

**REPORT OF THE JOINT SUBCOMMITTEE
STUDYING PUBLIC-PRIVATE PARTNERSHIPS
REGARDING SEAPORTS IN VIRGINIA**

**Public-Private Partnerships
Related to Seaports in
Virginia (HJR 72, 2008)**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 25

**COMMONWEALTH OF VIRGINIA
RICHMOND 2009**

**Joint Subcommittee Studying Public-Private
Partnerships Regarding Seaports in Virginia**

HOUSE JOINT RESOLUTION NO. 72 (2008)

<http://dls.virginia.gov/ports.htm>

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I. INTRODUCTION

On March 12, 2008, the Virginia General Assembly passed House Joint Resolution 72, which established a joint subcommittee to study public-private partnerships regarding seaports in Virginia. According to House Joint Resolution 72, "[t]he joint subcommittee shall have a total membership of 17 members that shall consist of 8 legislative members and 9 nonlegislative citizen members." The Speaker of the House of Delegates is responsible for appointing "five members of the House of Delegates . . . in accordance with the principles of proportional representation contained in the Rules of the House of Delegates." In 2008, the Speaker of the House of Delegates appointed the following delegates to the joint subcommittee: the Honorable Harry R. Purkey; the Honorable John A. Cosgrove; the Honorable James P. Massie, III; the Honorable Kenneth R. Melvin; and the Honorable Johnny S. Joannou. Upon the resignation of Honorable Kenneth R. Melvin from the House of Delegates in 2009, the Speaker of the House appointed the Honorable Algie T. Howell, Jr. as a member of the joint subcommittee. In addition, the Senate Committee on Rules is tasked with appointing three members of the Senate as joint subcommittee members. In 2008, the Senate Committee on Rules appointed as joint subcommittee members: the Honorable L. Louise Lucas; the Honorable Frank W. Wagner; and the Honorable John C. Miller. The joint subcommittee is also comprised of nine nonlegislative citizen members representing the port-oriented transportation business community. The nonlegislative citizen members are Messrs. J. William Cofer, John G. Milliken, Arthur W. Moye, Jr., Fred Whyte, Robert E. Martinez, Eric A. Sisco, Thomas W. Godfrey, Jr., Robert T. Taylor, and John D. Padgett. The joint subcommittee elected the Honorable Harry R. Purkey and the Honorable Frank W. Wagner as its chairman and vice-chairman, respectively.

House Joint Resolution 72 both recognized the possibility, and encouraged the use, of public-private partnerships that reduce the need for the commitment of taxpayer dollars in transportation programs without any diminution of service. The resolution, however, asked the joint subcommittee formed by the resolution to examine private and public "operating and financing mechanisms for addressing seaport development." To that end, the joint subcommittee met four times in 2008 and four times in 2009. During those meetings, the joint subcommittee heard testimony from economics professors, governmental officials, and persons representing seaport-oriented businesses and associations.

This final report details the testimonies given at the aforementioned eight meetings. Part II of this report is the resolution creating the joint subcommittee studying public-private partnerships regarding seaports in Virginia and that resolution's summary. Next, Part III contains the 2008 and 2009 executive summaries, which House Joint Resolution 72 requires to be prepared. Similarly, Part IV contains a summary of each meeting held by the joint subcommittee. Part V of this final report contains the findings and recommendations of the joint subcommittee. Part VI provides the texts of the Public-Private Transportation Act of 1995 and Chapter 10 of Title 62.1, which establishes and governs the Virginia Port Authority.

II. HOUSE JOINT RESOLUTION 72 (2008)

2008 SESSION

ENROLLED

HOUSE JOINT RESOLUTION NO. 72

Establishing a joint subcommittee to study public-private partnerships regarding seaports in Virginia. Report.

Agreed to by the House of Delegates, March 5, 2008

Agreed to by the Senate, March 4, 2008

WHEREAS, the seaports of Virginia are major sources of employment and provide a stimulus for other economic activity not only in the localities wherein they are located but across the Commonwealth; and

WHEREAS, the seaports of Virginia will continue to grow as part of the import and export trade; and

WHEREAS, the seaports of Virginia are strategically advantaged to deliver the port capacity to meet this growth; and

WHEREAS, the future worldwide development of seaports will include public and private investment in new capacity; and

WHEREAS, the Virginia General Assembly encourages and supports the use of public-private partnerships in the development of transportation infrastructure; and

WHEREAS, public-private partnerships may lead to improvements in service to the people and businesses of Virginia, and also to potential financial benefits through involvement of private capital and financial resources; and

WHEREAS, public-private partnerships may result in a reduction in the need for the commitment of taxpayer dollars in transportation programs without any diminution of service, along with other benefits available to business and the general public; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study public-private partnerships regarding seaports in Virginia. The joint subcommittee shall have a total membership of 17 members that shall consist of 8 legislative members and 9 nonlegislative citizen members. Members shall be appointed as follows: five members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; three members of the Senate to be appointed by the Senate Committee on Rules; five nonlegislative citizen members representing the port-oriented transportation business community to be appointed by the Speaker of the House of Delegates; and four nonlegislative citizen members representing the port-oriented transportation business community to be appointed by the Senate Committee on Rules. Nonlegislative citizen members of the joint subcommittee shall be citizens of the Commonwealth of Virginia, and shall serve with nonvoting privileges. Unless otherwise approved in writing by the chairman of the joint subcommittee and the respective Clerk, nonlegislative citizen members shall only be reimbursed for travel originating and ending within the Commonwealth of Virginia for the purpose of attending meetings. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required. The joint subcommittee shall elect a chairman and vice-chairman from among its membership, who shall be members of the General Assembly.

In conducting its study, the joint subcommittee shall:

1. Examine different operating and financing mechanisms for addressing seaport development, including both public and private approaches to such efforts. Such work will include an examination of the current operating and management structure of the Commonwealth-owned port facilities;

2. Identify the total cost of future development of Virginia's seaport including the refurbishment and enhancement of existing and planned future seaport facilities;

3. Determine the surface transportation impacts of the import and export of trade through Virginia's seaports and the gaps in today's surface transportation. Included within this determination shall be the impact of future development of the seaport;

4. Recommend the priorities of addressing the related surface transportation needs throughout the Commonwealth by 2015, 2025, and 2035; and

ENROLLED

HJ72ER

5. Hold public hearings to solicit public comment on the work of the joint subcommittee.

Administrative staff support shall be provided by the Office of the Clerk of the House of Delegates. Legal, research, policy analysis, and other services as requested by the joint subcommittee shall be provided by the Division of Legislative Services. All agencies of the Commonwealth shall provide assistance to the joint subcommittee for this study, upon request.

The joint subcommittee shall be limited to four meetings for the 2008 interim and four meetings for the 2009 interim, and the direct costs of this study shall not exceed \$13,600 for each year without approval as set out in this resolution. Approval for unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is agreed to, written authorization of both Clerks shall be required.

No recommendation of the joint subcommittee shall be adopted if a majority of the House members or a majority of the Senate members appointed to the joint subcommittee (i) vote against the recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the joint subcommittee.

The joint subcommittee shall complete its meetings for the first year by November 30, 2008, and for the second year by November 30, 2009, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the next Regular Session of the General Assembly for each year. Each executive summary shall state whether the joint subcommittee intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summaries and reports shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or delay the period for the conduct of the study, or authorize additional meetings during the 2008 and 2009 interims.

HJ 72 Seaports; joint subcommittee to study public-private partnership.

Establishing a joint subcommittee to study public-private partnerships regarding seaports in Virginia. Report.

Summary as passed House:

Study; privatization of the ports of Virginia; report. Establishes a joint subcommittee to study public-private partnerships regarding seaports in Virginia.

Patrons: Purkey and Hall

03/04/08 Senate: Agreed to by Senate with amendments by voice vote

03/05/08 House: Placed on Calendar

03/05/08 House: Senate amendments agreed to by House (98-Y 0-N)

03/05/08 House: VOTE: --- ADOPTION (98-Y 0-N)

YEAS--Abbitt, Albo, Alexander, Amundson, Armstrong, Athey, BaCote, Barlow, Bell, Bouchard, Bowling, Brink, Bulova, Byron, Caputo, Carrico, Cline, Cole, Cosgrove, Cox, Crockett-Stark, Dance, Ebbin, Eisenberg, Englin, Fralin, Frederick, Gear, Gilbert, Griffith, Hall, Hamilton, Hargrove, Hogan, Howell, A.T., Hugo, Hull, Iaquinto, Ingram, Janis, Joannou, Johnson, Jones, D.C., Jones, S.C., Kilgore, Landes, Lewis, Lingamfelter, Lohr, Loupassi, Marsden, Marshall, D.W., Massie, Mathieson, May, McClellan, Melvin, Merricks, Miller, J.H., Miller, P.J., Moran, Morrissey, Nichols, Nixon, Nutter, O'Bannon, Oder, Orrock, Peace, Phillips, Plum, Pogge, Poindexter, Poisson, Pollard, Purkey, Putney, Rust, Saxman, Scott, E.T., Scott, J.M., Shannon, Sherwood, Shuler, Sickles, Spruill, Suit, Tata, Toscano, Tyler, Valentine, Vanderhye, Ward, Ware, O., Ware, R.L., Watts, Wright, Mr. Speaker--98.

NAYS--0.

ABSTENTIONS--0.

NOT VOTING--Marshall, R.G., Morgan--2.

Delegate Morgan recorded as not voting. Intended to vote yea.

03/12/08 House: Bill text as passed House and Senate (HJ72ER)

III. EXECUTIVE SUMMARIES
A. HOUSE DOCUMENT NO. 26 (2008)

- Report Published -

House Document No. 26

PUBLICATION YEAR 2008

Document Title

Public-Private Partnerships Related to Seaports in Virginia

Author

Division of Legislative Services, Joint Subcommittee

Enabling Authority

[HJR 72 \(Regular Session, 2008\)](#)

Executive Summary

Joint Subcommittee Studying Public-Private Partnerships Related to Seaports in Virginia (HJR 72 (2008))

During the 2008 Session of the General Assembly, the General Assembly passed HJR 72, which established a joint subcommittee to study public-private partnerships related to seaports in Virginia.

Delegate Purkey, the patron of HJR 72, served as chairman of the joint subcommittee, and Senator Wagner served as vice-chairman of the joint subcommittee. Other legislative members of the joint subcommittee were Delegates Cosgrove, Massie, Melvin, and Joannou and Senators Lucas and Miller. Messrs. J. William Cofer, John G. Milliken, Arthur W. Moye Jr., Fred Whyte, Robert E. Martinez, Eric A. Sisco, Thomas W. Godfrey, Jr., Robert T. Taylor, and John D. Padgett, Esq. served as citizen members representing the port-oriented transportation business community.

The joint subcommittee met four times during 2008 on August 26, September 24, October 22, and December 1.

The General Assembly instructed the joint subcommittee to "examine different operating and financing mechanisms for addressing seaport development, including both public and private approaches to such efforts. Such work will include an examination of the current operating and management structure of the Commonwealth-owned port facilities."

In addition, the General Assembly requested the joint subcommittee to "identify the total cost of future development of Virginia's seaport including the refurbishment and enhancement of existing and planned future seaport facilities."

Furthermore, the General Assembly charged the joint subcommittee with determining "the surface transportation impacts of the import and export of trade through Virginia's seaports and the gaps in today's surface transportation. Included within this determination shall be the impact of future development of the seaport."

The General Assembly also directed the joint subcommittee to "recommend the priorities of addressing the related surface transportation needs throughout the Commonwealth by 2015, 2025, and 2035."

Finally, the General Assembly required the joint subcommittee to "hold public hearings to solicit public comment on the work of the joint subcommittee."

In furtherance of the resolution's aims, the joint subcommittee studied "public-private partnerships regarding seaports in Virginia." To that end, the joint subcommittee heard testimony on August 26, 2008, from Mr. Jerry A. Bridges, Executive Director of the Virginia Port Authority, and Mr. Joseph A. Dorto, President & CEO of Virginia International Terminals, Inc., who described the operations of Virginia's seaports. Additionally, Mr. Pierce R. Homer, Virginia Secretary of Transportation, delivered a presentation in which he discussed how the Port of Virginia could maintain its economic competitiveness. Also, Dr. Roy Pearson, Professor Emeritus at the Mason School of Business at the College of William & Mary, gave a presentation to the joint subcommittee that discussed how the Virginia Port Authority operations added value for Virginia businesses, governments, and households in fiscal year 2006. Further, Mr. Chick Rosemond, Vice-President of Sales & Marketing at Wyatt Transfer Inc. expressed to the joint subcommittee the concerns of truck drivers who are independent-operators and deliver cargo to/from the ports. Finally, David Mills, Senior Vice President and Corporate Secretary of "K" Line America, Inc. and Nobuo Ishida, Senior Vice President of "K" Line America, Inc., discussed "K" Line America, Inc.'s history, corporate principles, financial highlights, international operations, and decision to headquarter in Richmond, Virginia.

