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SENATE BILL NO. 249

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on February 27, 1996)

(Patron Prior to Substitute—Senator Walker)

A BILL to amend and reenact §§ 2.1-234.11, 2.1-234.13, 2.1-234.25, and 53.1-82.2 of the Code of Virginia; to amend and reenact the tenth enactment of Chapter 878 of the 1992 Acts of Assembly; to amend and reenact the ninth and tenth enactments of Chapter 1 of the 1993 Acts of Assembly, Special Session, as amended by the seventh enactment of Chapter 841 of the 1995 Acts of Assembly; to amend and reenact the eleventh enactment of Chapter 1 of the 1993 Acts of Assembly, Special Session, as last amended by the eighth enactment of Chapter 841 of the 1995 Acts of Assembly; to amend and reenact the tenth enactment of Chapter 841 of the 1995 Acts of Assembly; and to provide for certain projects to be financed by the Virginia Public Building Authority; all relating to the powers of the Virginia Public Building Authority and the projects to be financed by such Authority.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-234.11, 2.1-234.13, 2.1-234.25, and 53.1-82.2 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-234.11. Definitions.

The following terms, whenever used or referred to in this article, shall have the following meanings, except in those instances where the context clearly indicates otherwise:

1. The term "Authority" shall mean the body politic and corporate created by this article.

2. The term "project" shall mean any structure, facility, personal property or undertaking which the Authority is authorized to finance, refinance, construct, improve, furnish, equip, maintain, acquire, or operate under the provisions of this article.

3. The term "board" shall mean the governing body of the Authority.

4. The term "person" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships, and public bodies.

5. The term "federal agency" shall mean and include the United States of America, the President of the United States of America, and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States of America.

6. The term "bonds" shall mean and include the notes, bonds, and other evidences of indebtedness or obligations which the Authority is authorized to issue pursuant to this article.

7. The term "construction" shall mean and include acquisition and construction, and the term "to construct" shall mean and include to acquire and to construct all in such manner as may be deemed desirable.

8. The term "improvement" shall mean and include extension, enlargement, improvement, and renovation and the term "to improve" shall mean and include to extend, to enlarge, to improve, and to renovate all in such manner as may be deemed desirable.

9. The terms "fixtures" and "furnishings" shall mean and include any fixtures, leasehold improvements, equipment, office furniture and furnishings whatsoever as may be deemed desirable and required by the lessee of a project for the use and occupancy of such project, and the terms "to furnish" and "furnishing" shall mean and include the installation of such fixtures, equipment and furnishings.

10. The term "cost" as applied to a project financed under the provisions of this article shall mean the sum total of all costs incurred by the Authority as are reasonable and necessary for carrying out all works and undertakings necessary or incident to accomplish a project, including, without limitation because of enumeration, the cost incurred by the Authority of all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the vendor of such land, buildings or improvements, site preparation and development including demolition or removal of existing structures, construction, and reconstruction, the reasonable cost of financing incurred by the Authority in the course of the development of a project, carrying charges during construction to the occupancy date, interest on bonds issued to finance a project to a date subsequent to the estimated date of completion of a project, necessary expenses incurred in connection with the initial occupancy of a project, the funding of such funds and accounts as the Authority determines to be reasonable and necessary with regard to bonds of the Authority and the cost of such other items as the Authority determines to be reasonable and necessary.

11. The term "State" shall mean the Commonwealth of Virginia and any agency or department thereof.

12. The term "personal property" shall mean and include all items of equipment, fixtures, and

60 furnishings, including items affixed to real property.

61 § 2.1-234.13. Purposes and general powers and duties of Authority.

