

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 421

An Act to amend and reenact § 3 of Chapter 680 of the Acts of Assembly of 2005 and to amend Chapter 680 of the Acts of Assembly of 2005 by adding sections numbered 15 through 22, relating to the Clarksville-Boydton Airport Commission.

[S 794]

Approved March 5, 2008

Be it enacted by the General Assembly of Virginia:

1. That § 3 of Chapter 680 of the Acts of Assembly of 2005 is amended and reenacted and that Chapter 680 of the Acts of Assembly of 2005 is amended by adding sections numbered 15 through 22 as follows:

§ 3. The Commission established hereunder shall have all powers necessary or convenient to carry out the general purposes of this act, including the following powers in addition to others herein granted:

A. To sue and be sued; to adopt a seal and alter the same at pleasure; to have perpetual succession; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

B. To employ technical experts and other officers, agents, and employees as it may require, and to fix their qualifications and duties, and to fix their compensation within the limits of available funds.

C. To accept gifts and make application for and receive grants from the Commonwealth of Virginia or any political subdivision thereof, and from the United States and any of its agencies.

D. To acquire within the territorial limits of the region for which it is formed, by purchase, lease, gift, condemnation or otherwise, whatever land may be reasonably necessary for the purpose of establishing, constructing, enlarging, maintaining, and operating one or more airports or landing fields.

E. To acquire, establish, construct, enlarge, improve, maintain, equip, operate, and regulate the use of any airports, air landing fields, structures, air navigation facilities, and other property incidental thereto, within the area for which it is created; provided, however, that no such airport shall be established or operated without the permission of the Virginia Department of Aviation.

F. To construct, install, maintain, and operate facilities for the servicing of aircraft, and for the accommodation of cargo, freight, mail, express, etc., and comfort of air travelers, and to purchase and sell equipment and supplies as an incident to the operation of its airport facilities.

G. To determine rates and charges for the use of its airport and other facilities.

H. To enforce all rules, regulations, and statutes relating to its airports, including airport zoning regulations.

I. To exercise within its area such powers and authority with respect to airports and air navigation facilities as may be conferred by law upon the governing bodies of the towns of the Commonwealth.

J. To make and enforce rules and regulations for the management and regulation of its business and affairs and for the use, maintenance, and operation of its facilities and properties.

K. To engage directly or through its agents or employees in the operation for profit of concessions in connection with its airports or other facilities, including the sale of airplanes and aircraft fuel, or to grant such privileges and concessions to others.

L. To comply with the provisions of the laws of the United States and the Commonwealth of Virginia and any rules and regulations made thereunder for the expenditure of state or federal moneys in connection with airports, landing fields, and air navigation facilities, and to accept, receive, and receipt for federal moneys granted the commission, or granted any of the political subdivisions by which it is formed, for airport purposes.

M. To borrow money, as hereinafter provided, and to borrow money for the purpose of meeting casual deficits in its revenues.

§ 15. Commission to issue bonds.

The Commission shall have power and is hereby authorized to issue bonds from time to time in its discretion for any of its purposes, including the payment of all or any part of the cost of any of its facilities and the refunding of any bonds previously issued by it.

The Commission shall not issue bonds unless and until the maximum amount of each issue and the general purposes thereof have been approved by the governing body of each participating political subdivision. Subject to the foregoing, bonds may be issued under this act notwithstanding any debt or other limitation prescribed in any other statute and without obtaining the consent of any city, town, or county government or any commission, board, bureau, or agency of the Commonwealth or of any of the foregoing, and without any other proceedings or the happening of other conditions or things other than those proceedings, conditions, or things that are specifically required by this act.

The Commission may issue such types of bonds as it may determine, specifically bonds payable as to

principal and interest: (i) from its revenue generally; (ii) exclusively from the income and revenues of a particular project; or (iii) exclusively from the income and revenues of certain designated projects, whether or not they are financed in whole or in part from the proceeds of such bonds. Any such bonds may be additionally secured by a pledge of any grant or contribution from a participating political subdivision, the Commonwealth or any political subdivision, agency or instrumentality thereof, any federal agency or any unit, private corporation, copartnership, association, or individual, as such participating political subdivision, or other entities may be authorized to make under general law or by pledge of any income or revenues of the Commission, or where such mortgage has been approved by the participating political subdivisions, a mortgage of any facilities of the Commission.

