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**HOUSE BILL NO. 2024**

Offered January 11, 2017

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A *BILL to amend and reenact §§ 2.2-2340, 10.1-114, 15.2-1902, 23.1-3203, 23.1-3207, 25.1-301, 28.2-628, and 33.2-1018 of the Code of Virginia, relating to condemnation powers and proceedings; imminent threat to public health, safety, and welfare required.*

Patron—Freitas

Referred to Committee for Courts of Justice

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

**1. That §§ 2.2-2340, 10.1-114, 15.2-1902, 23.1-3203, 23.1-3207, 25.1-301, 28.2-628, and 33.2-1018 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-2340. Additional declaration of policy; powers of the Authority; penalty.**

A. It is the policy of the Commonwealth that the historic, cultural, and natural resources of Fort Monroe be protected in any conveyance or alienation of real property interests by the Authority. Real property in the Area of Operation at Fort Monroe may be maintained as Commonwealth-owned land that is leased, whether by short-term operating/revenue lease or long-term ground lease, to appropriate public, private, or joint venture entities, with such historic, cultural, and natural resources being protected in any such lease, to be approved as to form by the Attorney General of the Commonwealth of Virginia. If sold as provided in this article, real property interests in the Area of Operation at Fort Monroe may only be sold under covenants, historic conservation easements, historic preservation easements, or other appropriate legal restrictions approved as to form by the Attorney General that protect these historic and natural resources. Properties in the Wherry Quarter and Inner Fort areas identified in the Fort Monroe Reuse Plan may only be sold with the consent of both the Governor and the General Assembly, except that any transfer to the National Park Service shall require only the approval of the Governor. The proceeds from the sale or pre-paid lease of any real or personal property within the Area of Operation shall be retained by the Authority and used for infrastructure improvements in the Area of Operation.

B. The Authority shall have the power and duty:

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 economic and other development of Fort Monroe, including without limitation development for business, 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, rehabilitation, reuse, improvement, alteration, maintenance, removal, equipping, or repair of any buildings, structures, or land of any kind; to 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 the Programmatic Agreement, Design Standards, and Reuse Plan governing any lands, dwellings, houses, accommodations, structures, buildings, facilities, or appurtenances embraced within Fort Monroe; 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, provided, however, that if services are provided by the City of Hampton pursuant to § 2.2-2341 for which the City is compensated pursuant to subsection B of § 2.2-2342, then the Authority may provide for additional, more complete, or more timely services than are generally available in the City of Hampton as a whole if deemed necessary or appropriate by the Authority; 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 only be made for less than fair market value if the Board of Trustees determines, upon the advice of the Attorney General, that the transaction is consistent with the fiduciary obligation of the Authority to the Commonwealth and if necessary or appropriate to further the purposes of the Authority; as provided in this article, to sell, lease, exchange, transfer, assign, or pledge any real

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59 or personal property or any interest therein, which sale, lease, or other transfer or assignment may be  
60 made for less than fair market value; as provided in this article, to dedicate, make a gift of, or lease for  
61 a nominal amount any real or personal property or any interest therein to the Commonwealth, the City  
62 of Hampton, or other localities or agencies, public or private, within the Area of Operation or adjacent  
63 thereto, jointly or severally, for public use or benefit, such as, but not limited to, game preserves,  
64 playgrounds, park and recreational areas and facilities, hospitals, clinics, schools, and airports; to acquire,  
65 lease, maintain, alter, operate, improve, expand, sell, or otherwise dispose of onsite utility and  
66 infrastructure systems or sell any excess service capacity for offsite use; to acquire, lease, construct,  
67 maintain, and operate and dispose of tracks, spurs, crossings, terminals, warehouses, and terminal  
68 facilities of every kind and description necessary or useful in the transportation and storage of goods,  
69 wares, and merchandise; and to insure or provide for the insurance of any real or personal property or  
70 operation of the Authority against any risks or hazards;

71 3. To invest any funds held in reserves or sinking funds, or any funds not required for immediate  
72 disbursements, in property or security in which fiduciaries may legally invest funds subject to their  
73 control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest,  
74 all bonds so purchased to be cancelled;