62 The Authority is created for the purpose of constructing, improving, furnishing, maintaining,
63 acquiring, and operating public buildings for the use of the Commonwealth (heretofore or hereafter
64 constructed), state arsenals, armories, and military reserves, state institutions of every kind and character
65 (heretofore and hereafter constructed), additions and improvements to land grant colleges, state colleges,
66 universities and medical colleges, and the purchase of lands for rehabilitation purposes in connection
67 with state institutions and for use of state colleges, and museum facilities for a trust instrumentality of
68 the United States, and the purchase of lands for the development of public buildings which may be
69 authorized by the General Assembly in the future, ~~and~~ the acquisition of items of personal property for
70 the use of the Commonwealth, *and the financing or refinancing of reimbursements to localities or*
71 *regional jail authorities of all or any portion of the Commonwealth's share of the costs for jail projects*
72 *made pursuant to § 53.1-80, § 53.1-81, § 53.1-82, or § 53.1-95.19* (any and all of the foregoing being
73 herein called "projects"), the purpose and intent of this article being to benefit the people of the
74 Commonwealth by, among other things, increasing their commerce and prosperity. The Authority shall
75 not undertake *or finance or refinance* any project or projects which are not specifically included in a bill
76 or resolution passed by a majority of those elected to each house of the General Assembly, authorizing
77 such project or projects *or the reimbursement of all or any portion of the Commonwealth's share of the*
78 *costs of such project or projects* and, as to any project relating to a state institution of higher education,
79 not specifically designated by the board of visitors of that institution as a project to be undertaken by
80 the Authority. The Authority is hereby granted and shall have and may exercise all powers necessary or
81 convenient for the carrying out of the aforesaid purposes, including, but without limiting the generality
82 of the foregoing, the following rights and powers:

83 1. To have perpetual existence as a corporation.

84 2. To sue and be sued, implead and be impleaded, complain and defend in all courts.

85 3. To adopt, use, and alter at will a corporate seal.

86 4. To acquire, purchase, hold and use any property, real, personal or mixed, tangible or intangible, or
87 any interest therein necessary or desirable for carrying out the purposes of the Authority; without
88 limitation of the foregoing, to lease as lessee, with the approval of the Governor, any property, real,
89 personal or mixed, or any interest therein for a term not exceeding ninety-nine years at a nominal rental
90 or at such annual rental as may be determined; with the approval of the Governor, to lease as lessor to
91 the Commonwealth of Virginia and any city, county, town or other political subdivision, or any agency,
92 department, or public body of the Commonwealth, or land grant college, any project at any time
93 constructed by the Authority and any property, real, personal or mixed, tangible or intangible, or any
94 interest therein, at any time acquired by the Authority, whether wholly or partially completed; with the
95 approval of the Governor, to sell, transfer and convey to the Commonwealth of Virginia, any project at
96 any time constructed by the Authority; and, with the approval of the Governor, to sell, transfer and
97 convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time
98 acquired by the Authority.

99 5. To acquire by purchase, lease, or otherwise, and to construct, improve, furnish, maintain, repair,
100 and operate projects.

101 6. To make bylaws for the management and regulation of its affairs.

102 7. To fix, alter, charge, and collect rates, rentals, and other charges for the use of the facilities of, or
103 for the services rendered by, the Authority, or projects thereof, at reasonable rates to be determined by it
104 for the purpose of providing for the payment of the expenses of the Authority, the construction,
105 improvement, repair, furnishing, maintenance, and operation of its facilities and properties, the payment
106 of the principal of and interest on its obligations, and to fulfill the terms and provisions of any
107 agreements made with the purchasers or holders of any such obligations.

108 8. To borrow money; make and issue negotiable notes, bonds, and other evidences of indebtedness or
109 obligations (herein called "bonds") of the Authority and such bonds as the Authority may, from time to
110 time, determine to issue for the purpose of refunding bonds previously issued by the Authority; to
111 secure the payment of all bonds, or any part thereof, by pledge or deed of trust of all or any of its
112 revenues, rentals, and receipts; to make such agreements with the purchasers or holders of such bonds or
113 with others in connection with any such bonds, whether issued or to be issued, as the Authority shall
114 deem advisable; and in general, to provide for the security for said bonds and the rights of holders
115 thereof, provided that the total principal amount of such bonds outstanding at any time shall not exceed
116 ~~\$990~~ \$1,225 million.

