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SENATE BILL NO. 728

Offered January 19, 2024

A *BILL* to continue the *Cumberlands Airport Commission* and provide for its rights, powers, duties, and functions and to repeal Chapter 439 of the Acts of Assembly of 1958, which created the *Cumberlands Airport Commission*.

Patron—Pillion

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1.
Amended Cumberlands Airport Commission Act.

§ 1. Short title.

This Amended Act shall be known and may be cited as the Amended Cumberlands Airport Commission Act of 2024.

§ 2. Creation; public purpose.

The Cumberlands Airport Commission (the Commission) was created in 1958 by the Virginia General Assembly. This Amended Act redefines the potential participating political subdivisions to be only those including and within the Counties of Wise and Dickenson and the City of Norton. The Commission shall thereupon exist for such participating political subdivisions and shall exercise its newly amended powers and functions as prescribed herein in this Amended Act. The region for which such Commission shall exist shall be coterminous with the boundaries of the participating political subdivisions.

In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the Cumberlands Airport Commission, such Commission shall be conclusively deemed to have been created as a body corporate and to have been established and authorized to transact business and exercise its powers under this Amended Act. Any political subdivision within the region for which such Commission shall exist is authorized to join such Commission pursuant to the terms and conditions of this Amended Act.

It is hereby declared that the ownership and operation by the Commission of modern and efficient air transportation and related facilities and the exercise of powers conferred by this Amended Act are proper and essential governmental functions and public purposes and matters of public necessity for which public moneys may be spent and private property acquired through the power of eminent domain as hereinafter provided.

§ 3. Definitions.

As used in this Amended Act, the following words and terms have the following meanings unless a different meaning clearly appears from the context:

"Act" means the original Cumberlands Airport Commission Act of 1958.

"Amended Act" means this Amended Cumberlands Airport Commission Act of 2024.

"Commission" means the Cumberlands Airport Commission continued by this Amended Act and shall consist of members from the participating political subdivisions.

"Commonwealth" means the Commonwealth of Virginia.

"Facility" means any and all airports, terminals, runways, hangars, loading facilities, repair shops, parking areas, facilities for the preparation of in-flight meals, restaurants and accommodations for temporary or overnight use by passengers, and other facilities functionally related to the needs or convenience of passengers, shipping companies and airlines, and industrial and commercial facilities, purchased, constructed, or otherwise acquired or operated by the Commission.

Any facility may consist of or include any or all buildings or other structures, improvements, additions, extensions, replacements, machinery, or equipment, together with appurtenances, lands, rights in land, aviation rights, water rights, franchises, furnishings, landscaping, utilities, approaches, roadways, or other facilities necessary or desirable in connection therewith or incidental thereto.

"Lonesome Pine Airport" means the airport facilities located at 6225 Airport Road, Wise, Virginia, and any other facilities necessary, incidental, or convenient to the operation of the facilities.

"Participating political subdivision" means either of the counties of Wise and Dickenson, any of the incorporated political subdivisions therein, and the City of Norton.

"Political subdivision" means a county or incorporated municipality of the Commonwealth.

§ 4. Participating political subdivision.

A participating political subdivision should budget for and set forth a financial contribution to be

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59 *made annually by such political subdivision to the Commission.*

60 *No pecuniary liability of any kind shall be imposed upon any participating political subdivision*
61 *because of any act, omission, agreement, contract, tort, malfeasance, misfeasance, or nonfeasance by or*
62 *on the part of the Commission or any member thereof, or its agents, servants, or employees, except as*
63 *otherwise provided in this Amended Act with respect to contracts and agreements between the*
64 *Commission and any other political subdivision.*

65 *§ 5. Appointment, tenure and payment of members.*

66 *The governing body of each participating political subdivision shall appoint one member for a*
67 *four-year term. The governing body of each participating political subdivision is empowered to remove*
68 *at any time, without cause, any member appointed by it and appoint a successor member to fill the*
69 *unexpired portion of the removed member's term. If the appointment of a member is nullified through*
70 *political subdivision disincorporation, or the governing body chooses to no longer be a participating*
71 *political subdivision, then the Commission will advise the remaining participating political subdivisions*
72 *of such an event and its effects, if any, upon the Commission.*

73 *Each member may be reimbursed by the Commission for the amount of actual expenses incurred by*
74 *such member in the performance of their duties such as meeting attendance, conference trips, or trips to*
75 *meet with DOAV, FAA, or contractor officials. In addition to actual expenses incurred, each*
76 *Commission member may receive reasonable payment for meeting attendance, as determined by the*
77 *Commission.*

