

SENATE BILL NO. 569

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources

on _____)

(Patron Prior to Substitute--Senator Kiggans)

A BILL to amend and reenact §§ 2.2-215 and 10.1-603.25 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 22 of Title 2.2 an article numbered 13, consisting of sections numbered 2.2-2377 through 2.2-2387, relating to Virginia Resiliency Authority; established.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-215 and 10.1-603.25 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 22 of Title 2.2 an article numbered 13, consisting of sections numbered 2.2-2377 through 2.2-2387, as follows:

§ 2.2-215. Position established; agencies for which responsible.

The position of Secretary of Natural and Historic Resources (the Secretary) is created. The Secretary shall serve as the Chief Resilience Officer for the purposes of duties required pursuant to § 2.2-222.4, and shall be responsible to the Governor for the following agencies: Virginia Resiliency Authority, Department of Conservation and Recreation, Department of Historic Resources, Marine Resources Commission, Department of Wildlife Resources, and the Department of Environmental Quality. The Governor may, by executive order, assign any state executive agency to the Secretary of Natural and Historic Resources, or reassign any agency listed in this section to another Secretary.

Article 13.

Virginia Resiliency Authority.

§ 2.2-2377. Definitions.

As used in this article, unless the context requires a different meaning:

"Authority" means the Virginia Resiliency Authority.

"Non-federal sponsor" shall have the meaning as set forth in 33 C.F.R. § 203.15.

27 "Planning district officer" means the chair, vice-chair, treasurer, or executive director of a planning
28 district commission.

29 "Project" means activities located on public or private land or water that include the development
30 of flood protection facilities, acquisition of land, restoration of natural features, or other activities that
31 involve design, construction, or installation of facilities. "Project" includes design services necessary to
32 ensure that projects meet their intended purpose.

33 **§ 2.2-2378. Authority created.**

34 The Virginia Resiliency Authority is created as a body politic and corporate, a political subdivision
35 of the Commonwealth. As such, it shall have, and is hereby vested with, the powers and duties hereinafter
36 conferred in this chapter.

37 **§ 2.2-2379. Public purpose.**

38 The General Assembly has determined that there exists in the Commonwealth the need for a single
39 state entity to develop, manage, and integrate restoration and resilience projects.

40 **§ 2.2-2380. Board of Directors; members and officers; executive director.**

41 A. The Authority shall be governed by a Board of Directors (Board) consisting of 17 members as
42 follows: (i) the Secretary of Natural and Historic Resources or his designee; (ii) the Secretary of
43 Transportation or his designee; (iii) the Chair of the Senate Committee on Agriculture, Conservation and
44 Natural Resources or his designee; (iv) the Chair of the House Committee on Agriculture, Chesapeake
45 and Natural Resources or his designee; (v) one member of the Senate appointed by the Senate Committee
46 on Rules; (vi) three members of the House of Delegates appointed by the Speaker of the House; (vii) six
47 planning district officers, each selected from a different Planning District Commissions by the Governor;
48 and (viii) three nonlegislative citizen members who reside in the Hampton Roads, Crater, Richmond
49 Region, Middle Peninsula, Northern Neck, or Accomack-Northampton Planning Districts appointed by
50 the Joint Rules Committee.

51 B. The Board shall elect a chairman from any nonlegislative member of the Board, and the vice-
52 chairman of the Board shall be the Secretary of Natural and Historic Resources or his designee.

53 C. After the initial staggering of terms, all nonlegislative members shall serve terms of four years,
54 except that ex officio members of the Board shall serve terms coincident with their terms of office. No
55 member shall be eligible to serve more than two terms; however, after the expiration of the term of a
56 member appointed to serve three years or less, two additional terms may be served if appointed thereto.
57 Any appointment to fill a vacancy shall be for the unexpired term. A person appointed to fill a vacancy
58 may be appointed to serve two additional terms.

59 D. Members of the Board shall receive such compensation for the performance of their duties as
60 provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses
61 incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs
62 of compensation and expenses of the members shall be provided by the Authority.