On, September 24, 2008, the joint subcommittee heard testimony from Mr. Edward L. Brown, Sr., International Vice President of Port of Hampton Roads of the International Longshoremen's Association, Captain Patrick B. Trapp, Commander of Coast Guard Sector Hampton Roads for the United States Coast Guard, and Dr. Wayne K. Talley, Executive Director of the International Maritime Ports and Logistics Management Institute at Old Dominion University. Both Mr. Brown and Captain Trapp discussed the relationship between the seaports and interested constituencies. First, Mr. Brown discussed the longstanding history of longshoremen at the seaports and shared why he, as a longshoreman, prefers the current operations of the seaports to past operations. Second, Captain Trapp likewise discussed the Coast Guard's mission, duties, and regulations and how all three relate to Virginia's seaports. Dr. Talley, by contrast, explained the different types of seaports and the process of port privatization. Lastly, Messrs. Bridges and Dorto and Ms. Barbara Reese, Deputy Secretary, Office of the Secretary of Transportation, offered statements in response to the presentations made and the discussions that took place. In particular, Ms. Reese discussed the Public-Private Transportation Act with members of the joint subcommittee.

On October 22, 2008, the joint subcommittee heard testimony from Mr. Michael R. McClellan, Vice President - Intermodal & Automotive Marketing of Norfolk Southern Corporation, Mr. Thomas J. Simmers, President and Chief Executive Officer of Ceres Terminals, Inc., and Messrs. Andy Hecker and Mike Crist, Project Manager and Vice President, respectively, of Moffatt & Nichol. Mr. McClellan spoke about Norfolk Southern Corporation's networks that serve seaports throughout the nation, generally, and Hampton Roads, specifically. He also testified that Norfolk Southern could not opine any recommendations as to the future structure of the Virginia Port Authority, but Norfolk Southern did think the joint subcommittee should take into consideration economics, development, and investment as criteria when "evaluating any change in the current structure of the container operations of the Virginia Port Authority." Mr. Simmers argued that privation of port operations, from an operating perspective, could result in increased profit margins, decreased costs, better utilized assets, more seamless service delivered, and likelier opportunities for government to use capital no longer dedicated for seaports operations for public projects unrelated to seaports operations. Finally, Messrs. Hecker and Crist discussed the 2040 Master Plan update for the Port of Virginia, stating that opportunities exist to grow demand of port use, maximize productivity gains, advance technology through operational efficiency and automation, and promote distribution of jobs, buildings, and cargo.

On December 1, 2008, the joint subcommittee heard testimonies from Mr. Eric Sisco, President and CEO of APM Terminals Americas, and Mr. Bill Ralph, Senior Consultant and Economist for R.K. Johns & Associates. Mr. Sisco delivered a presentation to the joint subcommittee in which he discussed the portfolio, history, operations, and commitments of APM Terminals Americas. In his presentation that centered on port-related, public-private partnerships, Mr. Ralph discussed the attraction of private investors to the operations and ownership of seaports and the attraction of

governing bodies of port authorities to public-private partnerships. Each joint subcommittee member commented on the past and future workings of the subcommittee; Messrs. Bridges and Dorto also delivered brief remarks to the joint subcommittee.

No formal report embodying any legislative recommendations of the joint subcommittee will be submitted as a House Document to the 2009 Session. The joint subcommittee will meet, as authorized, in 2009 after the adjournment of the 2009 Session.

The joint subcommittee's Internet website is <http://dls.virginia.gov/ports.htm>.

III. EXECUTIVE SUMMARIES
B. HOUSE DOCUMENT NO. 25 (2009)

- Report Published -

House Document No. 25

PUBLICATION YEAR 2009

Document Title

Public-Private Partnerships Related to Seaports in Virginia

Author

Division of Legislative Services, Joint Subcommittee

Enabling Authority

[HJR 72 \(Regular Session, 2008\)](#)

Executive Summary

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During the 2008 Session of the General Assembly, the General Assembly passed HJR 72, which established a joint subcommittee to study public-private partnerships related to seaports in Virginia.

Delegate Purkey, the patron of HJR 72, served as chairman of the joint subcommittee, and Senator Wagner served as vice-chairman of the joint subcommittee. Other legislative members of the joint subcommittee were Delegates Cosgrove, A.T. Howell, Massie, and Joannou and Senators Lucas and Miller. Messrs. J. William Cofer, John G. Milliken, Arthur W. Moyer, Jr., Fred Whyte, Robert E. Martinez, Eric A. Sisco, Thomas W. Godfrey, Jr., Robert T. Taylor, and John D. Padgett, Esq. served as citizen members representing the port-oriented transportation business community.

The joint subcommittee met four times during 2009 on August 12, September 24, November 20, and December 3.

The General Assembly instructed the joint subcommittee to "examine different operating and financing mechanisms for addressing seaport development, including both public and private approaches to such efforts. Such work will include an examination of the current operating and management structure of the Commonwealth-owned port facilities."

In addition, the General Assembly requested the joint subcommittee to "identify the total cost of future development of Virginia's seaport including the refurbishment and enhancement of existing and planned future seaport facilities."

Furthermore, the General Assembly charged the joint subcommittee with determining "the surface transportation impacts of the import and export of trade through Virginia's seaports and the gaps in today's surface transportation. Included within this determination shall be the impact of future development of the seaport."

The General Assembly also directed the joint subcommittee to "recommend the priorities of addressing the related surface transportation needs throughout the Commonwealth by 2015, 2025, and 2035."

Finally, the General Assembly required the joint subcommittee to "hold public hearings to solicit public comment on the work of the joint subcommittee."

In furtherance of the resolution's aims, the joint subcommittee studied public-private partnerships regarding seaports in Virginia. To that end, the joint subcommittee heard testimony on August 12, 2009, from the mayor for the City of Norfolk, Paul D. Fraim, who delivered remarks as a representative of cities that host seaports and suggested that the citizens of Norfolk have standing to be represented in discussions about the future of Virginia's seaports. Additionally, Ashley S. Colvin, Project Leader for the Joint Legislative Audit and Review Commission, delivered a presentation entitled "Lessons Learned from Public-Private Partnerships," which centered on two issues: (1) the variation of legislative oversight of public-private partnerships and (2) lessons learned from selected public-private partnerships. Pierce R. Homer, the Virginia Secretary of Transportation, delivered a presentation centered on the Commonwealth's port and Public-Private Transportation Act (PPTA) priorities, which include (1) the promotion and realization of benefits of continued economic growth; (2) the provision of surface transportation to serve community and port; and (3) the addressing of community impacts of the ports. Furthermore, Dr. James V. Koch, who is President Emeritus and Board of Visitors Professor of Economics at the Old Dominion University's College of Business and Public Administration, delivered a presentation entitled "Some Issues Worth Thinking About Re: The Operation of Virginia Port Authority Terminals" in which he posed rhetorical and unanswered questions for the joint subcommittee's consideration. Jo Anne Maxwell, in her capacity as Senior Assistant Attorney General/Section Chief for Transportation in the Office of the Attorney General, answered questions posed by subcommittee members.

On September 24, 2009, the joint subcommittee heard testimony from Mayor Paul D. Fraim, who expanded upon his remarks from the August 12, 2009 meeting, by focusing on the topic most relevant to the City of Norfolk and the other port host cities: the proposed tax exemption of privately operated port operations. In addition, Dr. Robert Martinez, Vice President of Business Development at Norfolk Southern, testified in his own capacity and not that of his company, Norfolk Southern. His remarks focused on the primary questions that the Virginia Port Authority and the Secretary of Transportation should consider in their review of the proposals. Also, Dr. Wayne K. Talley, Executive Director at the Old Dominion University International Maritime Ports and Logistics Management Institute, presented sets of questions that should be asked in connection with the three unsolicited proposals relating to the privatization of the operations of Virginia's seaports. Furthermore, Executive Director of the Virginia Port Authority, Jerry A. Bridges, who had previously testified before the joint subcommittee in 2008, also testified before the joint subcommittee. He told the joint subcommittee members that the Port of Virginia is (i) an efficient port and, during its best year in 2007, handled more than 2 million TEUs making it the third busiest container port on the USEC; (ii) a very healthy operation that has the necessary infrastructure in place, or is building it, to handle a growing volume of containers; (iii) a port that continues to use its natural assets to its advantage; and (iv) a port that has historically had good labor relations with its union.

On November 20, 2009, the joint subcommittee heard testimony from the Honorable Patrick O. Gottschalk, Virginia Secretary of Commerce and Trade. The Secretary focused on the economic impact of the Port of Virginia, its major competitors, and its strengths. Also, Joseph Dorto, President & CEO, Virginia International Terminals, Inc., Jerry Bridges, Executive Director, Virginia Port Authority, and Jo Anne Maxwell, Senior Assistant Attorney General/Section Chief for Transportation, Office of the Attorney General, made some brief remarks and answered questions.

On December 3, 2009, the joint subcommittee heard testimony from the Carlyle Group, Carrix, Inc./Goldman Sachs, and CenterPoint Properties. The presenters described the aforementioned companies' unsolicited proposals to operate Virginia's publicly operated seaports.

The joint subcommittee intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House document.

The joint subcommittee's Internet website is <http://dls.virginia.gov/ports.htm>.

IV. SUMMARIES OF JOINT SUBCOMMITTEE MEETINGS
A. AUGUST 26, 2008

On August 26, 2008, the joint subcommittee studying public-private partnerships regarding seaports in Virginia held its first meeting at 1:00 pm in House Room D of the General Assembly Building in Richmond, VA.

Legislative members of the joint subcommittee in attendance were Delegates Purkey, Cosgrove, Massie, and Joannou and Senator Wagner. Nonlegislative members of the joint subcommittee in attendance were Messrs. Coffey, Milliken, Moye, Martinez, Sisco, Godfrey, Taylor, and Padgett.

Delegate Purkey called the first meeting of the joint subcommittee to order and delivered opening remarks. Afterwards, members of the joint subcommittee elected Delegate Purkey and Senator Wagner chairman and vice-chairman of the joint subcommittee, respectively.

Mr. Jerry A. Bridges, Executive Director, Virginia Port Authority

Mr. Jerry A. Bridges, Executive Director of the Virginia Port Authority, then delivered a presentation to the joint subcommittee. Mr. Bridges stated that the Port of Virginia, the third largest port on the East Coast and the fifth largest port in the United States in 2007, is an economic engine for the Commonwealth, attributable for 343,000 port and port-related jobs statewide, \$41 billion in business revenues, and \$1.2 billion in state and local taxes. He also described the growth plans (e.g., Craney Island Marine Terminal, estimated to bring to the Hampton Roads region 54,000 new jobs, \$1.7 billion in wages, and \$155 million in annual state and local tax revenue), which amount to a \$3 billion commitment, to accommodate projected cargo demand. Then, Mr. Bridges identified financing options available to the Port of Virginia to remain competitive and listed factors that contribute to the East Coast competitive environment in which it operates, such as terminal capacity, location of distribution centers and intermodal parks, channel depth, ease of access to the consuming population, and legislation affecting the Virginia Port Authority's master growth plans.

The information in the above paragraph is wholly attributable to Mr. Jerry A. Bridges, Executive Director of the Virginia Port Authority, and such information contained in Mr. Bridges' presentation can be found at <http://dls.state.va.us/GROUPS/ports/MEETINGS/082608/BridgesPPT.pdf>.

Mr. Joseph A. Dorto, President & CEO, Virginia International Terminals, Inc.

Mr. Joseph A. Dorto, President & CEO of Virginia International Terminals, Inc. (VIT) delivered the next presentation to the joint subcommittee entitled "Overview of Port Operations." In describing his employer, Mr. Dorto explained that "VIT is a non stock, non profit company created in 1983 by the [Virginia Port Authority] to operate the" State's ports. He further explained that VIT receives no state general fund dollars, that the entire operations of VIT and the Virginia Port Authority are funded by terminal revenue, and that the Transportation Trust

Fund money received by the Virginia Port Authority can only be used for maintenance and capital improvements. In addition, Mr. Dorto stated that "VIT has 448 full time employees and hires approximately 800 longshoremen per day," "VIT's fiscal year budget for [2009] is \$239,969,000 gross income," and "VIT's fiscal year budget for [2009] is \$9,293,000 net income." With regard to agreements in which it has entered, "VIT has successfully negotiated 10-year agreements with all but one of its customers," and "these agreements ensure the steady flow of cargo through [Virginia Port Authority] ports for the next 10 years, allowing the Virginia Port Authority/VIT to better plan [their] improvements and expenditures in the future." Moreover, VIT/Virginia Port Authority "have been successful in attracting major distribution centers to the Hampton Roads area in the past five years." Additionally, "VIT has a good balance of import/export containers (49%/51%, respectively, for 2007) which enables truck and rail to have two-way moves and balance their equipment. Lastly, Mr. Dorto told the joint subcommittee that "\$465 million has been reinvested into the ports' infrastructure and [has] paid the cost of operations for the Virginia Ports Authority."