75 4. To undertake and carry out examinations, investigations, studies, and analyses of the business,  
76 industrial, agricultural, utility, transportation, and other economic development needs, requirements, and  
77 potentialities of its Area of Operation or offsite needs, requirements, and potentialities that directly affect  
78 the success of the Authority at Fort Monroe, and the manner in which such needs and requirements and  
79 potentialities are being met, or should be met, in order to accomplish the purposes for which it is  
80 created; to make use of the facts determined in such research and analyses in its own operation; and to  
81 make the results of such studies and analyses available to public bodies and to private individuals,  
82 groups, and businesses, except as such information may be exempted pursuant to the Virginia Freedom  
83 of Information Act (§ 2.2-3700 et seq.);

84 5. To administer, develop, and maintain at Fort Monroe permanent commemorative cultural and  
85 historical museums and memorials;

86 6. To adopt names, flags, seals, and other emblems for use in connection with such shrines and to  
87 copyright the same in the name of the Commonwealth;

88 7. To enter into any contracts not otherwise specifically authorized in this article to further the  
89 purposes of the Authority, after approval as to form by the Attorney General;

90 8. To establish nonprofit corporations as instrumentalities to assist in administering the affairs of the  
91 Authority;

92 9. To exercise the power of eminent domain in the manner provided by *Chapter 2 (§ 25.1-200 et*  
93 *seq.) or Chapter 3 (§ 25.1-300 et seq.)* of Title 25.1 within the Authority's Area of Operation; however,  
94 eminent domain may only be used to obtain easements across property on Fort Monroe for the provision  
95 of water, sewer, electrical, ingress and egress, and other necessary or useful services to further the  
96 purposes of the Authority, unless the Governor has expressly granted authority to obtain interests for  
97 other purposes;

98 10. To fix, charge, and collect rents, fees, and charges for the use of, or the benefit derived from, the  
99 services or facilities provided, owned, operated, or financed by the Authority benefiting property within  
100 the Authority's Area of Operation. Such rents, fees, and charges may be charged to and collected by  
101 such persons and in such manner as the Authority may determine from (i) any person contracting for the  
102 services or using the Authority facilities or (ii) the owners, tenants, or customers of the real estate and  
103 improvements that are served by, or benefit from the use of, any such services or facilities, in such  
104 manner as shall be authorized by the Authority in connection with the provision of such services or  
105 facilities. Such rents, fees, and charges shall not be chargeable to the Commonwealth or, where such  
106 rents, fees or charges relate to services or facilities utilized by the City of Hampton to provide municipal  
107 services, to the City of Hampton except as may be provided by lease or other agreement and may be  
108 used to fund the provision of the additional, more complete, or more timely services authorized under  
109 subdivision 6 of § 2.2-2339, the payments provided under § 2.2-2342, or for other purposes as the  
110 Authority may determine to be appropriate, subject to the provisions of subsection B of § 2.2-2342;

111 11. To receive and expend gifts, grants, and donations from whatever source derived for the purposes  
112 of the Authority;

113 12. To employ an executive director and such deputies and assistants as may be required;

114 13. To elect any past chairman of the Board of Trustees to the honorary position of chairman  
115 emeritus. Chairmen emeriti shall serve as honorary members for life. Chairmen emeriti shall be elected  
116 in addition to the nonlegislative citizen member positions defined in § 2.2-2338;

117 14. To determine what paintings, statuary, works of art, manuscripts, and artifacts may be acquired  
118 by purchase, gift, or loan and to exchange or sell the same if not inconsistent with the terms of such  
119 purchase, gift, loan, or other acquisition;

120 15. To change the form of investment of any funds, securities, or other property, real or personal,

provided the same are not inconsistent with the terms of the instrument under which the same were acquired, and to sell, grant, or convey any such property, subject to the provisions of subsection A of § 2.2-2340;

16. To cooperate with the federal government, the Commonwealth, the City of Hampton, or other nearby localities in the discharge of its enumerated powers;