63 E. The Board shall also elect a secretary and a treasurer, who need not be members of the Board,
64 and may also elect other subordinate officers, who need not be members of the Board. The chairman and
65 the vice-chairman, with approval by the Board, shall create an executive committee of the Board. The
66 Board may also form advisory committees, which may include representatives who are not members of
67 the Board, to undertake more extensive study and discussion of the issues before the Board.

68 F. A majority of the members shall constitute a quorum for the transaction of the Authority's
69 business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights and
70 perform all duties of the Authority. The meetings of the Board shall be held at least quarterly or at the call
71 of the chairman.

72 The Board shall appoint an executive director who shall not be a member of the Board and who
73 shall serve at the pleasure of the Board and carry out such powers and duties conferred upon him by the
74 Board.

75 **§ 2.2-2381. Powers of Authority.**

76 The Authority is granted all powers necessary or convenient for the carrying out of its statutory
77 purposes, including the power to:

- 78 1. Sue and be sued, implead and be impleaded, complain, and defend in all courts;
- 79 2. Adopt, use, and alter at will a common seal;

80 3. Acquire any project and property, real, personal, or mixed, tangible or intangible, or any interest
81 therein, by purchase, gift, or devise and to sell, lease (whether as lessor or lessee), transfer, convey, or
82 dispose of any project or property, real, personal, or mixed, tangible or intangible or any interest therein,
83 at any time acquired or held by the Authority on such terms and conditions as may be determined by the
84 Board;

85 4. Adopt a strategic plan pursuant to and plan, develop, undertake, carry out, construct, equip,
86 improve, rehabilitate, repair, furnish, maintain, and operate projects pursuant to such plan;

87 5. Adopt an annual budget for the Authority's capital improvements and operations;

88 6. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its
89 business shall be transacted and the manner in which the power of the Authority shall be exercised and its
90 duties performed. Such bylaws, rules, and regulations may provide for such committees and their functions
91 as the Authority may deem necessary and expedient. Such bylaws, rules, and regulations shall be exempt
92 from the Administrative Process Act (§ 2.2-4000 et seq.);

93 7. Make and enter into all contracts and agreements necessary or incidental to the performance of
94 its duties, the furtherance of its purposes, and the execution of its powers under this article, including
95 interstate compacts that have been authorized by the General Assembly and where necessary consented
96 to by the United States Congress and agreements with any person or federal agency;

97 8. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial
98 experts, investment bankers, managers, and such other employees and agents as may be necessary, and to
99 fix their compensation to be payable from funds made available to the Authority; and

100 9. Receive and accept from any federal or private agency, foundation, corporation, association, or
101 person grants or donations of money, or real or personal property for the benefit of the Authority, and to
102 receive and accept from the Commonwealth or any state, and any municipality, county, or other political
103 subdivision thereof and from any other source, aid or contributions of either money, property, or other
104 things of value, to be held, used, and applied for the purposes for which such grants and contributions may
105 be made.

106 **§ 2.2-2382. Additional powers of Authority.**

107 The Authority shall have the following additional powers:

108 1. Borrow money, make and issue bonds including bonds as the Authority may determine to issue
109 for the purpose of accomplishing the purposes set forth in § 2.2-2381 or for refunding bonds previously
110 issued by the Authority, whether such outstanding bonds have matured or are then subject to redemption,
111 or any combination of such purposes; secure the payment of all bonds, or any part thereof, by pledge,
112 assignment, or deed of trust of all or any of its revenues, rentals, and receipts or of any project or property,
113 real, personal, or mixed, tangible or intangible, or any rights and interest therein; make such agreements
114 with the purchasers or holders of such bonds or with others in connection with any such bonds, whether
115 issued or to be issued, as the Authority shall deem advisable; and in general to provide for the security for
116 said bonds and the rights of holders thereof. However, the total principal amount of bonds, including
117 refunding bonds, outstanding at any time shall not exceed \$50 million, excluding from such limit any
118 revenue bonds. The Authority shall not issue any bonds, other than revenue bonds, that are not specifically
119 authorized by a bill or resolution passed by a majority vote of those elected to each house of the General
120 Assembly;