Bonds of the Commission shall be authorized by resolution and may be issued in one or more series, shall be dated, shall mature at such time or times not exceeding 40 years from their date or dates and shall bear interest at such rate or rates as may be determined by the Commission, and may be made redeemable before maturity at the option of the Commission at such price or prices and under such terms and conditions as may be fixed by the Commission prior to the issuance of the bonds. The Commission shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this act, or any recitals in any bonds issued under the provisions of this act, all such bonds shall be deemed to be negotiable instruments under the laws of the Commonwealth. The bonds may be issued in coupon or registered form or both, as the Commission 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, and for the conversion and reconversion into coupon bonds of any bonds registered as to both principal and interest and vice versa. The Commission may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the Commission.

Prior to the preparation of definitive bonds, the Commission may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery.

§ 16. Resolution or trust indenture to secure bonds.

In connection with the issuance of bonds and in order to secure the payment of such bonds, the Commission shall have power:

1. To pledge by resolution, trust indenture, or other agreement, all or any part of its fees, rents, or revenues;
2. To covenant to impose and maintain such schedule of fees, rents and charges as will produce funds sufficient to pay operating costs and debt service;
3. To covenant against pledging all or any part of its fees, rents and revenues to which its right then exists or the right to which may thereafter come into existence or against permitting or suffering any lien thereon;
4. To provide for the release of fees, rents, and revenues from any pledge and to reserve rights and powers in the fees, rents and revenues that are subject to a pledge;
5. To covenant with respect to limitations on its right to sell, lease or otherwise dispose of any facility or facilities of the Commission or any part thereof or with respect to limitations on its right to undertake additional projects;
6. To covenant as to the bonds to be issued pursuant to any resolution, trust indenture, or other instrument and as to the issuance of such bonds in escrow or otherwise, and as to the use and disposition of the proceeds thereof;
7. To covenant as to what other, or additional, debt may be incurred by it;
8. To provide for the terms, forms, registration, exchange, execution, and authentication of bonds;
9. To provide for the replacement of lost, destroyed, or mutilated bonds;
10. To covenant as to the use of any or all of its property, real or personal, subject to the continued use of such property for airport purposes;
11. To create or to authorize the creation of special funds in which there may be segregated: (i) the proceeds of any loan or grant; (ii) all of the fees, rents and revenues of any facility or facilities or parts thereof; (iii) any moneys held for the payment of the costs of operation and maintenance of any such facilities or as a reserve for the meeting of contingencies in the operation and maintenance thereof; (iv) any moneys held for the payment of the principal and interest on its bonds or the sums due under its leases or as reserve for such payments; (v) any moneys held for any other reserve or contingencies; and (vi) to covenant as to the use and disposal of the moneys held in such funds;
12. To redeem its bonds, and to covenant for their redemption and to provide the terms and conditions thereof;
13. To covenant against extending the time for the payment of its bonds or interest thereon, directly

or indirectly, by any means or in any manner;

14. To prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

15. To covenant as to the maintenance of its facilities, the insurance to be carried thereon and the use and disposition of insurance moneys;

16. To vest in a bondholder the right, in the event of the failure of the Commission to observe or perform any covenant on its part to be kept or performed, to cure any such default, and, subject to the limitation on total indebtedness expressed in this act, to advance any moneys necessary for such purpose, and the moneys so advanced may be made an additional obligation of the Commission with such interest, security and priority as may be provided in any trust indenture, lease or contract of the Commission with reference thereto;

17. To covenant and prescribe as to the events of default and terms and conditions upon which any or all of its bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

18. To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition or obligation;

19. To covenant to surrender possession of all or any part of any facility or facilities acquired or constructed from bond proceeds, the revenues from which have been pledged upon the happening of any event of default, as defined in the contract, and to vest in a bondholder the right without judicial proceeding to take possession and to use, operate, manage, and control such facility or any part thereof, and to collect and receive all fees, rents, and revenues arising therefrom in the same manner as the Commission itself might do and to dispose of the moneys collected in accordance with the agreement of the Commission with such obligee, subject to the continued use of such facilities for airport purposes;

20. To vest in a trustee or trustees the right to enforce any covenant made to secure, to pay, or in relation to the bonds, to provide for the powers and duties of such trustee or trustees, to limit liabilities thereof and to provide the terms and conditions upon which the trustee or trustees or the bondholders or any proportion of them may enforce any such covenant;

21. To make covenants other than and in addition to the covenants herein expressly authorized, of like or different character;

22. To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants or duties, which may contain such covenants and provisions, in addition to those above specified, as any purchaser of the bonds of the Commission may reasonably require; and

23. To make such covenants and to do any and all such acts and things as may be necessary or convenient or desirable in order to secure its bonds, or in the absolute discretion of the Commission that tend to make the bonds more marketable; notwithstanding that such covenant, acts or things may not be enumerated herein, it being the intention hereof to give the Commission power to do all things in the issuance of bonds, and in the provisions for their security that are not inconsistent with the Constitution of Virginia or this act.

