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SENATE BILL NO. 1189

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Local Government
on February 1, 2005)

(Patron Prior to Substitute—Senator Locke)

A BILL to amend and reenact §§ 15.2-6300 through 15.2-6304, 15.2-6306, 15.2-6308 and 15.2-6319 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 15.2-6300.1, 15.2-6308.1, 15.2-6314.1, and by adding in Chapter 63 of Title 15.2 sections numbered 15.2-6322 and 15.2-6323; relating to development of former federal areas and exempting certain authorities from provisions of the Personnel Act and the Procurement Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-6300 through 15.2-6304, 15.2-6306, 15.2-6308 and 15.2-6319 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 15.2-6300.1, 15.2-6308.1, 15.2-6314.1, and by adding in Chapter 63 of Title 15.2 sections numbered 15.2-6322 and 15.2-6323 as follows:

–§ 15.2-6300. Declaration of policy.

This legislation is enacted to provide for the acquisition by political subdivisions of areas which have been or may hereafter be occupied as United States government ~~military~~ installations ~~and which are disposed of by the United States government~~. The industrial and economic development of localities included in or adjacent to such ~~military~~ installations and the tax revenues of the Commonwealth will be seriously affected by the manner in which such areas are *developed and the manner in which they are returned to nonmilitary nonfederal* uses and to the tax rolls, no provision having been made therefor. The proper development of such areas industrially and otherwise is required so that local governments may derive revenues with which to render necessary services to their citizens and so that industrial development; job creation; and housing, recreational, commercial, educational and other economic and social development may be fostered and stimulated to prevent the creation of blighted areas in the Commonwealth with resultant injury to all. The creation by this chapter and operation of such authorities hereunder are governmental functions of the gravest concern to the Commonwealth and the need for this enactment being a matter of legislative policy such need is hereby declared as a matter of legislative determination.

§ 15.2-6300.1. Further findings and declaration.

It is further found and declared that: It being the policy of the federal government to promote the development of federal employee housing, including military housing, office buildings and other infrastructure through partnerships with private and governmental entities, the purpose of such transactions being to help the federal government get needed infrastructure in place more quickly, and to increase the value of its installations, the creation and operation of the authorities and the granting to such authorities of the powers set forth under this chapter are necessary for the public welfare, to enable more efficient cooperation with the federal government, and to increase the value of federal installations in the Commonwealth.

§ 15.2-6301. Definitions.

As used in this chapter, unless the context or subject matter requires otherwise:

"Adjacent to such authority" includes real or personal property which is contiguous, neighboring, or within reasonable proximity of an authority.

"Area of operation" means an area coextensive with the territorial boundaries of the land acquired from the federal government by the authority.

"Authority" means any political subdivision created by this chapter. The terms "an authority" or "the authority" refer to each such authority.

"Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this chapter.

"Commissioners" means the members of the board of commissioners of an authority.

"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.

"Federal government" includes the United States of America, or any department, agency or instrumentality, corporate or otherwise, of the United States of America.

~~"Former federal Federal area"~~ means an area coextensive with the territorial boundaries ~~which that~~ is, or has been, occupied by a United States governmental ~~military installation and which is, or appears likely to be, subject to disposal by the United States government to public bodies, or otherwise activity or operation.~~

"Obligee of the authority" or "obligee" includes any bondholder, trustee or trustees for any

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60 bondholders, and the federal government when it is a party to any contract with the authority.

61 "Person" means as defined in Chapter 2 (§ 1-10 et seq.) of Title 1.

62 "Project" means any specific enterprise undertaken by an authority, including the facilities as
63 hereinafter defined, and all other property, real or personal or any interest therein, necessary or
64 appropriate for the operation of such property.

65 "Public body of the Commonwealth" means any city, town, county, municipal corporation,
66 commission, district, authority, other political subdivision or public body of this Commonwealth.

67 "Real property" means all lands, including improvements and fixtures thereon, and property of any
68 nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or
69 equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise and
70 the indebtedness secured by such liens.

71 § 15.2-6302. Establishment of development authorities; proclamation by Governor.

