit any revenue bonds. The Authority shall not issue any bonds, other than
119 revenue bonds, that are not specifically authorized by a bill or resolution passed by a majority vote of
120 those elected to each house of the General Assembly;

121 2. Serve as a non-federal sponsor and enter into a legal agreement with the U.S. Army Corps of

Engineers for the purpose of mitigating flooding and integrating resilience;

3. Enter into and execute agreements with the federal government, including the U.S. Department of Defense for support for flood control initiatives to increase the resiliency related to U.S. Department of Defense installations;

4. Coordinate, with technical and administrative support from the Department of Conservation and Recreation, the execution of the Virginia Coastal Resilience Master Plan, the Virginia Flood Protection Master Plan, and federal, state, and local flood prevention and water quality programs to minimize loss of life, property damage, and negative impacts on the environment;

5. Administer, with technical assistance and support from the Department of Conservation and Recreation, the Virginia Community Flood Preparedness Fund as established in § 10.1-603.25;

6. In consultation with the Secretary of Natural and Historic Resources and the Director of the Department of Conservation and Recreation, seek the assistance of the Department of Conservation and Recreation in executing the powers and duties laid out in § 10.1-602;

7. In consultation with the Secretary of Transportation and the Commissioner of Highways, seek the assistance of the Department of Transportation with transportation planning, engineering, and construction for flood mitigation and assistance with coordination with the U.S. Army Corps of Engineers; and

8. Accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both or otherwise, to accomplish, in whole or in part, any of the purposes of this article. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth.

§ 2.2-2383. Form, terms, execution, and sale of bonds; use of proceeds; interim receipts or temporary bonds; lost or destroyed bonds; faith and credit of state and political subdivisions not pledged; expenses; trust indenture or agreement securing bonds; trust funds; proceedings to enforce rights; securities; refunding bonds.

A. The bonds of each issue shall be dated, shall bear interest at such rates as are fixed by the Authority, or as may be determined in such manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by the Authority, shall mature at such time not exceeding 40 years from their date as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of bonds and their manner of execution, and shall fix the denomination of the bonds and the place of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. The bonds shall be signed by the chairman or vice-chairman of the Authority or, if so authorized by the Authority, shall bear his facsimile signature, and the official seal of the Authority, or, if so authorized by the Authority, a facsimile thereof shall be impressed or imprinted thereon and attested by the secretary or any assistant secretary of the Authority, or, if so authorized by the Authority, with the facsimile signature of such secretary or assistant secretary. Any coupons attached to bonds issued by the Authority shall bear the signature of the chairman or vice-chairman of the Authority or a facsimile thereof. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be an officer before the delivery of the bonds, his signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery and any bonds may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bonds shall be the proper officers to sign such bonds although at the date of such bonds such persons may not have been such officers. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. Bonds issued in registered form may be issued under a system of book-entry for recording the ownership and transfer of ownership of rights to receive payment of principal of, and premium on, if any, and interest on such bonds. The Authority may contract for the services of one or more banks, trust companies, financial institutions, or other entities or persons, within or without the Commonwealth for the authentication, registration, transfer, exchange, and payment of the bonds, or may provide such services itself. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effect the purposes of this article.

The proceeds of the bonds of each issue shall be used solely for the purposes, and in furtherance of the powers, of the Authority as may be provided in the resolution authorizing the issuance of such bonds

183 *or in a trust agreement authorized by subsection B securing the bonds.*

184 *In addition to the above powers, the Authority may issue interim receipts or temporary bonds as*
185 *provided in § 15.2-2616 and execute and deliver new bonds in place of bonds mutilated, lost, or*
186 *destroyed as provided in § 15.2-2621.*

187 *No obligation of the Authority shall be deemed to constitute a debt, or pledge of the faith and credit,*
188 *of the Commonwealth or of any political subdivision thereof, but shall be payable solely from the*
189 *revenues and other funds of the Authority pledged thereto. All such obligations shall contain on the face*
190 *thereof a statement to the effect that the Commonwealth, any political subdivision thereof, and the*
191 *Authority shall not be obligated to pay the same or the interest thereon except from revenues and other*
192 *funds of the Authority pledged thereto, and that neither the faith and credit nor the taxing power of the*
193 *Commonwealth or of any political subdivision thereof is pledged to the payment of the principal of or*
194 *the interest on such obligations.*

195 *All expenses incurred in carrying out the provisions of the article shall be payable solely from funds*
196 *provided under the provisions of this article, and no liability shall be incurred by the Authority beyond*
197 *the extent to which moneys have been provided under the provisions of this article.*