17. To exercise all or any part or combination of powers granted in this article;

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

19. To adopt, amend or repeal, by the Board of Trustees, or the executive committee thereof, regulations concerning the use of, access to and visitation of properties under the control of the Authority in order to protect or secure such properties and the public enjoyment thereof, with any violation of such regulations being punishable by a civil penalty of up to \$100 for the first violation and up to \$250 for any subsequent violation, such civil penalty to be paid to the Authority;

20. To provide parking and traffic rules and regulations on property owned by the Authority; and

21. To provide that any person who knowingly violates a regulation of the Authority may be requested by an agent or employee of the Authority to leave the property and upon the failure of such person so to do shall be guilty of a trespass as provided in § 18.2-119.

**§ 10.1-114. Commemorative facilities and historic sites management; duties of Director.**

In order to further public understanding and appreciation of the persons, places and events that contributed substantially to the development and enhancement of our Commonwealth's and nation's democratic and social values and ideals and in order to encourage, stimulate and support the identification, protection, preservation and rehabilitation of the Department's significant historic, architectural and archaeological sites, the Director has the following duties:

1. To ensure that Departmental historical and cultural facilities are suitable for public, patriotic, educational and recreational assemblies and events;

2. To plan, establish, construct, operate, maintain and manage historic museums, commemorative memorials and other facilities as directed by acts of the General Assembly;

3. To acquire lands, property and structures deemed necessary to the purposes of this chapter by purchase, lease, gift, devise or condemnation proceedings. The title to land and property acquired shall be in the name of the Commonwealth. In the exercise of the power of eminent domain granted under this section, the Director may proceed in the manner provided in *Chapter 2 (§ 25.1-200 et seq.) or Chapter 3 (§ 25.1-300 et seq.)* of Title 25.1; and

4. To lease acquired property to any person, association, firm or corporation for terms and conditions determined by the Director with the Governor's consent.

**§ 15.2-1902. Condemnation proceedings generally.**

Except where otherwise authorized by any applicable charter provision, a locality shall exercise the power of eminent domain in the manner, and in accordance with the procedures, set out in Chapter 2 (§ 25.1-200 et seq.) or Chapter 3 (§ 25.1-300 et seq.) of Title 25.1, except that:

1. Only lands or easements for (i) streets and roads, (ii) drainage facilities, (iii) water supply and sewage disposal systems, including pipes and lines, and (iv) water, sewer and governmentally owned gas, electricity, telephone, telegraph and other utility lines and pipes and related facilities, except to the extent otherwise prohibited by law, may be condemned using the procedures in Chapter 3 of Title 25.1, as provided by the applicable provisions of §§ 15.2-1904 and 15.2-1905, because the foregoing enumerated uses are inherently public uses when undertaken by a locality;

2. Existing water and sewage disposal systems in their entirety shall be condemned in accordance with the procedures in § 15.2-1906;

3. Oyster bottoms and grounds may be condemned utilizing the procedures in *Chapter 2 or Chapter 3* of Title 25.1, as required by § 28.2-628; and

4. The provisions of §§ 33.2-1007 through 33.2-1011, 33.2-1014, and 33.2-1017 shall be applicable, *mutatis mutandis*, with respect to any condemnation by a locality of property for highway purposes.

**§ 23.1-3203. Duties of the board.**

A. The board shall:

1. Establish, operate, and maintain the Museum to commemorate the contributions of the pioneers and colonial frontiersmen and frontierswomen to the creation of this nation;

2. Employ an executive director and such assistants as may be required and confer such duties and responsibilities as determined necessary;

3. Adopt a flag, seal, and other emblems for use in connection with the Museum;

4. Establish a nonprofit corporation to develop and maintain public awareness of the Museum;

5. Receive and expend gifts, grants, and donations of any kind from whatever sources determined, including donations accepted by the American Frontier Culture Foundation on behalf of the Museum;