121 2. Serve as a non-federal sponsor and enter into a legal agreement with the U.S. Army Corps of
122 Engineers for the purpose of mitigating flooding and integrating resilience;

123 3. Enter into and execute agreements with the federal government, including the U.S. Department
124 of Defense for support for flood control initiatives to increase the resiliency related to U.S. Department of
125 Defense installations;

126 4. Coordinate, with technical and administrative support from the Department of Conservation and
127 Recreation, the execution of the Virginia Coastal Resilience Master Plan, the Virginia Flood Protection
128 Master Plan, and federal, state, and local flood prevention and water quality programs to minimize loss of
129 life, property damage, and negative impacts on the environment;

130 5. Administer, with technical assistance and support from the Department of Conservation and
131 Recreation, the Virginia Community Flood Preparedness Fund as established in § 10.1-603.25;

132 6. In consultation with the Secretary of Natural and Historic Resources and the Director of the
133 Department of Conservation and Recreation, seek the assistance of the Department of Conservation and
134 Recreation in executing the powers and duties laid out in § 10.1-602;

135 7. In consultation with the Secretary of Transportation and the Commissioner of Highways, seek
136 the assistance of the Department of Transportation with transportation planning, engineering, and
137 construction for flood mitigation and assistance with coordination with the U.S. Army Corps of Engineers;
138 and

139 8. Accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys,
140 public or private, made available by grant or loan or both or otherwise, to accomplish, in whole or in part,
141 any of the purposes of this article. All federal moneys accepted under this section shall be accepted and
142 expended by the Authority upon such terms and conditions as are prescribed by the United States and as
143 are consistent with state law; and all state moneys accepted under this section shall be accepted and
144 expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth.

145 **§ 2.2-2383. Form, terms, execution, and sale of bonds; use of proceeds; interim receipts or**
146 **temporary bonds; lost or destroyed bonds; faith and credit of state and political subdivisions not**
147 **pledged; expenses; trust indenture or agreement securing bonds; trust funds; proceedings to**
148 **enforce rights; securities; refunding bonds.**

149 A. The bonds of each issue shall be dated, shall bear interest at such rates as are fixed by the
150 Authority, or as may be determined in such manner as the Authority may provide, including the
151 determination by agents designated by the Authority under guidelines established by the Authority, shall
152 mature at such time not exceeding 40 years from their date as may be determined by the Authority, and
153 may be made redeemable before maturity, at the option of the Authority, at such price and under such
154 terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority
155 shall determine the form of bonds and their manner of execution, and shall fix the denomination of the
156 bonds and the place of payment of principal and interest, which may be at any bank or trust company
157 within or without the Commonwealth. The bonds shall be signed by the chairman or vice-chairman of the
158 Authority or, if so authorized by the Authority, shall bear his facsimile signature, and the official seal of

159 the Authority, or, if so authorized by the Authority, a facsimile thereof shall be impressed or imprinted
160 thereon and attested by the secretary or any assistant secretary of the Authority, or, if so authorized by the
161 Authority, with the facsimile signature of such secretary or assistant secretary. Any coupons attached to
162 bonds issued by the Authority shall bear the signature of the chairman or vice-chairman of the Authority
163 or a facsimile thereof. In case any officer whose signature or a facsimile of whose signature appears on
164 any bonds or coupons ceases to be an officer before the delivery of the bonds, his signature or facsimile
165 shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until
166 such delivery and any bonds may bear the facsimile signature of, or may be signed by, such persons as at
167 the actual time of the execution of such bonds shall be the proper officers to sign such bonds although at
168 the date of such bonds such persons may not have been such officers. The bonds may be issued in coupon
169 or in registered form, or both, as the Authority may determine, and provision may be made for the
170 registration of any coupon bonds as to principal alone and also as to both principal and interest, for the
171 reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the
172 interchange of registered and coupon bonds. Bonds issued in registered form may be issued under a system
173 of book-entry for recording the ownership and transfer of ownership of rights to receive payment of
174 principal of, and premium on, if any, and interest on such bonds. The Authority may contract for the
175 services of one or more banks, trust companies, financial institutions, or other entities or persons, within
176 or without the Commonwealth for the authentication, registration, transfer, exchange, and payment of the
177 bonds, or may provide such services itself. The Authority may sell such bonds in such manner, either at
178 public or private sale, and for such price as it may determine will best effect the purposes of this article.