§ 17. Fees, rents and charges.

The Commission is hereby authorized to and shall fix, revise, charge, and collect fees, rents and other charges for the use and services of any facilities. Such fees, rents, and other charges shall be so fixed and adjusted as to provide a fund sufficient with other revenues to pay the cost of maintaining, repairing, and operating the facilities and the principal and any interest on its bonds as the same shall become due and payable, including reserves therefor. Such fees, rents, and other charges shall not be subject to supervision or regulation by any commission, board, bureau, or agency of the Commonwealth or any participating political subdivision. The fees, rents, and other charges received by the Commission, except such part thereof as may be necessary to pay the cost of maintenance, repair, and operation and to provide such reserves therefor as may be provided for in any resolution authorizing the issuance of such bonds or in any trust indenture or agreement securing the same, shall to the extent necessary, be set aside at such regular intervals as may be provided in any such resolution or trust indenture or agreement in a sinking fund or sinking funds pledged to, and charged with, the payment and the interest of such bonds as the same shall become due, and the redemption price or the purchase price of such bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made. So long as any of its bonds are outstanding, the fees, rents, and charges so pledged and thereafter received by the Commission shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the Commission irrespective of whether such parties have notice thereof. Neither the resolution nor any trust indenture by which a pledge is created need to be filed or recorded except in the records of the Commission. The use and disposition of moneys to the credit of any such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust indenture or agreement.

§ 18. Credit of Commonwealth and political subdivisions not pledged.

The bonds of the Commission shall not be a debt of the Commonwealth or any political subdivision thereof, other than the Commission, and neither the Commonwealth nor any political subdivision thereof, other than the Commission, shall be liable thereon, nor shall such bonds be payable out of any funds or properties other than those of the Commission. All bonds of the Commission shall contain on the face thereof a statement to such effect. The bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction.

§ 19. Members and persons executing bonds not liable thereon.

Neither the Commission nor any person executing the bonds shall be liable personally on the Commission's bonds by reasons of the issuance thereof.

§ 20. Remedies of bondholder.

Any holder of bonds issued under the provisions of this act or of any of the coupons appertaining thereto, and the trustee under any trust indenture or agreement, may, either at law or in equity, by suit, action, injunction, or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this act or under such trust indenture agreement or the resolution authorizing the issuance of such bonds and may enforce and compel the performance of all duties required by this act or by such trust indenture or agreement or resolution to be performed by the Commission or by any officer or agent thereof, including the fixing, charging and collection of fees, rents and other charges. Any resolution authorizing the issuance of the Commission's bonds or trust indenture or agreement securing the same may limit or abrogate the individual right of action by the holders of such bonds or coupons appertaining thereto.

§ 21. Taxation.

The exercise of the powers granted by this act shall in all respects be presumed to be for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the promotion of their health, safety, welfare, convenience and prosperity, and as the operation and maintenance of any project that the Commission is authorized to undertake will constitute the performance of an essential governmental function, the Commission shall not be required to pay any taxes or assessments upon any facilities acquired and constructed by it under the provisions of this act and the bonds issued under the provisions of this act, their transfer and the income therefrom including any profit made on the sale thereof, shall at all times be free and exempt from taxation by the Commonwealth and by any political subdivision thereof. Persons, firms, partnerships, associations, corporations and organizations leasing property of the Commission or doing business on property of the Commission shall be subject to and liable for payment of all applicable taxes of the political subdivision in which such leased property lies or in which business is conducted, including, but not limited to, any leasehold tax on real property and taxes on tangible personal property and machinery and tools, taxes for admission, taxes on hotel and motel rooms, taxes on the sale of tobacco products, taxes on the sale of meals and beverages, privilege taxes and local general retail sales and use taxes, taxes to be paid on licenses in respect to any business, profession, vocation or calling and taxes upon consumers of gas, electricity, telephone and other public utility services.

§ 22. Bonds as legal investments.

Bonds issued by the Commission under the provisions of this act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made 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 is now or may hereafter be authorized by law.