6. Adopt regulations and set fees concerning the use and visitation of properties under its control;

182 7. With the consent of the Governor, acquire by purchase, lease, gift, devise, or condemnation  
183 proceedings lands, property, and structures deemed necessary to the purpose of the Museum. The title to  
184 such acquired land and property shall be in the name of the Commonwealth. In the exercise of the  
185 power of eminent domain granted under this section, the Museum may proceed in the manner provided  
186 by *Chapter 2 (§ 25.1-200 et seq.) or Chapter 3 (§ 25.1-300 et seq.)* of Title 25.1;

187 8. Convey by lease land and structures to any person, association, firm, or corporation, with the  
188 consent of the Governor, for such terms and on such conditions as the Museum may determine;

189 9. Enter into contracts to further the purpose of the Museum; and

190 10. Elect any past member of the board to the honorary position of trustee emeritus. Trustees emeriti  
191 shall serve as honorary members for life, shall not have voting privileges, and shall be elected in  
192 addition to those positions set forth in § 23.1-3202.

193 B. In addition to the powers granted by subsection A, the board may evaluate the significance and  
194 suitability of the furnishings, household items, and other objects acquired by purchase, gift, or donation  
195 with or for the Museum for the purpose of accurately presenting the means, tastes, and lifestyles of the  
196 people living during the era depicted by the Museum. The board may exchange or sell those furnishings,  
197 household items, and other objects that it determines to be of little or no significance or suitability for  
198 achieving the purpose or mission of the Museum as long as such disposition is not inconsistent with the  
199 terms of the acquisition of the relevant property. Sales of these items may be conducted by auction  
200 houses recognized for their expertise in the sale of such property.

201 C. Any furnishings, household goods, and other objects previously acquired by donation or purchase  
202 and the net proceeds of any sale of these items as provided in subsection B shall constitute a discrete  
203 fund of the Museum and shall be used solely for the acquisition of period furnishings, household goods,  
204 and other objects consistent with the purpose and mission of the Museum.

205 D. Donations to the Museum of any funds, securities, and any other property, real or personal, for  
206 use in accordance with its purpose and mission shall constitute endowments or unrestricted gifts for the  
207 purposes of § 23.1-101. The board may change the form of investment of any such funds, securities, or  
208 other property, real or personal, if the change in such form is not inconsistent with the terms of the  
209 instrument under which such property was acquired and may sell, grant, or convey any such property,  
210 except that any transfers of real property shall be made only with the consent of the Governor.

211 **§ 23.1-3207. Duties.**

212 The board shall:

213 1. Do all things necessary and proper to (i) foster through its living-history museums, Jamestown  
214 Settlement and Yorktown Victory Center, an awareness and understanding of the early history,  
215 settlement, and development of the United States through the convergence of American Indian,  
216 European, and African cultures and the enduring legacies bequeathed to the nation; (ii) commemorate  
217 Jamestown as the first permanent English-speaking settlement in the United States and its contributions  
218 to the building of the Commonwealth and the nation; (iii) commemorate the winning of American  
219 independence on the battlefield at Yorktown; and (iv) enhance our understanding of the making of the  
220 United States Constitution and Bill of Rights, including the Commonwealth's role in shaping the  
221 fundamental principles of the American constitutional system;

222 2. Administer, develop, and maintain at Jamestown and Yorktown permanent commemorative shrines  
223 and historical museums;

224 3. Adopt names, flags, seals, and other emblems for use in connection with such shrines and  
225 copyright the same in the name of the Commonwealth;

226 4. Enter into contracts to further the purposes of the Foundation;

227 5. Establish nonprofit corporations as instrumentalities to assist in administering the affairs of the  
228 Foundation;

229 6. With the consent of the Governor, acquire by purchase, lease, gift, devise, or condemnation  
230 proceedings lands, property, and structures deemed necessary for the purposes of the Foundation. The  
231 title to such acquired land and property shall be in the name of the Commonwealth. In the exercise of  
232 the power of eminent domain granted under this section, the Foundation may proceed in the manner  
233 provided by *Chapter 2 (§ 25.1-200 et seq.) or Chapter 3 (§ 25.1-300 et seq.)* of Title 25.1;

234 7. With the consent of the Governor, convey by lease land to any person, association, firm, or  
235 corporation for such terms and on such conditions as the Foundation may determine;