The information in the above paragraph is wholly attributable to Mr. Joe Dorto, President & CEO of Virginia International Terminals, Inc., and such information contained in Mr. Dorto's presentation can be found at <http://dls.state.va.us/GROUPS/ports/MEETINGS/082608/operations.pdf>.

Mr. Pierce R. Homer, Secretary of Transportation, Office of the Secretary of Transportation

Mr. Pierce R. Homer, Virginia Secretary of Transportation, addressed the joint subcommittee by delivering a presentation entitled "Maintaining the Competitiveness of the Port of Virginia." After sharing background information on the Port of Virginia, Secretary Homer explained that the Port of Virginia has the ability to be competitive with other ports. He explained that the Port of Virginia "will be competitive well into the future because of external factors" such as (1) the completion of the Panama Canal expansion by 2015; (2) "deep natural channels that accommodate the largest cargo ships;" (3) existing freight rail network along with significant rail improvements" by the federal and state government, Norfolk Southern, and CSX. However, Secretary Homer noted that securing capital funding for (a) port expansion in Virginia Port Authority's 2040 plan and (b) "road and rail improvements consistent with the Commonwealth Transportation Board's long range plan" are "constraints on the Port [of Virginia's] future competitiveness."

Through illustration, Secretary Homer also discussed how cargo truck traffic will increase as business grows and how road and rail networks will support or constrain growth (i.e., road connections to the Port of Virginia are strained, but rail is a competitive advantage for the Port of Virginia). Secretary Homer then explained that the Port of Virginia could maintain its competitiveness through operational improvements (e.g., dwell time reductions for containers), expansions at APM and Craney Island, and expanded road and rail networks. Specifically, Secretary Homer suggested that "for the future competitiveness of the Port of Virginia, the critical highway corridors and rail networks are necessary." He also warned that the "slowing economy will reduce public funding for port-related infrastructure."

The information in the two above paragraphs is wholly attributable to Secretary Pierce Homer, Virginia Secretary of Transportation, and such information contained in Secretary

Homer's presentation can be found at <http://dls.state.va.us/GROUPS/ports/MEETINGS/082608/competitiveness.pdf>.

Dr. Roy Pearson, *Professor Emeritus*
Mason School of Business, The College of William & Mary

Dr. Roy Pearson, Professor Emeritus at the Mason School of Business at the College of William & Mary, gave a presentation to the joint subcommittee that discussed how the Virginia Port Authority operations added value for Virginia businesses, governments, and households in fiscal year 2006. Dr. Pearson first explained the components impacting his findings (i.e., impact components): direct impact, indirect impact, induced impact, and total impact. "Direct impact" is the production and sale of goods or services being analyzed; "indirect impacts" are purchases from other businesses to carry out the direct activities; "induced impact" are earnings created by direct and indirect impacts that are spent by households, businesses, and state and local governments, and "total impact" is the sum of the three types of impacts. The impacts were modeled using IMPLAN Professional 200, which is based on government data about national, state and local production of goods and services and market transactions and other specific state and local information from surveys and other sources. Dr. Pearson then remarked that the Virginia Port Authority's full contribution to Virginia's economy includes contributions flowing from exports produced in Virginia and imports used in Virginia.

Dr. Pearson then shared his findings. He said that Virginia Port Authority-related port operations impacts (which include the Virginia Port Authority, Virginia International Terminal, port service companies, and companies transporting goods to and from the terminals) included \$4.46 billion in revenue/sales, \$1.6 billion in employee compensation, and 35,665 employees. Total Virginia economic impacts of the Virginia Port Authority include \$41.07 billion in revenue/sales, \$13.52 billion in employee compensation, and 343,000 employees. With regard to exports, of \$14.7 billion in exports handled, \$8.1 billion was made in Virginia. Virginia Port Authority Virginia-made export impacts included \$16.28 billion in revenue sales, \$4.29 in employee compensation, and 93,520 employees. By contrast, with regard to imports, of \$21.5 billion in imports handled, \$8.5 billion stayed in Virginia. Impacts of Virginia use of Virginia Port Authority imports include \$20.31 billion in revenue/sales, \$7.59 billion in employee compensation, and 213,816 employees.

The information in the two above paragraphs is wholly attributable to Dr. Roy Pearson, Professor Emeritus at the Mason School of Business at the College of William & Mary, and such information contained in Dr. Pearson's presentation can be found at <http://dls.state.va.us/GROUPS/ports/MEETINGS/082608/VPA.pdf>.

Mr. Chick Rosemond, *Vice-President of Sales & Marketing*, Wyatt Transfer Inc.

Mr. Chick Rosemond, Vice-President of Sales & Marketing at Wyatt Transfer Inc., then delivered a presentation to the joint subcommittee. Mr. Rosemond expressed concerns of truck drivers who are independent-operators and deliver cargo to/from the ports. He noted, however, the good relationship with such truck drivers and the Virginia Port Authority, which is due, in part, to the monthly meetings in which Mr. Bridges, Executive Director of the Virginia Port Authority, meets with such truck drivers.

David Mills, Senior Vice President and Corporate Secretary
Nobuo Ishida, Senior Vice President
"K" Line America, Inc.

Finally, David Mills, Senior Vice President and Corporate Secretary of "K" Line America, Inc. and Nobuo Ishida, Senior Vice President of "K" Line America, Inc. delivered the final presentation to the joint subcommittee. Mr. Mills discussed "K" Line America, Inc.'s history, corporate principles, and financial highlights (e.g., \$13.3 billion in revenues; \$1.3 billion in operating income). He also discussed the international operations of "K" Line America, Inc., such as its containership, dry bulk carrier, car carrier, logistics, short sea and coastal shipping, energy transportation, and tanker and heavy lift businesses. Next, Mr. Mills shared why "K" Line America, Inc. decided to relocate from New York, NY and headquarter in Richmond, VA. One, a low cost of living, enjoyable climate, and a well-educated, quality workforce were found in Richmond, VA. Also, locating in Virginia allowed "K" Line America, Inc., as an ocean carrier, to enjoy (1) a strategic location within the Mid-Atlantic Coast, (2) a superior inland rail network, (3) favorable relationships with labor, (4) state economic development efforts, (5) a deep harbor, (6) close proximity to open ocean, and (7) no ice free or air draft from bridges. Finally, Mr. Mills discussed factors affecting port competition (e.g., good infrastructure to deliver goods to customers, high productivity for vessels, and fast rail connections to/from inland destinations) and means to enhance a port's competitiveness (e.g., recruit exporters and manufacturers, invest in Virginia's infrastructure).

The information in the above paragraph is wholly attributable to David Mills, Senior Vice President and Corporate Secretary of "K" Line America, Inc. and Nobuo Ishida, Senior Vice President of "K" Line America, Inc. and such information contained in the presentation of these officers of "K" Line America, Inc. can be found at <http://dls.state.va.us/GROUPS/ports/MEETINGS/082608/KLinePPT.pdf>.

Chairman Purkey expressed interest in having an individual or individuals representing labor at Virginia ports, an individual or individuals representing one or more railway companies, and an individual or individuals representing one or more investment banking and management firms present at the next meeting. The next meeting has not been scheduled.

IV. SUMMARIES OF JOINT SUBCOMMITTEE MEETINGS
B. SEPTEMBER 24, 2008

On September 24, 2008, the joint subcommittee studying public-private partnerships regarding seaports in Virginia held its second meeting at 1:00 pm at Old Dominion University in Norfolk, Virginia.

Legislative members of the joint subcommittee in attendance were Delegates Purkey (Chairman), Joannou, and Melvin and Senators Wagner (Vice-Chairman) and John Miller. Nonlegislative members of the joint subcommittee in attendance were Messrs. Coffey, Godfrey, Milliken, Moye, and Taylor.

Delegate Purkey called the second meeting of the joint subcommittee to order and delivered opening remarks.

Edward L. Brown, Sr.,
International Vice President of Port of Hampton Roads,
International Longshoremen's Association

Mr. Brown first delivered a presentation to the joint subcommittee. He began describing the membership and charitable activities of the International Longshoremen's Association in Hampton Roads. By detailing his many experiences working at the ports over the past decades, Mr. Brown explained why he prefers the current operations of the ports. In addition, Mr. Brown suggested that the current operations of the ports in Virginia have contributed to increased economic growth and attractiveness in the Hampton Roads region. Furthermore, longshoremen have received extensive training in containerization and incomes due to the current operations of the ports, according to Mr. Brown.

Captain Patrick B. Trapp,
Commander of Coast Guard Sector Hampton Roads
United States Coast Guard

Captain Trapp delivered a presentation in which he discussed the Coast Guard's relationship to Virginia's seaports. In doing so, Captain Trapp first stated the mission statement of the Coast Guard with respect to the Sector Hampton Roads area. In addition, he explained that the Commander, Sector Hampton Roads serves, concurrently and ex-officio, as the Captain of the Port; Officer in Charge, Marine Inspection; Federal On-Scene Coordinator; Federal Maritime Security Coordinator; and Search and Rescue Mission Coordinator. After explaining the duties associated with the aforementioned titles, Captain Trapp shared some local port security challenges facing the Coast Guard, e.g., nearby chemical and power plants, nearby major fuel pipelines. Finally, Captain Trapp discussed the new regulations relating to the Transportation Worker Identification Credentials and the mandates and composition of the Area Maritime Security Committee.

Dr. Wayne K. Talley, *Executive Director*
International Maritime Ports and Logistics
Management Institute, Old Dominion University

Dr. Talley delivered a presentation entitled "Global Port Governance, Privatization and Operation." After delivering opening remarks about Old Dominion University's business programs that relate to port management, Dr. Talley described four types of ports: "the service port; (2) the tool port; (3) the landlord port; and (4) the private port."

Port Type	Owned by?	Managed by?
Service Port	Government (owns land/all assets)	Port Authority (operations controlled by port authority)
Tool Port	Government (owns land and assets)	Port Authority (staff operates port-owned equipment; private cargo-handling firms operate other cargo handling activities)
Landlord Port	Government	Port Authority (leases port's infrastructure to private terminal operator, who may hire dockworkers, purchase and install own equipment, and maintain own buildings, to operate port)
Private Port	Private Owner (owns land and infrastructure)	Private Operator (leases port operations)

Dr. Talley reported that service ports have decreased in number as privatization of port operations has increased. Privatization is a process in which governments seek "to increase the efficiency of port operations" through asset and service privatization. Note that asset privatization, according to Dr. Talley, is "the transfer of assets from a public port to the private sector (e.g., to a private port terminal operator)" and service privatization is "the transfer of a public port service (but not public port assets) to the private sector its provision."

After explaining port privatization in the United Kingdom, Dr. Talley detailed the process by which port privatization has occurred. He also shared examples of the works of and speculative interests in private port terminal operators.

* Information used in the above chart is solely attributable to Dr. Malley and can be found in his presentation at <http://dls.state.va.us/GROUPS/ports/MEETINGS/092408/global.pdf>.

Jerry A. Bridges, *Executive Director*, Virginia Port Authority, Joseph A. Dorto, *President & CEO*, Virginia International Terminals, Inc., and Barbara Reese, *Deputy Secretary*, Office of the Secretary of Transportation all offered statements in response to the presentations made and the discussions that took place. In particular, Ms. Reese discussed the Public-Private Transportation Act with members of the joint subcommittee.

The next meeting is scheduled for October 22.

IV. SUMMARIES OF JOINT SUBCOMMITTEE MEETINGS
C. OCTOBER 22, 2008

On October 22, 2008, the joint subcommittee studying public-private partnerships regarding seaports in Virginia held its third meeting at 2:00 pm at Nauticus, Half Moone Terminal in Norfolk, Virginia.

Legislative members of the joint subcommittee in attendance were Delegates Purkey (Chairman), Cosgrove, Joannou, Massie, and Melvin and Senators Lucas and John Miller. Nonlegislative members of the joint subcommittee in attendance were Messrs. Godfrey, Martinez, Milliken, Moye, Padgett, and Taylor. A designee represented Mr. Whyte, also a nonlegislative member.

Delegate Purkey called the third meeting of the joint subcommittee to order and delivered opening remarks.

Michael R. McClellan
Vice President - Intermodal & Automotive Marketing
Norfolk Southern Corporation.

Please find below the full text of Mr. McClellan's remarks.

Good afternoon to members of this commission and other guests, and thank you for the opportunity to speak here today. My name is Mike McClellan, and I am Vice President of Intermodal and Automotive Marketing at Norfolk Southern. I am responsible for, among other things, Norfolk Southern's conventional Intermodal business, automotive business and our Triple Crown motor carrier subsidiary.