179 The proceeds of the bonds of each issue shall be used solely for the purposes, and in furtherance
180 of the powers, of the Authority as may be provided in the resolution authorizing the issuance of such bonds
181 or in a trust agreement authorized by subsection B securing the bonds.

182 In addition to the above powers, the Authority may issue interim receipts or temporary bonds as
183 provided in § 15.2-2616 and execute and deliver new bonds in place of bonds mutilated, lost, or destroyed
184 as provided in § 15.2-2621.

185 No obligation of the Authority shall be deemed to constitute a debt, or pledge of the faith and
186 credit, of the Commonwealth or of any political subdivision thereof, but shall be payable solely from the
187 revenues and other funds of the Authority pledged thereto. All such obligations shall contain on the face
188 thereof a statement to the effect that the Commonwealth, any political subdivision thereof, and the
189 Authority shall not be obligated to pay the same or the interest thereon except from revenues and other
190 funds of the Authority pledged thereto, and that neither the faith and credit nor the taxing power of the
191 Commonwealth or of any political subdivision thereof is pledged to the payment of the principal of or the
192 interest on such obligations.

193 All expenses incurred in carrying out the provisions of the article shall be payable solely from
194 funds provided under the provisions of this article, and no liability shall be incurred by the Authority
195 beyond the extent to which moneys have been provided under the provisions of this article.

196 B. In the discretion of the Authority, any bonds issued under the provisions of this article may be
197 secured by a trust indenture or agreement by and between the Authority and a corporate trustee, which
198 may be any trust company or bank having the powers of a trust company within or without the
199 Commonwealth. The trust indenture or agreement or the resolution providing for the issuance of the bonds
200 may (i) pledge or assign the revenues to be received and provide for the mortgage of any project or
201 property or any part thereof and (ii) contain provisions for protecting and enforcing the rights and remedies
202 of the bondholders as may be reasonable and proper and not in violation of law, including covenants
203 providing for the repossession and sale by the Authority or any trustees under any trust indenture or
204 agreement of any project, or part thereof, upon any default under the lease or sale of such project, setting
205 forth the duties of the Authority in relation to the acquisition of property and the planning, development,
206 acquisition, construction, rehabilitation, establishment, improvement, extension, enlargement,
207 maintenance, repair, operation, and insurance of the project in connection with which the bonds shall have
208 been authorized; the amounts of rates, rents, fees, and other charges to be charged; the collection of such
209 rates, rents, fees, and other charges; the custody, safeguarding, and application of all moneys; and
210 conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any national
211 bank with its main office in the Commonwealth or any other state or any bank or trust company

212 incorporated under the laws of the Commonwealth or another state that may act as depository of the
213 proceeds of bonds or of revenues to furnish the indemnifying bonds or to pledge the securities required
214 by the Authority. Any trust indenture or agreement or resolution may set forth the rights of action by
215 bondholders. In addition to the foregoing, any such trust indenture or agreement or resolution may contain
216 such other provisions as the Authority may deem reasonable and proper for the security of the bondholders
217 including, without limitation, provisions for the assignment to a corporate trustee or escrow agent of any
218 rights of the Authority in any project owned by, or leases or sales of any projects made by, the Authority.
219 All expenses incurred in carrying out the provisions of the trust indenture or agreement or resolution or
220 other agreements relating to any project, including those to which the Authority may not be a party, may
221 be treated as a part of the cost of the operation of the project or projects.