72 There is hereby created with respect to every ~~former~~ federal area a political subdivision of the
73 Commonwealth, with such public and corporate powers as are set forth in this chapter. Each such
74 authority shall be designated as the Development Authority (with a name chosen by the
75 Governor descriptive of the area in which the property is located); however, no authority shall exercise
76 any power or transact any business hereunder unless or until the Governor upon receipt of a duly
77 certified resolution of the governing body of each of the localities within the area of operation of an
78 authority requesting such action, shall proclaim that a ~~former~~ federal area exists with respect to which an
79 authority should function under the terms of this chapter. Any such authority for which such a
80 proclamation has been issued may proceed to transact business and to exercise its powers hereunder at
81 any time after the selection of the commissioners of the authority, as set forth in § 15.2-6304.

82 *Alternatively, the governing body of a locality may by ordinance or resolution, or the governing*
83 *bodies of two or more localities may by concurrent ordinances or resolutions or by agreement, create*
84 *the development authority. The ordinance, resolution, or agreement creating the authority shall not be*
85 *adopted or approved until a public hearing has been held on the question of its adoption or approval.*

86 In any suit, action or proceeding involving the validity or enforcement of or relating to any contract
87 of or action by the authority, the authority shall be conclusively presumed to have been established and
88 authorized to transact business and exercise its powers hereunder (i) upon proof of the action of the
89 Governor in issuing a proclamation with reference to such authority and the designation of its name by
90 the Governor, which descriptive name can be altered by the authority as may be deemed expedient, or
91 (ii) upon the adoption and approval of an ordinance by a locality or localities in accordance with this
92 section.

93 § 15.2-6303. Authorities to file annual reports.

94 At least once a year, each authority created by proclamation of the Governor pursuant to
95 § 15.2-6302 shall file with the Governor a report of its activities for the preceding year.

96 § 15.2-6304. Board of commissioners; appointment of director, agents and employees.

97 A. All powers, rights and duties conferred by this chapter, or other provisions of law, upon an
98 authority created hereunder shall be exercised by a board of commissioners of that authority, hereinafter
99 referred to as board or board of commissioners.

100 B. ~~The~~ In the case of authorities created by proclamation of the Governor pursuant to § 15.2-6302,
101 the board shall consist of seven members to be appointed by the Governor, of whom at least five shall
102 be residents of the ~~counties~~ locality or localities in which the authority is located. The members shall
103 serve for terms of six years each, the initial appointment to be two members for terms of six years, two
104 members for terms of five years, two members for terms of four years and one member for a term of
105 three years, and subsequent appointments to be made for terms of six years, except appointments to fill
106 vacancies which shall be made for the unexpired term.

107 C. In the case of authorities created by a locality pursuant to § 15.2-6302, the board shall consist of
108 up to seven members appointed by the locality in the authority is located, all of whom shall be residents
109 of such locality. The members shall serve for terms of not more than four years each. If a member
110 resigns, dies, or is otherwise removed from his position on the board, the locality or localities may
111 appoint a new member to fill the vacancy for the remainder of the unexpired term.

112 D. Members shall receive from the authority their necessary travel and business expenses while on
113 business of the board. Each commissioner shall before entering on his duties take and subscribe the oath
114 prescribed by § 49-1.

115 E. The board shall appoint the chief executive officer of the authority, who shall not be a member
116 thereof, to be known as the director of that authority, hereinafter referred to as director, and whose
117 compensation shall be paid by the authority in the amount determined by the board. The board shall
118 employ or retain such other agents or employees subordinate to the director as may be necessary,
119 including persons with special qualifications, and shall determine which such agents or employees shall
120 be bonded and the amount of such bonds. The director and other agents and employees so appointed
121 shall serve at the pleasure of the board, which shall fix their compensation and prescribe their duties.

The board shall elect from its membership a chairman, vice-chairman, a secretary and a treasurer, or secretary-treasurer, and shall prescribe their powers and duties. Four members shall constitute a quorum of the board for the purpose of conducting its business and exercising its powers and for all other purposes. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection. It shall keep suitable records of all of its financial transactions and shall arrange to have the same audited annually.

§ 15.2-6306. Principal and branch offices.

The board of each authority *created by proclamation of the Governor pursuant to § 15.2-6302* shall establish a principal office within one of the counties included in the authority. The board may also establish such branch offices as may be considered by the board to be appropriate to the efficient operation of the authority.

§ 15.2-6308. Powers of authorities generally.