117 The Authority shall submit an annual report to the Governor and General Assembly on or before
118 November 1 of each year containing, at a minimum, the annual financial statements of the Authority for
119 the year ending the preceding June 30. The annual report shall be distributed in accordance with the
120 provisions of § 2.1-467.

121 9. To make contracts of every name and nature, and to execute all instruments necessary or

convenient for the carrying on of its business.

10. Without limitation of the foregoing, to borrow money and accept grants from, and to enter into contracts, leases or other transactions with, any federal agency.

11. To have the power of eminent domain.

12. To pledge or otherwise encumber all or any of the revenues or receipts of the Authority as security for all or any of the obligations of the Authority.

13. To do all acts and things necessary or convenient to carry out the powers granted to it by this article or any other acts.

14. To acquire, by assignment from the Commonwealth or the Virginia Retirement System, all contracts, including those which are not completed, which involve constructing, improving, furnishing, maintaining, and operating the structures, facilities, or undertakings similar to those designated herein as projects.

Except as otherwise provided by law, when projects are to be constructed, improved, furnished, maintained, repaired or operated for the use of any department of the Commonwealth, as hereinbefore listed in this section, no plans or specifications therefor shall be presented for quotations or bids until such plans and specifications shall have been submitted to and approved by the Department of General Services and any other department of the Commonwealth having any jurisdiction over the projects, so that the project will conform to standards established by such departments.

§ 2.1-234.25. Governing body of Authority.

The powers of the Authority shall be exercised by a governing body consisting of the members of the Authority acting as a board. The board shall elect in each odd-numbered year from their number a chairman, a vice-chairman, a treasurer and a secretary. *In the absence of the chairman, the vice-chairman shall exercise the powers and duties thereof.* The offices of secretary and treasurer may be combined. The board may elect such other officers from its own membership or from without as it deems appropriate.

Four members shall constitute a quorum of the board for the purpose of organizing the Authority and conducting the business thereof and for all other purposes, and all actions shall be taken by vote of a majority of the members of the Authority, unless in any case the bylaws shall require a larger number.

The board shall have full authority to manage the properties and business of the Authority, and to prescribe, amend, and repeal bylaws, rules, and regulations governing the manner in which the business of the Authority may be conducted, and the powers granted to it may be exercised and embodied. The board may assign to the Treasury Board or the State Treasurer such powers and duties as it may deem proper.

§ 53.1-82.2. Method of reimbursement; involvement of the Treasury Board.

A. Reimbursements by the Commonwealth to localities or regional jail authorities for a portion of the capital costs of a jail project, made pursuant to §§ 53.1-80, 53.1-81, 53.1-82, or § 53.1-95.19 may be effected ~~either~~ by one of the following methods:

1. In one lump sum payment to be made upon completion of the project, for minor renovation projects, or two equal lump sum payments, one such payment to be made upon certification that the construction, enlargement or renovation is fifty percent complete and the second such payment to be made upon completion of the project, such payments to be paid by the State Treasurer out of funds appropriated to the Department of Corrections; ~~or~~

2. Over a specified period of time through a contractual agreement entered into by the Treasury Board and approved by the Governor, on behalf of the Commonwealth, and the locality, localities or regional authority or other combination of localities undertaking a jail project, such payments to be paid by the State Treasurer out of funds appropriated to the Treasury Board; *or*

3. *In one lump sum payment to be made upon completion of the project by the Virginia Public Building Authority pursuant to § 2.1-234.13, including the costs provided for in subsection E.*

B. The General Assembly shall have the sole authority to determine whether reimbursement will be made pursuant to subdivision A 1 ~~or subdivision~~, A 2, *or* A 3. The Department of Planning and Budget, after consulting with the Treasury Board, shall evaluate all proposed jail projects and make recommendations to the Governor regarding the method of reimbursement for inclusion in his biennial budget.