236 8. Receive and expend gifts, grants, and donations from whatever source derived for the purposes of  
237 the Foundation;

238 9. Employ an executive director and such deputies and assistants as may be required;

239 10. Elect any past chairman of the board to the honorary position of chairman emeritus. Chairmen  
240 emeriti shall serve as honorary members for life. Chairmen emeriti shall be elected in addition to the  
241 at-large positions defined in § 23.1-3206;

242 11. With the consent of the Governor, enter into agreements or contracts with private entities for the  
243 promotion of tourism through marketing without participating in competitive sealed bidding or

competitive negotiation, provided that a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles;

12. Determine which paintings, statuary, works of art, manuscripts, and artifacts shall be acquired by purchase, gift, or loan and exchange or sell such items if not inconsistent with the terms of such purchase, gift, loan, or other acquisition; and

13. Change the form of investment of any funds, securities, or other property, real or personal, provided the form is not inconsistent with the terms of the instrument under which the property was acquired, and sell, grant, or convey any such property, except that any transfers of real property shall be made only with the consent of the Governor.

**§ 25.1-301. Applicability of chapter; purpose.**

A. *The procedure established by this chapter shall be available for use only upon the determination by the court in which condemnation proceedings are pending or are to be instituted that the use of such procedure is necessary to protect against an imminent threat to public health, safety, and welfare. Provided that such determination is made, the procedure established by this chapter shall be available for use, at the election of an authorized condemnor, in connection with the acquisition of property by condemnation if the use of the procedure is specifically authorized by law.*

B. It is the intention of this chapter to provide that property may, in the discretion of the authorized condemnor interest of public health, safety, and welfare, be condemned as provided in this chapter before, during or after the construction of improvements thereon.

**§ 28.2-628. Condemnation of oyster bottoms and grounds.**

The Department of Transportation and any locality shall have the right by eminent domain, to acquire any right or interest, partial or complete, in and to any oyster bottoms, oyster-planting grounds, or interest therein necessary for the purpose of such Department or locality. The procedure in such cases shall conform to the provisions of Chapter 2 (§ 25.1-200 et seq.) or Chapter 3 (§ 25.1-300 et seq.) of Title 25.1. However, a locality shall not exercise the right by eminent domain to acquire any right or interest, partial or complete, in and to any oyster-planting grounds leased pursuant to Article 1 (§ 28.2-600 et seq.) or 2 (§ 28.2-603 et seq.) of Chapter 6, other than a water-dependent linear wastewater project where there is no practical alternative and the project is subject to permitting under the State Water Control Law (§ 62.1-44.2 et seq.).

The Department of Conservation and Recreation shall have the same right of eminent domain against the same properties as previously described, where the purpose of the condemnation is to provide for a navigational improvement benefiting the Commonwealth and not limited to purposes of any particular locality.

**§ 33.2-1018. Authority to take possession and title to property before or during condemnation; purpose and intent of provisions.**

In addition to the exercise of the power of eminent domain prior to the entry upon land being condemned, as provided in this article, the Commissioner of Highways is authorized to acquire title and to enter upon and take possession of such property and rights-of-way, for the purposes set out in § 33.2-1001, as the Commissioner of Highways may deem necessary, and proceed with the construction of such highway, such taking to be made pursuant to §§ 33.2-1019 through 33.2-1029, upon a determination by the court where condemnation proceedings are pending or are to be instituted that such taking is necessary to protect against an imminent threat to public health, safety, and welfare.

It is the intention of this article to provide that such property and rights-of-way may, in the discretion of the Commissioner of Highways interest of public health, safety, and welfare, be condemned during or after the construction of the highway, as well as prior thereto, and to direct the fund out of which the judgment of the court in condemnation proceedings shall be paid, and to provide that in all other respects the provisions of this article shall apply, whether the property and rights-of-way are condemned before, during, or after the construction of the highway. However, the authorities constructing such highway under the authority of this article shall use diligence to protect growing crops and pastures and to prevent damage to any property not taken. So far as possible all rights-of-way shall be acquired or contracted for before any condemnation is resorted to.