198 *B. In the discretion of the Authority, any bonds issued under the provisions of this article may be*
199 *secured by a trust indenture or agreement by and between the Authority and a corporate trustee, which*
200 *may be any trust company or bank having the powers of a trust company within or without the*
201 *Commonwealth. The trust indenture or agreement or the resolution providing for the issuance of the*
202 *bonds may (i) pledge or assign the revenues to be received and provide for the mortgage of any project*
203 *or property or any part thereof and (ii) contain provisions for protecting and enforcing the rights and*
204 *remedies of the bondholders as may be reasonable and proper and not in violation of law, including*
205 *covenants providing for the repossession and sale by the Authority or any trustees under any trust*
206 *indenture or agreement of any project, or part thereof, upon any default under the lease or sale of such*
207 *project, setting forth the duties of the Authority in relation to the acquisition of property and the*
208 *planning, development, acquisition, construction, rehabilitation, establishment, improvement, extension,*
209 *enlargement, maintenance, repair, operation, and insurance of the project in connection with which the*
210 *bonds shall have been authorized; the amounts of rates, rents, fees, and other charges to be charged;*
211 *the collection of such rates, rents, fees, and other charges; the custody, safeguarding, and application of*
212 *all moneys; and conditions or limitations with respect to the issuance of additional bonds. It shall be*
213 *lawful for any national bank with its main office in the Commonwealth or any other state or any bank*
214 *or trust company incorporated under the laws of the Commonwealth or another state that may act as*
215 *depository of the proceeds of bonds or of revenues to furnish the indemnifying bonds or to pledge the*
216 *securities required by the Authority. Any trust indenture or agreement or resolution may set forth the*
217 *rights of action by bondholders. In addition to the foregoing, any such trust indenture or agreement or*
218 *resolution may contain such other provisions as the Authority may deem reasonable and proper for the*
219 *security of the bondholders including, without limitation, provisions for the assignment to a corporate*
220 *trustee or escrow agent of any rights of the Authority in any project owned by, or leases or sales of any*
221 *projects made by, the Authority. All expenses incurred in carrying out the provisions of the trust*
222 *indenture or agreement or resolution or other agreements relating to any project, including those to*
223 *which the Authority may not be a party, may be treated as a part of the cost of the operation of the*
224 *project or projects.*

225 *C. All moneys received pursuant to the authority of this article, whether as proceeds from the sale of*
226 *bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in*
227 *this article. The resolution authorizing the bonds of any issue or the trust indenture or agreement or*
228 *resolution securing such bonds shall provide that any officer with whom, or any bank or trust company*
229 *with which, such moneys shall be deposited shall act as a trustee of such moneys and shall hold and*
230 *apply the same for the purposes hereof, subject to the regulations as this article and the trust indenture*
231 *or agreement or resolution may provide.*

232 *D. Any holder of bonds issued under the provisions of this article or any of the coupons*
233 *appertaining thereto, and the trustee under any trust indenture or agreement or resolution, except to the*
234 *extent the rights given may be restricted by the trust indenture or agreement or resolution authorizing*
235 *the issuance of the bonds, may either at law or in equity, by suit, action, mandamus, or other*
236 *proceeding, protect and enforce any and all rights under the laws of the Commonwealth or granted*
237 *hereunder or under the trust indenture or agreement or resolution, and may enforce and compel the*
238 *performance of all duties required by this article or by the trust indenture or agreement or resolution to*
239 *be performed by the Authority or by any officer thereof, including the fixing, charging, and collecting of*
240 *rates, rentals, fees, and other charges.*

241 *E. Bonds issued by the Authority under the provisions of this article are made securities in which all*
242 *public officers and public bodies of the Commonwealth and its political subdivisions, all insurance*
243 *companies, trust companies, banking associations, investment companies, executors, administrators,*
244 *trustees, and other fiduciaries may properly and legally invest funds, including capital in their control*

or belonging to them. Such bonds shall be securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may hereafter be authorized by law.

F. The Authority may provide for the issuance of refunding bonds of the Authority for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of bonds. The issuance of the bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the Authority in respect of the same shall be governed by the provisions of this article insofar as they may be applicable.

§ 2.2-2384. Appropriations by any government.

Any government may make appropriations for the acquisition, construction, improvement, maintenance, or operation of any project acquired, constructed, improved, maintained, or operated by the Authority.

§ 2.2-2385. Conveyance, lease, or transfer of property by a city or county to the Authority.

Any city or county within the Commonwealth, in order to provide for the construction, reconstruction, improvement, repair, or management of any project, or in order to accomplish any of the purposes of this article, may, with or without consideration or for a nominal consideration, lease, sell, convey, or otherwise transfer to the Authority any real, personal, or mixed property located within such city or county.