Norfolk Southern is the second largest eastern railroad carrier in terms of revenue and track mileage. We employ over 30,000 people throughout our network and have over 22,000 route miles. Our railroad extends directly and through haulage and trackage rights agreements as far west as Dallas, Kansas City and Chicago, as far south as Miami and New Orleans, and as far north as Boston. We also serve almost all of the primary ports on the east coast.

In the last 4 quarters, Norfolk Southern generated over \$10 billion, with coal and intermodal accounting for about 47% of this revenue. Intermodal is 20% of revenue and 41% of units.

While Norfolk Southern serves most of the primary ports on the east coast and does significant intermodal and dry cargo business at all of them, the port facilities of Hampton Roads are of particular importance to our railroad for several reasons.

First, we own and operate a large general merchandise port facility here called Lambert's Point Docks where we have done over 900 carloads of import and export material so far in 2008, and our business there is growing.

Second, Norfolk is home to our Lambert's Point coal piers, which provide the majority of Norfolk Southern's capacity for coal exports. We have handled over 15 million tons of coal here so far in 2008, well above the tonnage moved in recent years.

Finally, the Hampton Roads container terminals - including our Portlock facility...in Chesapeake, VA - are a critical part of Norfolk Southern's overall intermodal network.

Norfolk Southern has an extensive intermodal network serving the East Coast ports. I might add here that the ownership structure of the ports that we serve on the east is extremely diverse, and ranges from private ports - such as APM Virginia here in Hampton Roads - all the way to the publicly owned and operated model deployed in Savannah by the Georgia Ports Authority. Having this view of many East Coast ports, our perception is twofold. First, each organizational structure appears to have strengths and weaknesses which seem to balance out up and down the East Coast. Second, it appears to us that the most important determinant of a port's success is not ownership structure, but the overall competitiveness of a port's connectivity, its capacity, its flexibility and most importantly, its cost structure.

In the Southeast, we provide a large network serving ports from Miami to Charleston, and have on-dock capabilities at Savannah.

In the Northeast, we also have an extensive network serving the ports from New York to Baltimore through our hub in Harrisburg, Pennsylvania.

With regards to the ports in Hampton Roads - primarily through APM Virginia, Norfolk International Terminal, and our Portlock Intermodal Terminal - Norfolk Southern provides the most extensive intermodal network on the East Coast. While Norfolk Southern derives over 100,000 moves per year from the Ports of Savannah, Charleston, and New York, the ports in Hampton Roads generate the largest international container volumes for Norfolk Southern.

With regard to the issue of public-private partnerships, and the potential for port privatization, Norfolk Southern is not in a position to directly comment on the merits of privatizing all or a portion of the property or operations of the Virginia Port Authority. The reason is straightforward: Norfolk Southern simply does not know the structural form or economic costs and benefits that the Commonwealth might be considering for such a transaction. However, given that Norfolk Southern has a large portion of its international intermodal business generated from Virginia Port Authority facilities, we feel that we are - and need to remain - a key stakeholder in this process. We want to ensure that whatever structure is ultimately adopted promotes the viability of this port. To this end, we would recommend that this subcommittee consider three key criteria in evaluating any change in the current structure of the container operations of the Virginia Port Authority, those being economics, development, and investment.

Our first recommended criterion for evaluating a structural change for the Virginia Port Authority and its operation is preserving and enhancing the port's economic competitiveness. Steamship lines, particularly nowadays, are extremely sensitive to even small changes in their overall cost structures. When costs go up for either port or inland services, the steamship lines have proven very adept at quickly shifting their networks to lower cost solutions when cost inputs change. This is particularly true when they perceive that these cost changes are structural and permanent. Thus, if a change in the current structure of the Virginia Port Authority would result in an increase in the cost structure - and price structure - of the port in a meaningful way, we believe that this would be a negative for the port overall. Such a cost increase might manifest itself in container fees, increased debt by a new entity, or increased land rents or taxes, all of which would ultimately drive up the prices per unit to the steamship lines and ultimate shippers. And this, we believe, could drive away freight. I would like to say here, although maybe a little out of place, that developing privately funded and operated terminal facilities on Craney Island seems to be one of the approaches that the Virginia Port Authority might engage in to ensure cost competitiveness of the port, particularly for those steamship lines who are demanding their own terminal assets on the East Coast.

The second criterion that Norfolk Southern would recommend for the evaluation of any changes in the structure of the Virginia Port Authority and its operation is preserving and enhancing the port's economic development role and capabilities. While the vessel and port economics are the opening ante when steamship lines determine their vessel rotations, having a strong base of customers that receive or generate cargo is required for a winning hand. Competition to develop landside customers and facilities up and down the East Coast is fierce, and we believe that ensuring that the Virginia Port Authority or any new entity has an economic development mission, and is closely aligned with other economic development entities in the Commonwealth of Virginia, is a very important capability for the success of this, or any, port.

The third and final criterion that we would recommend for the evaluation of any change in the structure of the Virginia Port Authority or its operations is ensuring the continued investment in the port for both capacity and productivity. While it is conceivable that a change in structure of the Virginia Port Authority and its operations might not result in any immediate increase in today's cost structure, if such a deal inhibited investment in the port's facilities, it would be easy to envision a gradual erosion in the strategic competitiveness of the port. Capacity growth capability and ongoing operational productivity improvements are key determinants when steamship lines select ports for their operations. Any degradation in the ability of a new owner to invest in capacity and productivity - whether perceived or real - will degrade the strategic competitive position of any port.

Of course one criterion not mentioned above is the ultimate value that could be derived by the Commonwealth from the privatization of all or part of the Virginia Port Authority and its operations. Clearly, the assessment of this value will be at the center of any deliberations over the future of the port. Our position, however, is that any tactical value or annuity gained for the Commonwealth of Virginia must be tempered against the three decision criteria listed above, those being cost competitiveness, economic development, and investment.

Now, as I mentioned earlier, the competitive position of all of the ports in Hampton Roads is of extreme importance to Norfolk Southern, and not just because the ports in Hampton Roads produce more container volume for Norfolk Southern than any other port. Norfolk Southern, along with the Commonwealth of Virginia and the federal government, and with the support of the Virginia Port Authority and the Virginia Maritime Association, are undertaking one of the most expensive and complex clearance and line improvement projects in our company's history.

Excluding terminals, Norfolk Southern will invest over \$60 million, and about \$220 million overall will be spent to improve the route structure of Norfolk Southern and the Commonwealth Railway lines between Hampton Roads and the Midwest. While this includes general improvements along the Norfolk Southern lines, and the relocation of the Commonwealth Railway line into the median of the Western Freeway, the centerpiece of these projects is the clearance of 30 tunnels in western Virginia, Kentucky, and West Virginia to ensure that taller trains carrying double-stacked containers can move through this part of the railroad.

Right now, a typical stack train is as tall as 20'3" above the rail and has a square profile.... Currently, however,...the tallest car that most tunnels on the Heartland can accommodate is just 19'1", and has a curved profile that conforms to the roof of the tunnel. Once completed, the profiles of all of the tunnels will be raised to accommodate the tallest stack trains operated.

The reason these clearances are so important is that currently, Norfolk Southern must move double-stack trains on one of these two routes between Chicago and Norfolk: either the

southern route through Knoxville or the northern route through Harrisburg. These routes are up to 230 miles longer than the route through West Virginia. Once complete, the time, mileage, and expense of moving trains between Hampton Roads and the Midwest will be reduced.

....I am pleased to report that this project is well underway. By the end of this year, about 1/3 of the tunnel footage will be cleared, and we are projecting that all of the clearances will be complete in the first half of 2010.

In summary, Norfolk Southern has a very strong interest in the health of *all* of the ports that it serves, but in particular, the private and public ports in Hampton Roads. We have a strong working relationship with the Virginia Port Authority and APM Virginia, and the ports in Hampton Roads produce more intermodal and overall cargo for Norfolk Southern than any other port on the East Coast. Norfolk Southern, the Commonwealth, and the federal government are engaged in an unprecedented public-private partnership to improve the rail routes between Hampton Roads and the Midwest. This corridor is not only a major investment by Norfolk Southern, but by all of the entities that worked to get this project through the last highway reauthorization bill.

Because of this position in Hampton Roads, Norfolk Southern is very interested in any deliberations and potential changes made to the structure of public ports in Virginia, and feel that we need to be a key stakeholder in these deliberations. While we are not in a position to opine on the merits of any specific deal or prospective new structure of the Virginia Port Authority, Norfolk Southern wants to ensure that whatever structure is ultimately adopted promotes the viability of the port. As such, we counsel and encourage this commission to balance any monetary benefits of port privatization against three key decision criteria. These criteria are: (1) ensuring that the port remains economically competitive for its customers; (2) ensuring that the Virginia Port Authority or its successors are structured to actively engage in economic development activities; and (3) ensuring that the port has the capability to invest in continuous productivity and capacity expansion when required.

Thank you for your time....

Thomas J. Simmers
President and Chief Executive Officer
Ceres Terminals, Inc.

Mr. Simmers delivered a presentation to the joint subcommittee regarding privatization of port operations. After discussing the number of vessels, operating income, revenue, and locations of the operating and landlord ports of his company, Ceres Terminals, Inc., Mr. Simmers discussed how, in his opinion, privatizing works from an operating perspective. According to Mr. Simmers, the privatized model of ports operations increases profit margins, decreases costs, better utilizes assets, delivers more seamless service, and focuses on both land transportation and vessel production. Moreover, Mr. Simmers testified that privatization frees up government capital for other public projects and can make the ports more competitive because private industry can build quicker and cheaper than the government.

* Mr. Simmers' PowerPoint presentation is available at:
<http://dls.state.va.us/GROUPS/ports/MEETINGS/102208/Simmers.pdf>

Andy Hecker, *Project Manager*
Mike Crist, *Vice President*
Moffatt & Nichol

Mr. Hecker and Mr. Crist delivered a presentation about the 2040 Master Plan update for the Port of Virginia. The presentation began by the gentlemen discussing the purposes of the Port of Virginia: the promotion of maritime commerce, economic and local business growth, job creation. Next, Mr. Hecker and Mr. Crist discussed the needs of the Port of Virginia being met by balancing demand and capacity, long-term planning, investments, and fiscal discipline. Noting the efficient transportation, such as rail improvements, assists in the generation of statewide benefits, Mr. Hecker and Mr. Crist stated that opportunities exist to grow demand of port use, maximize productivity gains, promote distribution of jobs, buildings, and cargo, and advance technology through operational efficiency and automation. Furthermore, Mr. Hecker and Mr. Crist acknowledged the uncertainty of the national economy, that competition for cargo and land distribution centers is fierce, and the need for continual evaluation of short-term and long-term capital and resource allocations. In summary, Mr. Hecker and Mr. Crist stated that (1) "port activity continues to generate benefits for Virginia;" (2) "a fiscally conservative plan supports growth and needed investments;" (3) capital improvement plans relating to Craney Island fit funding scenarios; and (4) economic uncertainties affect the pace of long term plans.

* The above information is directly attributed to Mr. Hecker and Mr. Crist and such information can be found in their PowerPoint presentation, available at <http://dls.state.va.us/GROUPS/ports/MEETINGS/102208/2040.pdf>.

Jerry A. Bridges, *Executive Director*, Virginia Port Authority, Joseph A. Dorto, *President & CEO*, Virginia International Terminals, Inc., Barbara Reese, *Deputy Secretary*, Office of the Secretary of Transportation, and Dr. Wayne K. Talley, *Executive Director*, International Maritime Ports and Logistics Management Institute, Old Dominion University all offered statements in response to the presentations made and the discussions that took place.

The next meeting is scheduled for December 1, 2008.

IV. SUMMARIES OF JOINT SUBCOMMITTEE MEETINGS
D. DECEMBER 1, 2008

On December 1, 2008, the joint subcommittee studying public-private partnerships relating to seaports in Virginia held its fourth meeting at 1:00 pm at Old Dominion University in Norfolk, Virginia.

Legislative members of the joint subcommittee in attendance were Delegates Purkey (Chairman), Joannou, Massie, and Melvin and Senators Lucas and John Miller. Nonlegislative members of the joint subcommittee in attendance were Messrs. Coffey, Godfrey, Martinez, Moye, Padgett, and Sisco. A designee represented Mr. Whyte, also a nonlegislative member.

Delegate Purkey called the fourth meeting of the joint subcommittee to order and delivered opening remarks.

Eric Sisco
President and CEO
APM Terminals Americas

Mr. Sisco delivered a presentation to the joint subcommittee after first answering questions posed by Dr. Wayne K. Talley, Executive Director of the International maritime Ports and Logistics Management Institute at Old Dominion University. Mr. Sisco began his presentation by discussing the history, portfolio, and commitments of APM Terminals Americas. Next, Mr. Sisco showed to the joint subcommittee a video that highlighted the operations of APM Terminals Americas. He then described, quantitatively, APM Terminals Americas' impact on the Hampton Roads community, specifically noting the \$6 million it pays to the City of Portsmouth in property taxes. Mr. Sisco stated that APM Terminals Americas' supports the surrounding community through its provision of "technologically-advanced jobs and workforce training" to residents of the community. He also described those industry structures relating to the ownership and operation of ports; Mr. Sisco provided a chart illustrating such description.