222 C. All moneys received pursuant to the authority of this article, whether as proceeds from the sale
223 of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this
224 article. The resolution authorizing the bonds of any issue or the trust indenture or agreement or resolution
225 securing such bonds shall provide that any officer with whom, or any bank or trust company with which,
226 such moneys shall be deposited shall act as a trustee of such moneys and shall hold and apply the same
227 for the purposes hereof, subject to the regulations as this article and the trust indenture or agreement or
228 resolution may provide.

229 D. Any holder of bonds issued under the provisions of this article or any of the coupons
230 appertaining thereto, and the trustee under any trust indenture or agreement or resolution, except to the
231 extent the rights given may be restricted by the trust indenture or agreement or resolution authorizing the
232 issuance of the bonds, may either at law or in equity, by suit, action, mandamus, or other proceeding,
233 protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under
234 the trust indenture or agreement or resolution, and may enforce and compel the performance of all duties
235 required by this article or by the trust indenture or agreement or resolution to be performed by the
236 Authority or by any officer thereof, including the fixing, charging, and collecting of rates, rentals, fees,
237 and other charges.

238 E. Bonds issued by the Authority under the provisions of this article are made securities in which
239 all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance
240 companies, trust companies, banking associations, investment companies, executors, administrators,
241 trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or
242 belonging to them. Such bonds shall be securities that may properly and legally be deposited with and
243 received by any state or municipal officer or any agency or political subdivision of the Commonwealth
244 for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may
245 hereafter be authorized by law.

246 F. The Authority may provide for the issuance of refunding bonds of the Authority for the purpose
247 of refunding any bonds then outstanding that have been issued under the provisions of this article,
248 including the payment of any redemption premium thereon and any interest accrued or to accrue to the
249 date of redemption of bonds. The issuance of the bonds, the maturities and other details thereof, the rights
250 of the holders thereof, and the rights, duties, and obligations of the Authority in respect of the same shall
251 be governed by the provisions of this article insofar as they may be applicable.

252 **§ 2.2-2384. Appropriations by any government.**

253 Any government may make appropriations for the acquisition, construction, improvement,
254 maintenance, or operation of any project acquired, constructed, improved, maintained, or operated by the
255 Authority.

256 **§ 2.2-2385. Conveyance, lease, or transfer of property by a city or county to the Authority.**

257 Any city or county within the Commonwealth, in order to provide for the construction,
258 reconstruction, improvement, repair, or management of any project, or in order to accomplish any of the
259 purposes of this article, may, with or without consideration or for a nominal consideration, lease, sell,
260 convey, or otherwise transfer to the Authority any real, personal, or mixed property located within such
261 city or county.

262 **§ 2.2-2386. Reporting requirement.**

263 The Board, promptly following the close of the fiscal year, shall submit an annual report of the
264 Authority's activities for the preceding year to the Chairman of the House Committee on Agriculture.

265 Chesapeake and Natural Resources and the Chairman of the Senate Committee on Agriculture,
266 Conservation and Natural Resources. Each such report shall set forth a complete operating and financial
267 statement covering the operation of the Authority during such year.

268 **§ 2.2-2387. Department of Emergency Management.**

269 Nothing in this article shall be construed to hinder the Department of Emergency Management
270 from completing its duties in response to an emergency.

271 **§ 10.1-603.25. Virginia Community Flood Preparedness Fund; loan and grant program.**

272 A. The Virginia Shoreline Resiliency Fund is hereby continued as a permanent and perpetual fund
273 to be known as the Virginia Community Flood Preparedness Fund. All sums that are designated for deposit
274 in the Fund from revenue generated by the sale of emissions allowances pursuant to subdivision C 1 of §
275 10.1-1330, all sums that may be appropriated to the Fund by the General Assembly, all receipts by the
276 Fund from the repayment of loans made by it to local governments, all income from the investment of
277 moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public
278 or private, including any federal grants and awards or other forms of assistance received by the
279 Commonwealth that are eligible for deposit in the Fund under federal law, shall be designated for deposit
280 to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any
281 moneys remaining in the Fund, including any appropriated funds and all principal, interest accrued, and
282 payments, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.
283 All loans and grants provided under this article shall be deemed to promote the public purposes of
284 enhancing flood prevention or protection and ~~coastal~~ resilience.