78 *§ 6. Organization.*

79 *A majority of the members in office shall constitute a quorum. No vacancy in the membership of the*
80 *Commission shall impair the right of a quorum to exercise all the rights and perform all the duties of*
81 *the Commission.*

82 *The Commission shall hold regular meetings at such times and places as may be established by its*
83 *bylaws. Special meetings of the Commission may be called by any two members or by the Chairman*
84 *upon at least 48 hours written notice via hand-carried letter to each member served personally or left at*
85 *his usual place of business or residence, or via email or text message with acknowledgement of receipt.*

86 *The Commission shall annually elect a chairman, a vice-chairman, a secretary, and a treasurer (or a*
87 *secretary-treasurer) from its membership and such other officers as it may deem appropriate. The*
88 *Commission may appoint an Airport Manager, who shall not be a member, who shall exercise such*
89 *powers and duties as may be delegated to him by the Commission, including powers and duties*
90 *involving the exercise of discretion.*

91 *The Commission may make and from time to time adopt rules and regulations for its own procedure*
92 *and government, amend and repeal bylaws, not inconsistent with this Amended Act, governing the*
93 *manner in which the Commission's business may be transacted and in which the power granted to it*
94 *may be enjoyed. The Commission may appoint such committees as it may deem advisable and fix the*
95 *duties and responsibilities of such committees.*

96 *§ 7. Powers.*

97 *The Commission is hereby granted all powers necessary or appropriate to carry out the purposes of*
98 *this Amended Act, including, for purposes of illustration, the following:*

99 *1. To sue and be sued in its own name;*

100 *2. To have perpetual succession;*

101 *3. To adopt a corporate seal;*

102 *4. To maintain offices at such places as it may designate in the Town of Wise and in Wise County,*
103 *with the preferred location at Lonesome Pine Airport;*

104 *5. To acquire, establish, construct, enlarge, improve, maintain, equip, operate and regulate any*
105 *airport, air landing fields, structures, aviation facilities and other property incidental thereto within the*
106 *territorial limits of the participating political subdivisions subject to the limitation that such power shall*
107 *be limited to such items as may be necessary for the operation of the Lonesome Pine Airport;*

108 *6. To construct, install, maintain and operate facilities for the servicing and storage of aircraft and*
109 *for the accommodation of cargo, freight, mail, express, and similar items, and for the accommodation*
110 *and comfort of air travelers, and for lease or sale to industrial or commercial users, and to purchase*
111 *and sell equipment and supplies incidental to the operation of its airport facilities;*

112 *7. To grant to others the privilege to operate for profit concessions, leases, and franchises, including*
113 *but not limited to the sale of airplanes, fuel, parts, and equipment, maintenance of aircraft, the*
114 *accommodation and comfort of persons using its facilities, and the providing of ground transportation*
115 *and parking facilities for such persons; such concessions, leases, and franchises shall be exclusive or*
116 *limited when deemed by the Commission necessary to further the public safety, improve the quality of*
117 *air service, avoid duplication of service, or conserve airport property and the airport operation;*

118 *8. To determine fees, rates, and charges for the use of its facilities;*

119 *9. To apply for and accept gifts, or grants of money or gifts, grants or loans of other property or*
120 *other financial assistance from the United States and agencies and instrumentalities thereof, the*

Commonwealth and political subdivisions, agencies, and instrumentalities thereof, or any other person or entity, for or in aid of the construction, acquisition, ownership, operation, maintenance, or repair of the Commission's facilities or for the payment of principal of any indebtedness of the Commission, interest thereon, or other cost incident thereto, and to this end the Commission shall have the power to render such services, comply with such conditions, and execute such agreements and legal instruments as may be necessary, convenient, or desirable or imposed as a condition to such financial aid;

10. To appoint, employ, or engage such officers, employees, architects, engineers, attorneys, accountants, financial advisors, investment bankers, and other advisors, consultants, and agents as may be necessary or appropriate, and to fix their duties and compensation;

11. To contract with a participating political subdivision;

12. To establish personnel policies and rules;

13. To own, purchase, lease, obtain options upon, acquire by gift, grant, or bequest or otherwise acquire any property, real or personal, or any interest therein, and in connection therewith to assume or take subject to any indebtedness secured by such property;

14. To sell, lease, grant options upon, exchange, transfer, assign, or otherwise dispose of any property, real or personal, or any interest therein, subject to the provisions of any deed or deeds to the Commission and any agreement or agreements among or between the Commission and any participating political subdivision, if such disposition is in the public interest and in furtherance of the purposes of this Amended Act or if such property is not necessary for the purposes of the Commission;