Type:	Publicly Owned and Operated	Lease/Concession	Public-Private Partnership
Description:	Port authority is responsible for capital investment in infrastructure and equipment	Port authority leases land to private operator, typically for 30-50 years	Greater responsibility to private sector for infrastructure development
Description:	Port authority typically runs yard, gate, and vessel operations	Port authority invests in major infrastructure development and quay wall	Public entities invest in connecting infrastructure (roads, rail, channel)
Description:	Port authority may subcontract operations or other to stevedoring company in shorter-term contract	Port operator typically invests in equipment, buildings, and paving to ready the land for operational use	Private operator invests in major port infrastructure, taking increased risk in return for a long-term concession
Examples:	Savannah; Charleston; Houston; Kingston	Los Angeles; New York; New Jersey; Tacoma; Jacksonville; Miami; Oakland	Vancouver; Mobile; ~Virginia

While noting the benefits of private investment and operation in or of Virginia seaports, Mr. Sisco discussed how strategic operators contribute most to the seaports' value in the long-term and how financial investors with "high-levered investments are being challenged in the current

economic environment." Moreover, Mr. Sisco opined that economic development and a "more efficient approach toward capacity development" could be maximized through permissible coordination between APM Terminals Americas and the Virginia Port Authority and Virginia International Terminals. Mr. Sisco concluded his presentation by suggesting future examinations, explorations, and reviews the joint subcommittee could make.

Bill Ralph
Senior Consultant, Economist
R.K. Johns & Associates

Mr. Ralph delivered a presentation to the joint subcommittee regarding port-related, public-private partnerships. He discussed the attractiveness of public-private partnerships to governing bodies of port authorities, citing the resulting redeployment of government spending and asset monetization. Likewise, Mr. Ralph discussed what attracts private investors to the seaport industry, and noted such attraction results from "visible and predictable earnings," "long-term leases [and] low risk assets," and "inflation linked revenues." Next, Mr. Ralph discussed the two types of private buyers of ports: "strategic buyers (carriers and global terminal operators)" and financial buyers, which include both aggressive investors who seek to "maximize the purchased asset value through debt leverage" and passive investors who "focus on the asset providing a stable, longer term yield for the owners." Furthermore, Mr. Ralph discussed changes in 2008 regarding the new availability and cost of debt (e.g., higher rate; more stringent leverage requirements), the availability of capital as infrastructure funds, the reemergence of strategic buyers in "build-to-suit" concessions and open bidding, and the pursuit of public-private partnerships and sale opportunities by ports and terminal operators. Lastly, Mr. Ralph listed several key considerations he suggested that the joint subcommittee and other public bodies take into account when reviewing public-private partnerships relating to ports.

Each joint subcommittee member commented on the past and future workings of the subcommittee. Additionally, Jerry A. Bridges, Executive Director of the Virginia Port Authority and Joseph A. Dorto, President and CEO of Virginia International Terminals, Inc., both offered statements in response to the presentations made and the discussions that took place.

The joint subcommittee plans to meet four times, as authorized under House Joint Resolution 72 (2008), in 2009.

IV. SUMMARIES OF JOINT SUBCOMMITTEE MEETINGS
E. AUGUST 12, 2009

The joint subcommittee studying public-private partnerships related to seaports in Virginia held its fifth meeting on August 12, 2009. The legislative members in attendance were Chairman Purkey, Senator J. Miller, and Delegates Cosgrove, A.T. Howell, and Massie. Messrs. Godfrey, Milliken, Moye, Padgett, Sisco and Taylor were the nonlegislative members in attendance.

Paul D. Fraim
Mayor
City of Norfolk

Mayor Fraim delivered remarks as a representative of cities that host seaports and suggested that the citizens of Norfolk have standing to be represented in discussions about the future of Virginia's seaports.

The mayor first argued that if privatization occurs, host cities should be treated fairly and equitably for costs they have incurred. He stated that because the Constitution mandates state responsibilities (prisons, schools) which do not include economic engines such as seaports, then host cities should be compensated. Moreover, Mayor Fraim expressed concerns about private port operators being granted tax-exempt status because a grant of such status would prevent host cities from collecting revenue from such private port operators.

The mayor further addressed the argument that cities benefit economically from having seaports located within their jurisdictions. Countering such argument with three points, the mayor first argued that just because a port is located in a particular city does not mean that city will reap the significant benefits of the port being located there. Second, the mayor referenced data that host cities lose more revenue because of unreimbursed municipal services given to ports (e.g., extra police, road construction, etc.). Third, the mayor stated that no one has shared why, as to date, the ports need to be privatized.

Finally, the mayor argued that the Public-Private Transportation Act was never designed to address the privatization of the Commonwealth's seaports.

Ashley S. Colvin
Project Leader
Joint Legislative Audit and Review Commission

Mr. Colvin delivered a presentation entitled "Lessons Learned from Public-Private Partnerships." His presentation centered on two issues: (1) the variation of legislative oversight of public-private partnerships and (2) lessons learned from selected public-private partnerships. First, Mr. Colvin discussed the legislative history of the Public-Private Transportation Act and the Public-Private Education Facilities and Infrastructure Act. Next, Mr. Colvin discussed the Public-Private Partnership Advisory Commission's mission, membership, and relationship with the Joint Commission on Transportation Accountability. He then explained that the vendor's experience on similar projects and understanding of the public entity's business from an operational perspective are key elements for success. In addition, Mr. Colvin commented that such a public-private "partnership may still require public role and support," including the need

for public moneys to be expended on partnership and the need by a public entity to have an "experienced staff." Furthermore, Mr. Colvin listed several factors to consider in evaluating proposals, including (1) the proposal may identify a need, but the public entity may be able to provide services without a partnership, (2) problems with a proposal's feasibility may not come to light until completion of agreement, and (3) budget flexibility may be lost if long-term financial commitment is made to the private partner. Furthermore, he noted that there is implicit tension between the executive branch and the legislative branch over partnership projects because the executive branch is authorized to solicit, negotiate, and implement proposals, but there is no traditional role for the legislature in the approval process. As such, Mr. Colvin suggested that a role should exist for legislative financial auditing and performance evaluation including a defined role in a public-private partnership agreement for legislative auditors (JLARC and APA) to evaluate and audit the project periodically.

Pierce R. Homer
Virginia Secretary of Transportation
Office of the Secretary of Transportation

The Secretary's presentation centered on the Commonwealth's port and Public-Private Transportation Act (PPTA) priorities. The three main priorities include (1) the promotion and realization of benefits of continued economic growth; (2) the provision of surface transportation to serve community and port; and (3) the addressing of community impacts of the ports. The Secretary later stated that such priorities present the both an economic opportunity and "a transportation challenge.

Next, the Secretary discussed Virginia's public-private partnership transportation program. First, the Secretary stated the program has several components, including special taxing districts and tolling revenues. Also, the program's goals are shared goals with other components of [the] Commonwealth's transportation program and include less cost, timeliness, accountability, and private risk sharing. Second, the Secretary explained certain current requirements of the PPTA, including the requirement of private sector commitments and the rejection of unsolicited bids that do not include private risk. Third, Secretary Homer discussed and gave examples of PPTA concession payments; some examples included support[ing] other transportation projects in corridor and increasing access or mobility within the project scope. Fourth, the Secretary gave an update on the status of several PPTA construction projects, including four construction projects that have been cancelled or withdrawn since 2002, and three projects that are currently under negotiation.

Finally, Secretary Homer explained how the proposals to privatize Virginia's seaports are and will be handled under the PPTA. The Secretary also informed the subcommittee members that included in their handouts are overviews of the proposals to privatize Virginia's seaports under the PPTA and a chart comparing such proposals. He further emphasized that the independent review panel (i) will be constituted and will serve as an advisory body; (ii) will hold public meetings, receive formal public comments, discuss proposal[s] and make a recommendation to the Virginia Port Authority (VPA) and the Secretary of Transportation on whether to advance the PPTA process; and (iii) may recommend to advance all or none of the PPTA proposals to the detailed proposal phase. However, Secretary Homer stated that the VPA must take affirmative action to request a detailed proposal, and execution of a comprehensive

agreement would require successful submission of a detailed proposal and subsequent negotiation of [a] comprehensive agreement between [the] VPA and a private entity.

Dr. James V. Koch
President Emeritus and Board of Visitors Professor of Economics
Old Dominion University's College of Business and Public Administration

Dr. Koch delivered a presentation entitled "Some Issues Worth Thinking About Re: The Operation of Virginia Port Authority Terminals." Immediately below in quotations is the text of his presentation prepared for the subcommittee meeting.

"First, let me establish that I regard the privatization of port operations in Virginia as a very discussable idea. I suggested this in an opinion piece in the *Virginian-Pilot* on 24 June 2007. After all, portions of 35 ports in the U.S. are privately operated. Fifty-six percent of twenty-foot equivalent units (TEU) internationally are handled in ports with private operators. This tells us that we should look closely at proposals for privatization of port operations. But, God is in the details on matters such as this. And, the most important details in the three outstanding proposals are largely unknown to the public at large, including me. The three proposals need to be laid side by side with a fourth option---not accepting any of them and keeping the port. We need to project current arrangements forward 60 years and rigorously evaluate how valuable this would be for Virginia. If such a study already has been done, then it has not yet been made public."

Dr. Koch remarked that, "[I]et's recognize that the VPA and Virginia International Terminals enjoy good reputations and other port authorities often voice envy for Virginia's current organizational quasi-public structure, operational skill and relatively smooth labor relations. Hence, there must be observable, countable benefits that are greater than costs if we are to change things. There are some basic issues and principles that we should consider as we arrive at what would be a momentous decision with profound implications for the future."

Dr. Koch then listed the following as "possible benefits from private operation:" reduction of costs, increase in "cargo throughput speed," increase in "business volume (private operator can attract new business," stimulat[ion] of "Virginia businesses," attract[ion] of higher value cargoes," "additional investments in equipment and infrastructure," and "additional tax payments." However, Dr. Koch also noted that, "we also need to recognize that much international cargo today is not really in play. [For example, it's] 3470 miles from London to New York City, but 3743 miles from London to Norfolk. NYC always will have a locational advantage for certain types of cargo coming from Northern Europe. Private operation will not change this. New Orleans always will have certain advantage with respect to grain and Miami with respect to the Caribbean. Hampton Roads is well situated for coal shipments. Most bulk cargo traffic is unlikely to change ports in the absence of major changes in economic circumstances. TEU traffic is different, though my guess is that perhaps only one-third of TEU traffic may actually be movable from one port to another without major changes in current economic circumstances (primarily costs)."

Rhetorically, Dr. Koch asked and answered, "Can a private operation/partnership..."

1. "Lower costs? Perhaps."

"In order to earn a respectable rate of return on its investment, will a private operator have to raise prices and fees? One must ask in a straightforward fashion--- precisely how will the private operator make money on its investment? And, if it is the form of higher prices and fees, is it Virginians or non-Virginians who will pay? From the standpoint of Virginia, it should matter *who* pays."

2. "Increase[] speed/efficiency? This certainly is a possibility, but how will this occur? Smarter workers, better managers, better equipment, improved intermodal infrastructure?"

Such improvements do not happen via magic. What precise investments in workers, managers, equipment and infrastructure will the private operator make? When will these occur?"

3. "Increase[] Volume of Business? There is some evidence from other ports that certain private operators can bring some business from specific carriers with them. What have our three bidders promised?"

4. "Stimulate Virginia Business? To the extent that a private operator lowers costs, increases speed, and improves infrastructure, Virginia businesses and their customers will benefit. Employment will increase and customers will pay less for items ranging from automobiles to bananas. Tax collections will rise. However, are prices and fees going to increase over the years and, if so, how much and when?"

5. "Attract Higher Value Cargoes? The theory here is that high value cargoes spin off more jobs with higher wages. Bulk cargoes historically haven't required as much labor and probably don't qualify here. Further, once we are talking about TEUs, it's not so clear that a TEU with pricey technology items will generate more economic smoke than a TEU filled, say, with cotton socks. Regardless, can a private operator help VPA attract higher value cargoes?"

6. "Attract[] Investments in Port Equipment and Infrastructure? Most of the desirable cost and speed developments just discussed depend upon significant port investments.

How much are they? When? How long will they last? Who owns them? Do they require matches and complementary investments from the Commonwealth (e.g., in highways and bridges/tunnels)?"