285 B. Moneys in the Fund shall be used solely for the purposes of enhancing flood prevention or
286 protection and ~~coastal~~ resilience as required by this article. The Authority shall manage the Fund and shall
287 establish interest rates and repayment terms of such loans as provided in this article in accordance with a
288 memorandum of agreement with the Department. The Authority may disburse from the Fund its
289 reasonable costs and expenses incurred in the management of the Fund. The Department shall direct
290 distribution of loans and grants from the Fund in accordance with the provisions of subsection D.

291 C. The Authority is authorized at any time and from time to time to pledge, assign, or transfer from
292 the Fund or any bank or trust company designated by the Authority any or all of the assets of the Fund to
293 be held in trust as security for the payment of principal of, premium, if any, and interest on any and all
294 bonds, as defined in § 62.1-199, issued to finance any flood prevention or protection project undertaken
295 pursuant to the provisions of this article. In addition, the Authority is authorized at any time and from time
296 to time to sell upon such terms and conditions as the Authority deems appropriate any loan or interest
297 thereon made pursuant to this article. The net proceeds of the sale remaining after payment of costs and
298 expenses shall be designated for deposit to, and become part of, the Fund.

299 D. The Fund shall be administered by the ~~Department~~ Virginia Resiliency Authority as ~~prescribed~~
300 ~~in this article~~ established by § 2.2-2378 with technical assistance and administrative support from the
301 Department. The Department, in consultation with the Secretary of Natural and Historic Resources and
302 the Special Assistant to the Governor for Coastal Adaptation and Protection, shall establish guidelines
303 regarding the distribution and prioritization of loans and grants, including loans and grants that support
304 flood prevention or protection studies of statewide or regional significance.

305 E. Localities shall use moneys from the Fund primarily for the purpose of implementing flood
306 prevention and protection projects and studies in areas that are subject to recurrent flooding as confirmed
307 by a locality-certified floodplain manager. Moneys in the Fund may be used to mitigate future flood
308 damage and to assist inland and coastal communities across the Commonwealth that are subject to
309 recurrent or repetitive flooding. No less than 25 percent of the moneys disbursed from the Fund each year
310 shall be used for projects in low-income geographic areas. Priority shall be given to projects that
311 implement community-scale hazard mitigation activities that use nature-based solutions to reduce flood
312 risk.

313 F. Any locality is authorized to secure a loan made pursuant to this section by placing a lien up to
314 the value of the loan against any property that benefits from the loan. Such a lien shall be subordinate to
315 each prior lien on such property, except prior liens for which the prior lienholder executes a written
316 subordination agreement, in a form and substance acceptable to the prior lienholder in its sole and
317 exclusive discretion, that is recorded in the land records where the property is located.

318 G. Any locality using moneys in the Fund to provide a loan for a project in a low-income
319 geographic area is authorized to forgive the principal of such loan. If a locality forgives the principal of
320 any such loan, any obligation of the locality to repay that principal to the Commonwealth shall not be
321 forgiven and such obligation shall remain in full force and effect. The total amount of loans forgiven by
322 all localities in a fiscal year shall not exceed 30 percent of the amount appropriated in such fiscal year to
323 the Fund by the General Assembly.

324 **2. That the provisions of §§ 2.2-2382 through 2.2-2385 of the Code of Virginia, as created by this**
325 **act, shall become effective on July 1, 2023.**

326 **3. That the Secretary of Natural and Historic Resources and the Secretary of Transportation, in**
327 **consultation with the Virginia Resiliency Authority, as created by this act, shall make further**
328 **recommendations regarding the organization of the Virginia Resiliency Authority.**

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