15. To make, assume and enter into all contracts, leases, and arrangements necessary or incidental to the exercise of its powers, including contracts for the management or operation of all or any part of its facilities;

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

b. The total indebtedness of the Commission at no time shall exceed the amount of \$500,000, in principal, whether by purchase of encumbered property, direct loan, bonded indebtedness, or debt in any other form except as agreed to by each participating political subdivision by resolution of the governing body thereof, in which case the total amount of indebtedness shall be expressed in the resolution of each such governing body;

c. Notwithstanding any other provision of law, no interest or right in the real property conveyed, in any form, to the Commission by a participating political subdivision, shall be conveyed, pledged, or otherwise transferred by the Commission for the purpose of obtaining or securing any indebtedness, nor shall any such property be encumbered by the Commission unless and until such subdivision has approved the nature of, terms of, and amount of such conveyance, pledge, transfer, or encumbrance, by resolution of the governing body of said subdivision;

17. To adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of its facilities, for governing the conduct of persons and organizations using its facilities and for the enforcement of such rules and regulations and all other rules, regulations, ordinances, and statutes relating to its facilities, all as hereinafter provided;

18. To pay pensions and establish pension plans, pension trusts, and other compensation plans for any of its employees;

19. To purchase and maintain insurance or to provide indemnification on behalf of any person who is or was a member, officer, employee, or agent of the Commission against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such; and

20. To do all things necessary or convenient to the purposes of this Amended Act.

The powers of the Commission expressed in this Amended Act shall be limited to those powers necessary for the construction and operation of the Lonesome Pine Airport. To that end, property acquired, owned, or conveyed to the Commission, contracts entered into, financial assistance, indebtedness, rules and regulations adopted by the Commission, and any other actions thereof may only pertain to said airport.

The grant of regulatory authority to the Commission by this Amended Act, including regulations that displace, eliminate, or limit competition by or among persons or entities, is based on the policy of the Commonwealth to provide for the safe, adequate, economical, and efficient provision of air transportation and related facilities and services to the public.

§ 8. Name of airport.

The name of the airport operated by the Commission shall be Lonesome Pine Airport.

§ 9. Rules and regulations.

The Commission shall have the power to adopt, amend, and repeal rules and regulations for the use, maintenance, and operation of its facilities and governing the conduct of persons and organizations using its facilities.

Unless the Commission shall by unanimous vote of the Commission determine that an emergency

182 exists, the Commission shall, prior to the adoption of any rule or regulation or alteration, amendment,
183 or modification thereof:

184 1. Make such rule, regulation, alteration, amendment, or modification in convenient form available
185 for public inspection in the office of the Commission for at least 10 business days; and

186 2. Post in a public place a notice declaring the Commission's intention to consider adopting such
187 rule, regulation, alteration, amendment, or modification and informing the public that the Commission
188 will at a public meeting consider the adoption of such rule or regulation or such alterations,
189 amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of
190 at least 10 business days from the first day of the posting of the notice thereof. The Commission's rules
191 and regulations shall be available for public inspection at the Commission's primary office.

192 The Commission's rules and regulations relating to (i) traffic, including but not limited to motor
193 vehicle speed limits and the location of and payment of public parking; (ii) access to Commission
194 facilities, including but not limited to solicitation, hand billing, and picketing; and (iii) aircraft
195 operation and maintenance shall have the force of law, as shall any other rule or regulation of the
196 Commission that shall contain a determination by the Commission that it is necessary to accord the
197 same force and effect of law in the interest of the public safety; however, with respect to motor vehicle
198 traffic rules and regulations, the Commission shall obtain the approval of the traffic engineer or
199 comparable official of the political subdivision in which such rules or regulations are to be enforced.

200 The violation of any rule or regulation of the Commission relating to motor vehicle traffic shall be
201 tried and punished in the same manner as if it had been committed on the public roads of the
202 participating political subdivision in which such violation occurred. All other violations of the rules and
203 regulations having the force of law shall be punishable as misdemeanors.

204 All ordinances, rules, and regulations duly adopted for the regulation, administration, and operation
205 of Lonesome Pine Airport in force at the effective date of this Amended Act shall remain in full force
206 insofar as they or any part thereof are not inconsistent with the provisions of this Amended Act until
207 amended or repealed in accordance with this Amended Act.

208 § 10. Eminent domain.