Next, Dr. Koch commented that, "looming above all this is the degree of risk," and "evaluat[ed] systemic vs. non-systemic risk." Moreover, Dr. Koch stated that "[w]e've learned over the past year that the world is a much more risky place than many believed. There is *systemic* (economy-wide) risk and *non-systemic risk* (associated with a specific firm or operator) that Virginia must take into consideration. When the entire world economy goes into the ditch (this is systemic risk that we can't control), then port traffic and business are visibly diminished. [For example,] Hapag Lloyd of Germany (sixth largest container fleet in the world) is attempting to obtain an emergency \$427 m. loan to stay afloat and another \$2.0 b. in capital to ensure future survival." Dr. Koch cited "continued world-wide economic decline" and the "declining real value of the U.S. dollar" as "systemic risks we face in Virginia."

The fate of the U.S. dollar was next discussed. Dr. Koch asked, "[w]hat will happen to the value of the U.S. dollar?" and replied that "[t]he value of the U.S. dollar has been tanking. Will this be true for 60 years? That's unlikely. However, for the next few years, the value of the U.S. dollar is quite likely to suffer because of: (1) the huge deficits the U.S. Government is running that require it to borrow literally trillions of dollars; and, (2) significant increases in the

money supply." However, he suggested that "[t]he Federal Reserve will have to be very timely and very clever for this huge surge in liquidity not to result in significant price inflation in the future." Dr. Koch also cautioned that "[f]uture revenues received from a private operator may not be worth very much."

Finally, Dr. Koch addressed the "non-systemic risk (private operator risk)" by first supposing that "the Commonwealth contracts with a private operator to run its ports" and secondly, asking, "[w]hat is the chance that this firm will do one of the following?"

1. "Go broke?"
2. "Default?"
3. "Commit fraud?"
4. "Not meet performance standards?"

A few years ago, prior to the insolvencies of firms such as Lehman Brothers, Merrill Lynch, and AIG, we might have been inclined to say "*the chances of this are almost zero.*" We now know that these things can and do happen. Our port evaluation must take this into account. One of the ways we do this is via 'discounting.'" "Discounting is the process of taking into account the reality that money one has in hand today is worth more than money that one won't receive until, say, 10 years from today."

According to Dr. Koch, "the bottom line" is that "[t]here is a sufficiently attractive price and there are sufficiently attractive conditions that would make the privatization of port operations an attractive proposition for the VPA and Virginia. Virginia needs a rigorous assessment of the three proposals versus the unstated fourth option---keeping the ports. The degree of uncertainty and risk involved, however, are substantial for all *four* options. (Rhetorically, he asked,) Who can predict what conditions will be 40 or 60 years from today? Who among us would have predicted that last year oil prices would rise to \$147 per barrel and then fall below \$40 per barrel? "

Jo Anne Maxwell
Senior Assistant Attorney General/Section Chief for Transportation
Office of the Attorney General

Because the Public-Private Transportation Act had been discussed, in detail, by Secretary Homer, Ms. Maxwell answered questions posed by subcommittee members. First, Ms. Maxwell informed the subcommittee that a responsible public entity involved in a proposed PPTA project is responsible for paying for legal counsel/attorney fees incurred in negotiating the partnership agreement. Second, Ms. Maxwell stated that while the Office of the Attorney General (OAG) takes into account input made by the responsible public entity, the OAG is responsible for appointing outside legal counsel to represent a responsible public entity involved in a proposed PPTA project. Third, Ms. Maxwell stated that, generally, the Virginia General Assembly has no role in a PPTA project; however, she stated that when there is an outright sale of an asset, the responsible public entity must notify the General Assembly.

Next Meetings:

Chairman Purkey stated that the subcommittee will attempt to meet in September, October, and November.

IV. SUMMARIES OF JOINT SUBCOMMITTEE MEETINGS
F. SEPTEMBER 24, 2009

The joint subcommittee studying public-private partnerships related to seaports in Virginia held its sixth meeting on September 24, 2009. The legislative members in attendance were Chairman Purkey, Senators Wagner and Lucas, and Delegates Cosgrove, Joannou, and A.T. Howell. Messrs. Cofer, Godfrey, Martinez, Milliken, Moye, Padgett, and Sisco were the nonlegislative members in attendance. Kevin Old attended on behalf of Fred Whyte.

Paul D. Fraim
Mayor
City of Norfolk

Mayor Fraim thanked the subcommittee for allowing him to expand upon his remarks from the previous meeting. He focused on the topic most relevant to the City of Norfolk and the other port host cities: the proposed tax exemption of privately operated port operations. He stated that Norfolk is proud to be the home to the Port of Virginia's largest and busiest facility, Norfolk International Terminals. For more than 300 years, international trade has defined the city. Mayor Fraim explained that the Port of Virginia has been developed and nurtured by Virginians for generations and that we owe it to those generations and to our future generations to be good stewards of the Port.

Mayor Fraim mentioned the recent Virginia Port Authority (VPA), Virginia International Terminals (VIT), and APM Terminals discussions that have been ongoing since December 2008 under a Federal Maritime Commission Discussion Agreement. Although he has been assured that these discussions are not part of the overall Public Private Transportation Act (PPTA) process or the bid review currently underway, he thinks such a development gives greater reason for pause and careful examination. Whatever the outcome, the long-range interests of the Commonwealth and the Port must be kept in view, regardless of how attractive short-term proposals may be.

Next, Mayor Fraim mentioned the three proposals submitted by CenterPoint, Carrix and the Carlyle Group. As he understands it, the Virginia Port Authority would remain an asset of the Commonwealth and continue to be exempted from real property, leasehold, and business property taxation under the provisions set forth in the Virginia Code. However, each of the three proposers has structured its proposal to capitalize and enjoy VPA's tax-exempt status. This would be precedent-setting and contrary to prior experience. As discussed with the subcommittee during the last meeting, when the U.S. Navy leases base property to a McDonald's restaurant, in Virginia, this becomes a taxable event and local taxes are collected on the value of the McDonald's lease in the form of a lease-hold tax. Local business taxes are also collected such as meals tax, machinery and tools tax - even though it is situated on land that is owned by the federal government. Just as an example, the City of Norfolk collected \$1.6 million in calendar year 08 in business related taxes from private businesses operating on Norfolk Naval Base. A private port operator, proposing to lease state-owned property and conduct business as a private entity, should be treated no differently.

Mayor Fraim then mentioned the 1999 Joint Legislative Audit and Review Commission's report titled Review of the Impact of State-Owned Ports and Local Governments (<http://jlarc.virginia.gov/reports/Rpt241.pdf>). According to the report, port host cities in Virginia

have a disproportionate cost to share compared against the actual economic benefits received. In fact, under the current structure, the Port actually costs host communities more than they are compensated for in terms of lost tax revenue, additional police, fire, and rescue services, added street maintenance and transportation infrastructure impacts on communities, not counting the truck traffic congestion, noise and pollution that affect citizens' quality of life on a daily basis. As a result of the JLARC Study findings, the 2000 Virginia General Assembly amended the Virginia Code governing the calculation of a Port Service Fee. This legislation outlined a new Payment in Lieu of Taxes (PILOT) methodology for determining what the Commonwealth and the VPA should contribute annually to VPA host localities. Unfortunately, the PILOT program has not been fully funded to date. As Mayor Fraim explained, since becoming law more than nine years ago, Norfolk has had to calculate and collect an annual Port service charge using the same inequitable formula it used prior to the 2000 PILOT legislation. This consistent underfunding and tax exemption of port operations has placed an ever increasing fiscal burden on communities that are already classified by the Commonwealth as recently as March 2009 "fiscally stressed." In FY 09, the City of Norfolk received a combined total of \$1.1 million for the city's support and provision of fire-rescue and roadway maintenance costs attributed to port operations. The service charge amount from the VPA totaled \$485,000 and Norfolk's proportional share of Port Highway Funds from the Commonwealth totaled \$610,000. In estimating the City of Norfolk's Service Charge to be received from the Virginia Port Authority, the city made a variety of assumptions based on the best publicly available information. The 2000 legislation references "Total Tonnage" as a key component of the calculation. It is clear that the City of Norfolk receives a fraction of the potential revenue under existing law, or as would be available to the city if these facilities were fully taxable.

The city understands that these are tough economic times for the region, state, and country. The Commonwealth could potentially gain a significant short-term financial benefit if it were to accept one of the three competing proposals. However such a decision requires careful evaluation of each proposal, including the adequacy of compensation for host communities. Specific to the PPTA process, representatives from the port host communities should be appointed to the PPTA Independent Review Panel, as is typically accomplished in other PPTA processes. As the three conceptual proposals are considered, either the proposers and/or the Commonwealth must identify how they would address the inadequacy of the currently employed PILOT methodology.

In closing, Mayor Fraim stated that whether the VPA operations remain a state function or ultimately are privatized, any successful model must provide equitable compensation for host jurisdictions as a primary component of its overall business plan.

Dr. Robert Martinez

Dr. Martinez began his remarks by stressing that he was speaking solely from his own perspective, not on behalf of his company, Norfolk Southern. His remarks focused on the primary questions that the Virginia Port Authority and the Secretary of Transportation should consider in their review of the proposals. Fifteen years after its passage, Virginia's PPTA remains one of the most progressive, flexible, and market-oriented pieces of legislation. Dr. Martinez believes it would be a mistake to insert the General Assembly directly into the PPTA process. The current procedures attract private capital to Virginia and allowing direct participation by the General Assembly might hinder the state's ability to attract that capital for

other infrastructure projects. He recommends that this subcommittee pull together a series of considerations that the Oversight Board should answer in its deliberations prior to making a decision on these proposals.

Dr. Martinez set out some thoughts to consider as the proposals move through the PPTA process. The VPA has done pretty well over the years. Therefore, it is a business model that works, but that does not mean you do not question it. Virginia must focus attention on its surface transportation connections to inland markets (pertains to road/highway issues and freight rail). In looking at these proposals, it is important to consider how inland transportation connections will be enhanced. Dr. Martinez commented that the timing of this process is not the best. This is perhaps the worst international maritime freight period since World War II. The markets have been in much greater turmoil than prior to last year's financial meltdown, which makes proper valuation more difficult than in normalized markets. Next, he mentioned the length of the proposed concession and stated that no one can accurately undertake a 60-year valuation. Another important consideration involves looking at the treatment of VPA and VIT debt. Dr. Martinez concluded by stating that there are many great items in the proposals (e.g., financing, operating style, or operating management) that are not necessarily related to a privatization proposal per se and that could be pursued without a public-private transportation agreement.

Dr. Wayne K. Talley
Executive Director

ODU International Maritime Ports and Logistics Management Institute

Dr. Talley presented sets of questions that should be asked in connection with the three proposals. Regarding the private operator payments: Will the payments by the private operator for the right to operate the VPA marine terminals be sent directly to the VPA or another entity? Will the private operator be required to fund VPA expenses using the current agreement for such funding by VIT? Will the private operator payments, over and above those needed to fund VPA expenses, be restricted for VPA marine terminal investments and improvements? Is VPA's Intermodal Terminal being considered for service privatization? Will the cities in which the VPA marine terminals are located receive a portion of the private operator payments? If so, will the payments to the cities be based upon the throughput activities of the terminals (higher when throughput is higher and lower when throughput is lower) or fixed amounts per year? Will the payments to the cities be restricted for funding transportation improvements that will benefit the marine terminals located in the cities?

Regarding quality of service: Will the privatization contract require that the private operator maintain a certain quality of service (i.e., in order for VPA marine terminals to stay competitive with other East Coast ports)? If so, how will the quality of service be evaluated (e.g. by the use of port performance indicators)? Which port performance indicators are to be used?

Questions related to penalties and rewards: If the quality of service of the VPA marine terminals under the private operator declines to (or rises above) a certain level, will there be a mechanism in the contract whereby the operator will be penalized (or rewarded)? If the throughputs of the VPA marine terminals fall below (or rise above) a certain level, will the private operator be penalized (or rewarded)?

Regarding bankruptcy and goals: If the private operator goes into bankruptcy and ceases to operate the VPA marine terminals, will there be a mechanism in the contract to ensure the continuing operation of the terminals? Will the private operator be required to operate the VPA

marine terminals in a way that is consistent with the goals and objectives of the VPA (e.g. promoting state employment, economic growth, and a clean marine environment)?

Regarding length of contract: Why are two potential private operators (CenterPoint and Carlyle) seeking a 60-year contract to operate the VPA marine terminals, whereas Carrix, Inc. that owns the world's seventh largest private port operator (SSA Marine) is seeking a 30-year contract?

Regarding the recent VIT/APM proposal: If an agreement is reached for VIT to lease the APM Terminal in Portsmouth, what impact will this have on the privatization contract for VPA marine terminals? Would the private operator of VPA terminals also assume the operation of the APM Terminal? If so, what impact will this have on the value of the privatization contract, since VIT's container throughput capability will have doubled if the APM deal goes through? Is there a need to privatize the VPA marine terminals if the APM deal goes through?