§ 2.2-2386. Reporting requirement.

The Board, promptly following the close of the fiscal year, shall submit an annual report of the Authority's activities for the preceding year to the Chairman of the House Committee on Agriculture, Chesapeake and Natural Resources and the Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources. Each such report shall set forth a complete operating and financial statement covering the operation of the Authority during such year.

§ 2.2-2387. Department of Emergency Management.

Nothing in this article shall be construed to hinder the Department of Emergency Management from completing its duties in response to an emergency.

§ 10.1-603.25. Virginia Community Flood Preparedness Fund; loan and grant program.

A. The Virginia Shoreline Resiliency Fund is hereby continued as a permanent and perpetual fund to be known as the Virginia Community Flood Preparedness Fund. All sums that are designated for deposit in the Fund from revenue generated by the sale of emissions allowances pursuant to subdivision C 1 of § 10.1-1330, all sums that may be appropriated to the Fund by the General Assembly, all receipts by the Fund from the repayment of loans made by it to local governments, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private, including any federal grants and awards or other forms of assistance received by the Commonwealth that are eligible for deposit in the Fund under federal law, shall be designated for deposit to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including any appropriated funds and all principal, interest accrued, and payments, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. All loans and grants provided under this article shall be deemed to promote the public purposes of enhancing flood prevention or protection and coastal resilience.

B. Moneys in the Fund shall be used solely for the purposes of enhancing flood prevention or protection and coastal resilience as required by this article. The Authority shall manage the Fund and shall establish interest rates and repayment terms of such loans as provided in this article in accordance with a memorandum of agreement with the Department. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the management of the Fund. The Department shall direct distribution of loans and grants from the Fund in accordance with the provisions of subsection D.

C. The Authority is authorized at any time and from time to time to pledge, assign, or transfer from the Fund or any bank or trust company designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of principal of, premium, if any, and interest on any and all bonds, as defined in § 62.1-199, issued to finance any flood prevention or protection project undertaken pursuant to the provisions of this article. In addition, the Authority is authorized at any time and from time to time to sell upon such terms and conditions as the Authority deems appropriate any loan or interest thereon made pursuant to this article. The net proceeds of the sale remaining after payment of costs and expenses shall be designated for deposit to, and become part of, the Fund.

D. The Fund shall be administered by the ~~Department~~ Virginia Resiliency Authority as prescribed in this article established by § 2.2-2378 with technical assistance and administrative support from the Department. The Department, in consultation with the Secretary of Natural and Historic Resources and the Special Assistant to the Governor for Coastal Adaptation and Protection, shall establish guidelines

306 regarding the distribution and prioritization of loans and grants, including loans and grants that support
307 flood prevention or protection studies of statewide or regional significance.

308 E. Localities shall use moneys from the Fund primarily for the purpose of implementing flood
309 prevention and protection projects and studies in areas that are subject to recurrent flooding as confirmed
310 by a locality-certified floodplain manager. Moneys in the Fund may be used to mitigate future flood
311 damage and to assist inland and coastal communities across the Commonwealth that are subject to
312 recurrent or repetitive flooding. No less than 25 percent of the moneys disbursed from the Fund each
313 year shall be used for projects in low-income geographic areas. Priority shall be given to projects that
314 implement community-scale hazard mitigation activities that use nature-based solutions to reduce flood
315 risk.

316 F. Any locality is authorized to secure a loan made pursuant to this section by placing a lien up to
317 the value of the loan against any property that benefits from the loan. Such a lien shall be subordinate
318 to each prior lien on such property, except prior liens for which the prior lienholder executes a written
319 subordination agreement, in a form and substance acceptable to the prior lienholder in its sole and
320 exclusive discretion, that is recorded in the land records where the property is located.

321 G. Any locality using moneys in the Fund to provide a loan for a project in a low-income
322 geographic area is authorized to forgive the principal of such loan. If a locality forgives the principal of
323 any such loan, any obligation of the locality to repay that principal to the Commonwealth shall not be
324 forgiven and such obligation shall remain in full force and effect. The total amount of loans forgiven by
325 all localities in a fiscal year shall not exceed 30 percent of the amount appropriated in such fiscal year
326 to the Fund by the General Assembly.

327 **2. That the provisions of §§ 2.2-2382 through 2.2-2385 of the Code of Virginia, as created by this**
328 **act, shall become effective on July 1, 2023.**

329 **3. That the Secretary of Natural and Historic Resources and the Secretary of Transportation, in**
330 **consultation with the Virginia Resiliency Authority, as created by this act, shall make further**
331 **recommendations regarding the organization of the Virginia Resiliency Authority.**