209 The Commission is hereby granted full power to exercise the right of eminent domain within the
210 participating political subdivisions in the acquisition of any lands, easements, privileges, or other
211 property interests that are necessary for constructing and operating an airport, including, where
212 necessary to provide unobstructed air space for the landing and taking off of aircraft utilizing its
213 airport, aviation easements over lands or water outside the boundaries of its airport, even though such
214 aviation easement may be either inconsistent with the continued use of such land for the same purposes
215 for which it had been used prior to such acquisition, or inconsistent with the maintenance, preservation,
216 and renewal of any structure or any tree or other vegetation standing or growing on said land at the
217 time of such acquisition. Proceedings for the acquisition of such land, easements, and privileges by
218 condemnation may be instituted and conducted in the name of the Commission in accordance with Title
219 25.1 of the Code of Virginia. However, prior to initiating such proceedings, the governing body of the
220 participating political subdivision in which the subject property is located shall grant consent by
221 resolution.

222 § 11. Reports, records, and audits.

223 The Commission shall keep minutes of its proceedings, which minutes shall be open to public
224 inspection during normal business hours. It shall keep suitable records of all its financial transactions
225 and shall arrange to have audited by an independent certified public accountant any and all financial
226 records required by the FAA or the Commonwealth. Copies of each such audit shall be open to public
227 inspection.

228 § 12. Procurement and small purchase procedures.

229 All contracts that the Commission may let for construction or materials shall be subject to the
230 Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Additionally, where
231 feasible, small purchase procedures established by the Commission will be used.

232 § 13. Deposit and investment of funds.

233 Except as provided by contract with a participating political subdivision, all moneys received by the
234 Commission pursuant to this Amended Act, whether as revenues or otherwise, shall be deemed to be
235 trust funds to be held and applied solely as provided in this Amended Act. All moneys of the
236 Commission shall be deposited as soon as practicable in a separate account or accounts in one or more
237 banks or trust companies organized under the laws of the Commonwealth or national banking
238 associations having their principal offices in the Commonwealth. Such deposits shall be continuously
239 secured in accordance with the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq. of the
240 Code of Virginia).

241 Funds of the Commission not needed for immediate use or disbursement may be invested in
242 securities that are considered lawful investments for fiduciaries.

243 § 14. 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. Such fees, rents, and charges shall not be subject to supervision or regulation by any commission, board, bureau, or agency of the Commonwealth or any participating political subdivision.

§ 15. Taxation.

The exercise of the powers granted by this Amended 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 Amended Act. Under the provisions of this Amended Act, any profit made on the sale or transfer 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.

§ 16. Appropriation by political subdivision.

Any participating political subdivision is authorized to provide services, to donate real or personal property, and to make appropriations to the Commission for the acquisition, construction, maintenance, and operation of the Commission's facilities. Any such political subdivision is hereby authorized to issue its bonds, including general obligation bonds, in the manner provided in the Public Finance Act (§ 15.2-2600 et seq. of the Code of Virginia) or in any applicable municipal charter for the purpose of providing funds to be appropriated to the Commission, and such political subdivisions may enter into contracts obligating such bond proceeds to the Commission. The Commission may agree to assume, or reimburse a participating political subdivision for, any indebtedness incurred by such participating political subdivision with respect to facilities conveyed by it to the Commission. With the consent of the governing body of the participating political subdivision, any such agreement may be made subordinate to the Commission's indebtedness to others.

§ 17. Commission budget.

1. The Commission shall annually prepare and submit to the participating political subdivisions (i) a proposed operating budget showing its estimated general fund revenues and expenses on an accrual basis for the forthcoming fiscal year, and if such estimated expenses exceed such estimated revenues, the portion of the deficit proposed to be borne by each participating political subdivision, and (ii) a proposed capital budget showing its estimated expenditures for such fiscal year for assets costing more than \$20,000, or such higher amount as the Commission and the participating political subdivisions may determine, and having an estimated useful life of 20 years or more and the source of funds for such expenditures, including any amount requested from the participating political subdivisions. No depreciation shall be included in the Commission's operating budget with respect to assets purchased by the Commission with funds appropriated to it for such purpose by a participating political subdivision and, for this determination, it shall be assumed that any appropriation so made is for the purchase of assets set forth in the applicable Commission budget to the extent such purchase price is included in the approved budget. Assets purchased by the Commission with bond proceeds shall be depreciated over the term of the bond issue in proportion to the maturities, including sinking fund installments, of the bond issue.

2. If the governing body of a participating political subdivision agrees with the Commission's proposed operating budget, it shall appropriate to the Commission such political subdivision's portion of such budget, subject to the availability of funds in regard to the budget of the political subdivision.