Regarding timing of privatization: Is this a bad time to privatize the operations of VPA terminals? Given that the volume of VIT's throughput is down due to the global recession, should the privatization of the VPA terminals be delayed until the terminals' throughput is higher and the value of the privatization contract is higher? What impact will the new International Longshoremen's Association contract in 2010 and the completion of the widening of the Panama Canal in 2015 have on the value of the privatization contract for VPA terminals?

Jerry A. Bridges
Executive Director
Virginia Port Authority

Mr. Bridges explained that the Port of Virginia is (i) an efficient port and, during its best year in 2007, handled more than 2 million TEUs making it the third busiest container port on the USEC; (ii) a very healthy operation that has the necessary infrastructure in place, or is building it, to handle a growing volume of containers; (iii) a port that continues to use its natural assets to its advantage; and (iv) a port that has historically had good labor relations with its union. All of these things stem from a long-term, forward-thinking relationship of 29 years between the Virginia Port Authority (governmental agency) and Virginia International Terminals Inc. (private operator). In the industry the VPA-VIT set-up is seen as a model owner-operator relationship. They have a close collaboration and work together on multiple fronts: infrastructure development, customer service, economic development, and advance planning. In 1982, TEUs at the Port of Virginia totaled 289,000 and grew to 2 million in 2007. The VPA terminals are run and managed by a private operator and it has been that way for 29 years. Many of the benefits that the Commonwealth has enjoyed as a result of the Port's success are the result of a continual collaborative economic development effort among VPA, VIT, the Virginia Economic Development Partnership, other state agencies and local governments. The most visible result of that effort is that one out every nine jobs in the Commonwealth is in some way tied to the marine cargo operations in Hampton Roads. It is hard to estimate what the job creation and/or impact will be as two out of the three bidders have no experience in maritime operations. Mr. Bridges stressed that job retention and creation are the result of a competitive port and that job loss only comes when the Port cannot compete with other USEC ports.

IV. SUMMARIES OF JOINT SUBCOMMITTEE MEETINGS
G. NOVEMBER 20, 2009

The joint subcommittee studying public-private partnerships related to seaports in Virginia held its seventh meeting on November 20, 2009, at Old Dominion University in Norfolk, Virginia. The legislative members in attendance were Chairman Purkey and Delegates Joannou, Massie, and A.T. Howell. Messrs. Godfrey, Martinez, Milliken, Moye, Padgett, and Taylor were the nonlegislative members in attendance.

After opening remarks, The Honorable Patrick O. Gottschalk, Virginia Secretary of Commerce and Trade, made a presentation. Secretary Gottschalk's presentation focused on the economic impact of the Port of Virginia ("Port"), its major competitors, and its strengths. He explained that the Port is a major economic engine for the state and a key factor in attracting business to Virginia and allows Virginia to be highly competitive in the global economy. For many companies, proximity to the Port has been an important contributing factor in the decision to locate or expand in Virginia. Regarding the economic impact of the Port, there are 343,000 port and port-related jobs statewide and \$41.1 billion in business revenues. The Port generates \$720.4 million in state and local tax revenue.

In terms of competition, Secretary Gottschalk explained that the Port competes primarily with the Port of New York and New Jersey, Savannah, and Charleston. Smaller competitors include Baltimore, Wilmington, and Jacksonville.

Secretary Gottschalk next looked at the Port's strengths and stated that regardless of ownership structure, these strengths must be preserved or enhanced. The Port strengths include: (1) competitive rates, (2) modern terminals, (3) historically strong relationship with the International Longshoremen's Association, (4) an outstanding track record in safety and security, (5) the capacity to expand, (6) excellent freight capacity, (7) intermodal access, (8) the deepest commercial shipping channels on the East Coast, (9) no overhead obstructions, (10) being home to the world's largest and fastest container cranes, and (11) being 18 miles from open ocean.

Following the Secretary's presentation, Joseph Dorto, President & CEO, Virginia International Terminals, Inc., made some remarks. The Heartland Corridor is expected to open in the second half of 2010. The International Longshoremen's Association's contract was extended for another three years. In addition, negotiations with APM continue. All of these developments can only make the Port more attractive to companies.

Next, Jerry Bridges, Executive Director, Virginia Port Authority, provided some brief remarks. Mr. Bridges stated that he is hearing from shippers that in the second half of 2010, the industry will be in full recovery, though volumes will not increase to the 2007 levels until 2011. Virginia is an attractive gateway.

Jo Anne Maxwell, Senior Assistant Attorney General/Section Chief for Transportation, Office of the Attorney General, also provided remarks and answered questions about the Public-Private Partnership Act.

Next Meeting:

The next meeting will be December 3, 2009, at noon at the Virginia Aquarium & Marine Science Center in Virginia Beach.

IV. SUMMARIES OF JOINT SUBCOMMITTEE MEETINGS
H. DECEMBER 3, 2009

The joint subcommittee studying public-private partnerships related to seaports in Virginia held its eighth and final meeting on December 3, 2009, at the Virginia Aquarium & Marine Science Center in Virginia Beach, Virginia. The legislative members in attendance were Chairman Purkey, Delegates Joannou, Massie, and A.T. Howell, Jr., and Senator Lucas. Messrs. Cofer, Martinez, Moye, Padgett, and Taylor were the nonlegislative members in attendance.

After an introduction by Chairman Purkey, Lynn Clements, Executive Director of the Virginia Aquarium & Marine Science Center, provided welcoming remarks to the members and audience. The joint subcommittee then heard testimony from the Carlyle Group, Carrix, Inc./Goldman Sachs, and CenterPoint Properties. The testimonies relate to the aforementioned companies' unsolicited proposals to operate Virginia's publicly operated seaports.

The first presentation was by Barry Gold, Managing Director of The Carlyle Group. Mr. Gold provided a private equity snapshot as well as an overview of The Carlyle Group. A copy of his presentation can be found at:
<http://dls.virginia.gov/GROUPS/ports/MEETINGS/120309/Carlyle.pdf>.

The next presentation was by Bob Watters, Vice-President and Director of Business Development for Carrix Inc. Mr. Watters provided an overview of Carrix and Goldman Sachs as well as a summary of their proposal. A copy of his presentation can be found at:
<http://dls.virginia.gov/GROUPS/ports/MEETINGS/120309/Carrix.pdf>.

The final presentation was by Paul Fisher, President of CenterPoint Properties. Mr. Fisher provided an overview of CenterPoint Properties and reviewed the case for a strategic partnership and CenterPoint's strategic partnership proposal. A copy of his presentation can be found at: <http://dls.virginia.gov/GROUPS/ports/MEETINGS/120309/CenterPoint.pdf>.

After the presentations, Chairman Purkey asked the members to provide final comments. He also asked that the members send written findings and recommendations to staff for inclusion in the Final Report. Chairman Purkey thanked the presenters and members for their hard work and then adjourned the meeting.

V. FINDINGS AND RECOMMENDATIONS

A. General findings and recommendations of subcommittee members:

1. The members of the joint subcommittee strongly endorse and support the Public-Private Transportation Act of 1995 (PPTA).
2. The joint subcommittee expressed, as a matter of general principle, that a transfer of ownership of the seaports should not occur without the approval of the General Assembly and the Governor. Members of the subcommittee recognize that transfer of ownership is not technically the intent of the proposals currently before the Virginia Port Authority.
3. Any legislation based on the three proposals under consideration, as of December 3, 2009, could have unintended consequences, such as:
 - Re-opening the debate over the PPTA itself, in effect, politicizing a process that has worked well. According to the joint subcommittee members, this would be particularly harmful as (1) the Commonwealth enters a period during which increased public money for transportation will not happen; (2) private markets are hesitant as it is; and (3) Virginia must compete against other states for what private money is available. Joint subcommittee members believe that it is precisely the PPTA's flexible structure and strong market basis that will ensure Virginia's ability to compete.
 - Creating a perception in the market that the Virginia Port Authority's overall flexibility is being curtailed. That is because unlike other state agencies, the Virginia Port Authority (VPA) is a market actor and its negotiating position with third parties will be impacted.
 - Creating a chilling effect on private investment in transportation in Virginia, broadly, and on future possible deals involving VPA, specifically.
4. The joint subcommittee accepted, as a factual matter, that the business relationship between the Virginia Port Authority and Virginia International Terminals, Inc. (VIT) is working well. That means that, as of its final meeting on December 3, 2009, the joint subcommittee could not identify a business imperative that would dictate changing the business relationship between the Virginia Port Authority and Virginia International Terminals, Inc.
5. The joint subcommittee members voiced confidence that the Virginia Port Authority, working through its board, is best suited to review proposals submitted to it pursuant to the PPTA, and the joint subcommittee members supported the PPTA's governance of the Virginia Port Authority's review of the proposals submitted to it. Several members of the joint subcommittee, however, stated that the review should be put on temporary hold until the Honorable Bob McDonnell, the then governor-elect, had been sworn into office and had the opportunity to make appointments to the Virginia Port Authority Board of Commissioners.

B. Recommendations and items to consider directed to Independent Review Panel (IRP) and VPA Board:

1. The joint subcommittee recommended the Independent Review Panel and VPA Board appropriately value the ports of the Commonwealth. According to the members of the joint subcommittee, there does not appear to be a clear valuation for the length of terms proposed in the proposals under consideration, as of December 3, 2009, that are attached to actual revenue streams, business outlooks, etc. Proposals to operate the seaports or engage in a public-private partnership with the Virginia Port Authority in the operation of the seaports for a period between 30 and 60 years should not be considered. In fact, evaluating the future value of the seaports is extremely difficult to almost impossible even 20 years from receipt of the proposals, especially given volatile global economic conditions in existence on December 3, 2009, and projected volatile global economic conditions.
2. The joint subcommittee accepted, for purposes of formulating recommendations and items it wished the Independent Review Panel and VPA Board to consider, that the global steamship line market for international containers is at its absolute bottom. The joint subcommittee questioned why, from a negotiating perspective, the VPA would entertain a concession when its negotiating position is at its absolute weakest unless other factors compelled it to entertain such concession; however, the joint subcommittee opined that the Virginia Port Authority is not compelled to entertain any concession.
3. The joint subcommittee opined that the proposals before the Virginia Port Authority remain unclear with respect to the treatment of bonds issued by the Authority (and backed by the full faith of the Commonwealth) and even less clear as to treatment of existing debt which is backed by VIT operating revenue bonds.
4. Several members of the joint subcommittee concluded that none of the proposals explains why or how Virginia's position would be enhanced relative to the existing VPA/VIT regime/structure in existence as of December 3, 2009. That is, none of the proposals details the justification of the return to the private parties.
5. Several members of the joint subcommittee further concluded that most of what is being proposed (as found in proposals before the Virginia Port Authority and submitted pursuant to the PPTA) could be done without extending a concession to any third party and that there are a variety of possible business arrangements.
6. Finally, several members of the joint subcommittee expressed that, quite apart from the proposals before the Virginia Port Authority and submitted pursuant to the PPTA, there is

no reason that the VPA in the future might not seek a partnering opportunity for development of Craney Island.

C. Findings and recommendations from Chairman Purkey

1. An absolute change of ownership, i.e., the selling of the physical port real estate and other port owned physical assets, of the ports should not take place.
2. Any effort to sell the ports should require the approval by the legislature as well as the governor.
3. The legislature would continue to have no role in the daily operation of the ports. (The purpose of the study was in no way associated with an attempt of legislative micro-managing.)
4. The Secretary of Transportation should not be permitted to leave office and immediately go to work for a private company involved with a proposal that was submitted while he was Secretary, to develop and/or operate any Virginia seaport under the PPTA. This prohibition should be for no more than one year.
5. Local governments of host port cities need to be informed of and involved in potential operational changes, and be advised of the potential impact on their cities.
6. The General Assembly should establish a joint subcommittee studying ports of the Commonwealth, which will, in conjunction with the House and Senate Committees on Transportation and Finance, meet bi-annually to review the operations of the ports.
7. Annually, during the regular session of the General Assembly, the Senate Committee on Finance and the House Committee on Finance should meet jointly so that representatives of the Virginia Port Authority and Virginia International Terminals, Inc. and other citizen members representing the port-oriented transportation business community could deliver to the joint committee a report of the state and condition of all important matters affecting seaports of the Commonwealth. The purpose of having such report delivered is to (i) build ongoing and closer ties between the Commonwealth's vital port industry, the General Assembly, and Virginia Port Authority and Virginia International Terminals, (ii) ascertain if potential tax legislation is needed to competitively meet tax incentives being offered by other ports, and (iii) answer questions presented to the joint subcommittee members throughout the year, e.g., how would bonds issued by the Virginia Port Authority be treated or how would existing debt be taxed if the Virginia Port Authority entered into a public-private partnership with a private entity to operate or jointly operate the seaports of the Commonwealth. The purpose of having such report delivered is not for the General Assembly to micromanage the operations of seaports of the Commonwealth.
8. Because the development of Craney Island and public ownership of the seaports are both vitally important, any proposal affecting either should be reviewed by the Attorney General and/or the Joint Legislative Audit and Review Commission.