An authority shall have the following powers:

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 industrial, social and other economic development of its area of operation, including without limitation development for industrial, 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, improvement, alteration, maintenance, removal, equipping or repair of any buildings, structures or land of any kind; to sell, 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 § 15.2-6317, any lands, dwellings, houses, accommodations, structures, buildings, facilities, or appurtenances embraced within its area of operations; 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; 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 be made for less than fair market value*; 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*; to dedicate, make a gift of, or lease for a nominal amount, any real or personal property or any interest therein to the Commonwealth, or the localities or agencies, public or private, within the area of operation or adjacent to such authority, 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 on-site utility and infrastructure systems or sell any excess service capacity for off-site 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 off-site needs, requirements and potentialities which directly affect the successful industrial and economic development of its area of operation, 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. In the discharge of its enumerated powers, to cooperate with the federal government, the Commonwealth and the localities within its area of operation or adjacent to such authority.

6. To appoint an authority advisory committee to advise it, consisting of such number of persons as it may deem proper. Such persons so appointed shall be residents of the ~~localities~~ locality in which the authority is located. They shall not receive any compensation for their services but may be reimbursed for their necessary traveling and other expenses incurred while on business of the authority.

7. To exercise all or any part or combination of powers herein granted.

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

No provision of law with respect to the acquisition, operation or disposition of property by other political subdivisions or public bodies shall be applicable to an authority unless specifically stated therein. In any locality where planning, zoning or 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.

§ 15.2-6308.1. Approval of General Assembly not required.

If an authority desires to undertake a project or other activity as provided in this chapter, and the property involved in such undertaking is subject to a reversionary interest in favor of the Commonwealth, such undertaking shall not require the prior approval of the General Assembly, the Governor, or any agency of the Commonwealth so long as such undertaking is for the purpose of allowing a federal activity to remain in operation on the property subject to that reversionary interest.

The Commonwealth's reversionary interest in such property shall be subordinate to any lease, mortgage or other transaction entered into by such authority with regard to such property.

§ 15.2-6314.1. Exemptions.

A development authority created under this chapter shall be exempt from the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) and the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

§ 15.2-6319. Dissolution of authority.

Whenever the commission of the authority by resolution determines that the purposes for which the authority was formed have been substantially complied with and all bonds issued and all obligations incurred by the authority have been fully paid, the commission shall execute and file for record with the governing body or bodies of the ~~localities within the area of operation of~~ locality or localities in which the authority was created, a resolution declaring such facts. If the governing bodies ~~of the localities within the area of operation~~ are of the opinion that the facts stated in the authority's resolution are true and the authority should be dissolved, they shall so resolve; however, *in the case of an authority created by proclamation of the Governor pursuant to § 15.2-6302*, the authority shall not be dissolved unless or until the Governor, upon receipt of the duly certified resolution of each governing body of each locality within the area of operation of the authority requesting dissolution, shall proclaim that the authority is dissolved. Any such authority for which such a proclamation was issued shall be dissolved as of the date on which the proclamation was issued. Upon ~~such~~ dissolution, the title to all funds and properties owned by the authority at the time of such dissolution shall vest, *(i) in the case of authorities created by proclamation of the Governor*, in the localities in the area of operation or to not-for-profit agencies, public or private, as may be designated by the localities, *or (ii) in the case of authorities created by a locality or localities pursuant to § 15.2-6302*, in such locality or localities or to not-for-profit agencies, public or private, as may be designated by such locality or localities.

§ 15.2-6322. Validation of creation of authorities, appointment of directors and proceedings; curative resolutions.

All proceedings heretofore taken with respect to the creation of authorities by any localities pursuant to this chapter are hereby validated and confirmed and all such authorities are declared to be legally created. All incumbent directors of authorities are declared to be and are lawfully appointed directors of authorities, notwithstanding any failure to conform to the requirements of this chapter, and all such appointments are hereby ratified, validated, and confirmed. However, all terms of incumbent directors shall conform to § 15.2-6304. The governing body of any locality is hereby authorized to adopt such corrective resolutions as may be necessary to carry out the requirements of the immediately preceding sentence. All proceedings heretofore taken to provide for or with respect to the authorization, issuance, sale, execution, or delivery of bonds by or on behalf of any authority are hereby validated, ratified, approved, and confirmed, and any such bonds so issued shall be valid, legal, binding, and enforceable obligations of such authority.

§ 15.2-6323. Sovereign immunity.

No provisions of this chapter nor act of an authority, including the procurement of insurance or self-insurance, shall be deemed a waiver of any sovereign immunity to which the authority or its directors, officers, employees, or agents are otherwise entitled.