C. Any contract for reimbursement over a specified period of time entered into pursuant to subdivision A 2 shall include the following:

1. The Commonwealth shall reimburse a portion of financing costs as provided in subsection E below;

2. The Commonwealth's reimbursement payments shall be subject to appropriation;

3. In the event that the jail project is financed through an issuance of securities, the Commonwealth's reimbursement payments shall be calculated using the coupon interest rates received by the locality or jail authority at the time the securities for the project are sold and shall be made pursuant to a schedule

183 to be set forth in the contract;

184 4. In the event that a jail project is financed through an issuance of securities, and coupon interest
185 rates are not available due to the structure of the securities, the Treasury Board is authorized to make
186 such adjustments as are necessary and reasonable to calculate the Commonwealth's payments;

187 5. In the event that the jail project is financed through a method other than the issuance of securities,
188 the Commonwealth's payment shall include interest payments based on an interest rate assumption equal
189 to the prevailing AA rate for tax-exempt bonds issued by the Commonwealth or agencies thereof, or the
190 actual rate achieved, whichever is lower, and the schedule for the Commonwealth's reimbursement
191 payments shall be set forth in the contract; and

192 6. Such other terms and conditions as are necessary to specify the structure of the Commonwealth's
193 participation in project financing and as may be required by guidelines established by the Treasury
194 Board.

195 Reimbursement to localities pursuant to this section shall be available without regard to the security
196 level of the facility constructed, enlarged or renovated, provided such facility satisfies applicable
197 standards established by the Board pursuant to § 53.1-68.

198 D. For purposes of this article, "capital costs" includes, but is not limited to, actual construction
199 costs, costs of land acquisition, if the land purchased is used exclusively for siting a jail facility,
200 architectural and engineering fees, and fixed equipment. "Capital costs" does not include administrative
201 costs nor a financial advisor's, an investment banker's, or attorneys' fees incurred by local governments
202 or, except in the case of minimum security facilities, loose equipment or furnishings.

203 E. For purposes of this article, "financing costs" means the total of all costs incurred by the locality,
204 localities or regional authority or other combination of localities, *including the costs to finance such*
205 *facilities during the period of construction*, as are deemed reasonable and necessary by the Treasury
206 Board to execute the financing of the Commonwealth's payment of capital costs and to fund such funds
207 and accounts as the Treasury Board determines to be reasonable and necessary.

208 **2. That the tenth enactment of Chapter 878 of the 1992 Acts of Assembly is amended and**
209 **reenacted as follows:**

210 10. That pursuant to § 2.1-234.13 of the Code of Virginia, the General Assembly hereby authorizes
211 the Virginia Public Building Authority to undertake a project consisting of the acquisition of buildings
212 and appurtenant land, construction, improvements and furnishings of the Kiptopeake State Park Facility
213 located on the Eastern Shore, and to exercise any and all powers granted to it by law in connection
214 therewith, including the power to lease such project to the Commonwealth and to finance the cost
215 thereof by the issuance of revenue bonds in a principal amount not to exceed ~~\$8,500,000~~ *\$11,000,000*
216 plus amounts needed to fund issuance costs, reserve funds, and other financing expenses.

217 **3. That the ninth and tenth enactments of Chapter 1 of the 1993 Acts of Assembly, Special**
218 **Session, as amended by the seventh enactment of Chapter 841 of the 1995 Acts of Assembly, are**
219 **amended and reenacted as follows:**

220 9. That pursuant to § 2.1-234.13 of the Code of Virginia, the General Assembly hereby authorizes
221 the Virginia Public Building Authority to undertake a project consisting of the construction *and*
222 *furnishing* of a Keen Mountain Prototype Facility #3 maximum-security prison, to be located in Sussex
223 County (Sussex I), and to exercise any and all powers granted to it by law in connection therewith,
224 including the power to lease such project to the Commonwealth and to finance the cost thereof by the
225 issuance of revenue bonds in a principal amount not to exceed ~~\$71,120,000~~ *\$74,472,000* plus amounts
226 needed to fund issuance costs, reserve funds, and other financing expenses. *Of the amount provided for*
227 *the Sussex I facility, no more than \$3,352,000 shall be used to furnish the facility.*