3. If the governing body of a participating political subdivision agrees with the Commission's proposed capital budget, it shall appropriate to the Commission such participating political subdivision's portion of the expenditures set forth therein. Any such appropriation may be reduced by the participating political subdivision's proportionate share of any grant funds received by the Commission for the purchase of assets included in the Commission's approved capital budget in excess of the grant

305 funds shown in such capital budget as a source of funds for such expenditure, unless prohibited by the
306 basic provider of the grant funds.

307 4. The Commission may expend any and all moneys within its control without obtaining the approval
308 of the participating political subdivisions, except as otherwise provided in this Amended Act with respect
309 to contracts and agreements between the Commission and any political subdivision, the Commission
310 shall not commit any participating political subdivision in an amount in excess of that appropriated to
311 the Commission by the governing body of such political subdivision.

312 5. If at any time during any fiscal year it shall appear that the cash disbursements of the
313 Commission will exceed its cash receipts for such fiscal year, including amounts appropriated to it by
314 the participating political subdivisions, the Commission may request supplemental appropriations from
315 the participating political subdivisions and any other political subdivision.

316 § 18. Allocation of deficit.

317 Any deficit budgeted by the Commission in any fiscal year, i.e., any excess of its estimated general
318 fund expenses over its estimated general fund revenues, and the cost of any budgeted capital
319 expenditures in excess of the amount shown as available therefor, as shown on the Commission's
320 operating and capital budgets, agreed to by the participating political subdivisions, shall be allocated
321 among the participating political subdivisions as agreed upon by the participating political subdivisions
322 and subject to the availability of funds in regard to the budgets of the political subdivisions.

323 § 19. Dissolution of Commission.

324 Whenever it shall appear to the Commission that the need for the Commission no longer exists, the
325 Commission may petition the court of competent jurisdiction for the dissolution of the Commission. If
326 the court shall determine that the need for the Commission as set forth in this Amended Act no longer
327 exists and that all debts and pecuniary obligations of the Commission have been fully paid or provided
328 for, it may enter an order dissolving the Commission.

329 Upon dissolution, the court, while considering the requirements of § 5.1-2.6. of the Code of Virginia,
330 shall order any real property contributed to the Commission by a participating political subdivision,
331 together with any improvements thereon, returned to such participating political subdivision. The
332 remaining assets of the Commission shall be distributed to the participating political subdivisions in
333 proportion to their respective contributions theretofore made to the Commission. Each participating
334 political subdivision and all holders of the Commission's bonds shall be made parties to any such
335 proceeding and shall be given notice as provided by law. Any party defendant may reply to such
336 petition at any time within six months after the filing of the petition.

337 § 20. Liberal construction.

338 Neither this Amended Act, nor anything herein contained, is or shall be construed as a restriction or
339 limitation upon any powers that the Commission might otherwise have under any laws of the
340 Commonwealth, and this Amended Act is cumulative to any such powers. This Amended Act does and
341 shall be construed to provide a complete, additional, and alternative method for the accomplishment of
342 actions and undertakings authorized hereby and shall be regarded as supplemental and additional to
343 powers conferred by other laws.

344 The provisions of this Amended Act are severable, and if any of its provisions shall be held
345 unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or
346 impair any of the other provisions of this Amended Act.

347 § 21. Application of local ordinances, service charges, and taxes upon leaseholds.

348 Nothing herein contained shall be construed to exempt the Commission's property from any
349 applicable zoning, subdivision, erosion and sediment control and fire prevention codes or from building
350 regulations of a political subdivision in which such property is located.

351 Nor shall anything herein contained exempt the property of the Commission from any service charge
352 authorized by the General Assembly pursuant to Article X, Section 6 (g) of the Constitution of Virginia,
353 or exempt any lessee of any of the Commission's property from any tax imposed upon his leasehold
354 interest in such property or upon the receipts derived therefrom.

355 § 22. Existing contracts, leases, franchises, not impaired.

356 No provisions of this Amended Act shall relieve, impair, or affect any right, duty, liability, or
357 obligation arising out of any contract, concession, lease, or franchise now in existence except to the
358 extent that such contract, concession, lease, or franchise may permit. Notwithstanding the foregoing
359 provisions of this section, the Commission may renegotiate, renew, extend the term of or otherwise
360 modify at any time any contract, concession, lease, or franchise now in existence in such manner and on
361 such terms and conditions as it may deem appropriate, provided that the operator of or under any said
362 contract, concession, lease, or franchise consents to said renegotiation, renewal, extension, or
363 modification.

364 2. That Chapter 439 of the Acts of Assembly of 1958 is repealed.