228 10. That pursuant to § 2.1-234.13 of the Code of Virginia, the General Assembly hereby authorizes
229 the Virginia Public Building Authority to undertake a project consisting of the demolition of existing
230 structures and the construction *and furnishing* of a new women's multi-custody prison to be located in
231 Fluvanna County, and to exercise any and all powers granted to it by law in connection therewith,
232 including the power to lease such project to the Commonwealth and to finance the cost thereof by the
233 issuance of revenue bonds in a principal amount not to exceed ~~\$48,899,312~~ *\$53,110,312* plus amounts
234 needed to fund issuance costs, reserve funds, and other financing expenses. *Of the amount provided for*
235 *the women's multi-custody prison, no more than \$4,211,000 shall be used to furnish the facility.*

236 **4. That the eleventh enactment of Chapter 1 of the 1993 Acts of Assembly, Special Session, as last**
237 **amended by the eighth enactment of Chapter 841 of the 1995 Acts of Assembly, is amended and**
238 **reenacted as follows:**

239 11. That pursuant to § 2.1-234.13 of the Code of Virginia, the General Assembly hereby authorizes
240 the Virginia Public Building Authority to undertake a project consisting of the construction and
241 furnishing of a maximum security youth facility and wastewater treatment plant at Beaumont in
242 Powhatan County, and to exercise any and all powers granted to it by law in connection therewith,
243 including the power to lease such project to the Commonwealth and to finance the cost thereof by the
244 issuance of revenue bonds in a principle amount not to exceed ~~\$20,432,000~~ *\$21,132,000* plus amounts

needed to fund issuance costs, reserve funds, and other financing expenses. Of the amounts provided for the maximum security youth facility, not more than \$432,400 ~~\$1,132,400~~ shall be used to furnish the project.

5. That the tenth enactment of Chapter 841 of the 1995 Acts of Assembly is amended and reenacted as follows:

10. That pursuant to § 2.1-234.13 of the Code of Virginia, the General Assembly hereby authorizes the Virginia Public Building Authority to undertake a project consisting of the improvement of one museum facility as follows:

Facility	Principal Amount of Project
Broad Street Station (Science Museum of Virginia) <i>Renovations and Emergency Repairs</i>	\$1,730,450 \$9,330,450

The Virginia Public Building Authority is also authorized to exercise any and all powers granted to it by law in connection therewith, including the power to lease such project to the Commonwealth and to finance the cost thereof by the issuance of revenue bonds not to exceed the principal amount set forth plus amounts needed to fund issuance costs, reserve funds, and other financing expenses.

6. § 1. That pursuant to § 2.1-234.13 of the Code of Virginia, the General Assembly hereby authorizes the Virginia Public Building Authority to undertake projects consisting of the construction, improvement, and furnishing of adult and juvenile correctional facilities, a farmer's market facility, a museum facility, and the acquisition of appurtenant land as follows:

Facility	Principal Amount of Project
Southampton Reception and Classification Center: <i>Renovation</i>	\$5,100,000
Close Custody Juvenile Correctional Facility (Culpeper County)	\$30,430,000
Medium Security Juvenile Correctional Facility	\$21,100,000
Farmer's Market Facility (Southampton County)	\$4,600,000
Jamestown Settlement Cafe	\$1,280,000

§ 2. The Virginia Public Building Authority is also authorized to exercise any and all powers granted to it by law in connection therewith, including the power to lease such projects to the Commonwealth and to finance the cost thereof by the issuance of revenue bonds not to exceed the principal amount set forth plus amounts needed to fund issuance costs, reserve funds, and other financing expenses.