VI. APPENDIX
A. PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995 (§ 56-556 ET SEQ.)

Title 56 - PUBLIC SERVICE COMPANIES.
Chapter 22 - Public-Private Transportation Act of 1995

§ 56-556. Title.

This chapter may be cited as the "Public-Private Transportation Act of 1995."

(1994, c. 855; 1995, c. 647.)

§ 56-557. Definitions.

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

"Affected jurisdiction" means any county, city or town in which all or a portion of a qualifying transportation facility is located and any other responsible public entity directly affected by the qualifying transportation facility.

"Asset management" means a systematic process of operating and maintaining the state system of highways by combining engineering practices and analyses with sound business practices and economic theory to achieve cost-effective outcomes.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 56-566 of this chapter.

"Concession" means any lease, license, franchise, easement, or other binding agreement transferring rights for the use or control, in whole or in part, of a qualifying transportation facility by a responsible public entity to a private entity for a definite term during which the private entity will provide transportation-related services including, but not limited to, operations and maintenance, revenue collection, toll-collection enforcement, design, construction, and other activities that enhance throughput, reduce congestion, or otherwise manage the facility in return for the right to receive all or a portion of the revenues of the qualifying transportation facility.

"Concession payment" means a payment from a private entity to a responsible public entity in connection with the development and/or operation of a qualifying transportation facility pursuant to a concession.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement, including a memorandum of understanding or binding preliminary agreement, between the private entity and the responsible public entity that provides for completion of studies and any other activities to advance the development and/or operation of a qualifying transportation facility.

"Maintenance" means that term as defined in § 33.1-23.02.

"Material default" means any default by the private entity in the performance of its duties under subsection E of § 56-565 of this chapter that jeopardizes adequate service to the public from a qualifying transportation facility and remains unremedied after the responsible public entity has provided notice to the private entity and a reasonable cure period has elapsed.

"Multimodal transportation facility" means a transportation facility consisting of multiple modes of transportation.

"Operate" or "operation" means to finance, maintain, improve, equip, modify, repair, or operate.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity or other business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city, or town and any other political subdivision of any of the foregoing, but shall not include any public service company.

"Qualifying transportation facility" means one or more transportation facilities developed and/or operated by a private entity pursuant to this chapter.

"Responsible public entity" means a public entity, including local governments and regional authorities, that has the power to develop and/or operate the qualifying transportation facility.

"Revenues" means all revenues, including, but not limited to, income, earnings, user fees, lease payments, allocations, federal, state, regional, and local appropriations or the appropriations or other funds available to any political subdivision, authority, or instrumentality thereof, bond proceeds, equity investments, and/or service payments arising out of or in connection with supporting the development and/or operation of a qualifying transportation facility, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service contract" means a contract entered into between a public entity and the private entity pursuant to § 56-561 of this chapter.

"Service payments" means payments to the private entity in connection with the development and/or operation of a qualifying transportation facility pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility; however, a commercial or retail use or enterprise not essential to the transportation of persons or goods shall not be a "transportation facility."

"User fees" mean the rates, tolls, fees, or other charges imposed by the private entity for use of all or a portion of a qualifying transportation facility pursuant to the interim or comprehensive agreement.

(1994, c. 855; 1995, c. 647; 2001, c. 286; 2002, cc. 570, 593; 2005, cc. 504, 562; 2006, c. 922.)

§ 56-558. Policy.

A. The General Assembly finds that:

1. There is a public need for timely development and/or operation of transportation facilities within the Commonwealth that address the needs identified by the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency and that such public need may not be wholly satisfied by existing methods of procurement in which qualifying transportation facilities are developed and/or operated;
2. Such public need may not be wholly satisfied by existing ways in which transportation facilities are developed and/or operated; and
3. Authorizing private entities to develop and/or operate one or more transportation facilities may result in the development and/or operation of such transportation facilities to the public in a more timely, more efficient, or less costly fashion, thereby serving the public safety and welfare.

B. An action, other than the approval of the responsible public entity under § 56-560 of this chapter, shall serve the public purpose of this chapter if such action, including undertaking a concession, facilitates the timely development and/or operation of a qualifying transportation facility.

C. It is the intent of this chapter, among other things, to encourage investment in the Commonwealth by private entities that facilitates the development and/or operation of transportation facilities. Accordingly, public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services which are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562; 2006, c. 922.)

§ 56-559. Prerequisite for operation.

Any private entity seeking authorization under this chapter to develop and/or operate a transportation facility shall first obtain approval of the responsible public entity under § 56-560. Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § 56-560 or the responsible public entity may request proposals pursuant to subsection B of § 56-560.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562.)

§ 56-560. Approval by the responsible public entity.

A. The private entity may request approval by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity in its guidelines or other instructions given, in writing, to the private entity with respect to the transportation facility or facilities that the private entity proposes to develop and/or operate as a qualifying transportation facility:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;
2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;
3. The proposed date for development and/or operation of the transportation facility or facilities along with an estimate of the life-cycle cost of the transportation facility as proposed;
4. A statement setting forth the method by which the private entity proposes to secure any property interests required for the transportation facility or facilities;
5. Information relating to the current transportation plans, if any, of each affected jurisdiction;
6. A list of all permits and approvals required for developing and/or operating improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
7. A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the private entity to accommodate such crossings;
8. A statement setting forth the private entity's general plans for developing and/or operating the transportation facility or facilities, including identification of any revenue, public or private, or proposed debt or equity investment or concession proposed by the private entity;

9. The names and addresses of the persons who may be contacted for further information concerning the request;

10. Information on how the private entity's proposal will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency; and

11. Such additional material and information as the responsible public entity may reasonably request pursuant to its guidelines or other written instructions.

B. The responsible public entity may request proposals from private entities for the development and/or operation of transportation facilities. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing, and evaluating proposals received in response to such requests.

C. The responsible public entity may grant approval of the development and/or operation of the transportation facility or facilities as a qualifying transportation facility if the responsible public entity determines that it serves the public purpose of this chapter. The responsible public entity may determine that the development and/or operation of the transportation facility or facilities as a qualifying transportation facility serves such public purpose if:

1. There is a public need for the transportation facility or facilities the private entity proposes to develop and/or operate as a qualifying transportation facility;

2. The transportation facility or facilities and the proposed interconnections with existing transportation facilities, and the private entity's plans for development and/or operation of the qualifying transportation facility or facilities, are, in the opinion of the responsible public entity, reasonable and will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency;

3. The estimated cost of developing and/or operating the transportation facility or facilities is reasonable in relation to similar facilities; and

4. The private entity's plans will result in the timely development and/or operation of the transportation facility or facilities or their more efficient operation.

In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request submitted by a private entity pursuant to subsection A, including without limitation, reasonable attorney's fees and fees for financial and other necessary advisors or consultants. The responsible public entity shall also develop guidelines that establish the process for the acceptance and review of a proposal from a private entity pursuant to

subsections A and B. Such guidelines shall establish a specific schedule for review of the proposal by the responsible public entity, a process for alteration of that schedule by the responsible public entity if it deems that changes are necessary because of the scope or complexity of proposals it receives, the process for receipt and review of competing proposals, and the type and amount of information that is necessary for adequate review of proposals in each stage of review. For qualifying transportation facilities that have approved or pending state and federal environmental clearances, secured significant right of way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying transportation facility in accordance with the purpose of this chapter, the guidelines shall provide for a prioritized documentation, review, and selection process.

E. The approval of the responsible public entity shall be subject to the private entity's entering into an interim agreement or a comprehensive agreement with the responsible public entity. For any project with an estimated construction cost of over \$50 million, the responsible public entity also shall require the private entity to pay the costs for an independent audit of any and all traffic and cost estimates associated with the private entity's proposal, as well as a review of all public costs and potential liabilities to which taxpayers could be exposed (including improvements to other transportation facilities that may be needed as a result of the proposal, failure by the private entity to reimburse the responsible public entity for services provided, and potential risk and liability in the event the private entity defaults on the comprehensive agreement or on bonds issued for the project). This independent audit shall be conducted by an independent consultant selected by the responsible public entity, and all such information from such review shall be fully disclosed.

F. In connection with its approval of the development and/or operation of the transportation facility or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for the acquisition of or the beginning of construction of or improvements to the qualifying transportation facility. The responsible public entity may extend such date from time to time.

G. The responsible public entity shall take appropriate action, as more specifically set forth in its guidelines, to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 11 of § 2.2-3705.6.

H. The responsible public entity may also apply for, execute, and/or endorse applications submitted by private entities to obtain federal credit assistance for qualifying projects developed and/or operated pursuant to this chapter.

(1994, c. 855; 1995, c. 647; 2003, c. 289; 2005, cc. 504, 562; 2006, c. 922; 2008, c. 296.)

§ 56-561. Service contracts.

In addition to any authority otherwise conferred by law, any public entity may contract with a private entity for transportation services to be provided by a qualifying transportation facility in exchange for such service payments and other consideration as such public entity may deem appropriate.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562.)

§ 56-562.

Repealed by Acts 1995, c. 647.

§ 56-563. Affected jurisdictions.

A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § 56-560 shall notify each affected jurisdiction by furnishing a copy of its request or proposal to each affected jurisdiction.

B. Each affected jurisdiction that is not a responsible public entity for the respective qualifying transportation facility shall, within 60 days after receiving a request for comments from the responsible public entity, submit any comments it may have in writing on the proposed qualifying transportation facility to the responsible public entity and indicating whether the facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency.

C. Any qualifying transportation facility, title or easement to which is held by the Commonwealth or an agency or authority therefor and the rights to develop or operate which have been granted to the private entity through a concession as defined in § 56-557, shall be subject to the provisions of Title 15.2 in the same manner as a facility of the Commonwealth, *mutatis mutandis*, except that such private entity shall comply with the provisions of subsections B and C of § 15.2-2202 as they relate to the affected jurisdiction's comprehensive plan.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562; 2006, c. 922.)

§ 56-564. Dedication of public property.

Any public entity may dedicate any property interest that it has for public use as a qualified transportation facility if it finds that so doing will serve the public purpose of this chapter. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law governing such conveyances, to the private entity, subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the private entity to develop and/or operate the qualifying transportation facility. The property interests that the public entity may convey to the private entity in connection with a dedication under this section may include licenses, franchises, easements, concessions, or any other right or interest the public entity deems appropriate. Such property interest including, but not limited to,

a leasehold interest in and/or rights to use real property constituting a qualifying transportation facility shall be considered property indirectly owned by a government if described in § 58.1-3606.1.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562; 2006, c. 922.)

§ 56-565. Powers and duties of the private entity.

A. The private entity shall have all power allowed by law generally to a private entity having the same form of organization as the private entity and shall have the power to develop and/or operate the qualifying transportation facility and impose user fees and/or enter into service contracts in connection with the use thereof. However, no tolls or user fees may be imposed by the private entity on any existing rural Interstate highway without the prior approval of the General Assembly if the affected Interstate System component is Interstate Route 81.

B. The private entity may own, lease or acquire any other right to use or develop and/or operate the qualifying transportation facility.

C. Subject to applicable permit requirements, the private entity shall have the authority to cross any canal or navigable watercourse so long as the crossing does not unreasonably interfere with then current navigation and use of the waterway.

D. In operating the qualifying transportation facility, the private entity may:

1. Make classifications according to reasonable categories for assessment of user fees; and
2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to a similar transportation facility.

E. The private entity shall:

1. Develop and/or operate the qualifying transportation facility in a manner that meets the standards of the responsible public entity for transportation facilities operated and maintained by such responsible public entity, all in accordance with the provisions of the interim agreement or the comprehensive agreement;
2. Keep the qualifying transportation facility open for use by the members of the public in accordance with the terms and conditions of the interim or comprehensive agreement after its initial opening upon payment of the applicable user fees, and/or service payments; provided that the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance procedures;
3. Maintain, or provide by contract for the maintenance of, the qualifying transportation facility;

4. Cooperate with the responsible public entity in establishing any interconnection with the qualifying transportation facility requested by the responsible public entity; and

5. Comply with the provisions of the interim or comprehensive agreement and any service contract.

(1994, c. 855; 1995, c. 647; 2002, c. 593; 2005, cc. 504, 562; 2008, cc. 602, 838.)

§ 56-566. Comprehensive agreement.

A. Prior to developing and/or operating the qualifying transportation facility, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall, as appropriate, provide for:

1. Delivery of performance and payment bonds in connection with the development and/or operation of the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity;

2. Review of plans for the development and/or operation of the qualifying transportation facility by the responsible public entity and approval by the responsible public entity if the plans conform to standards acceptable to the responsible public entity;

3. Inspection of construction of or improvements to the qualifying transportation facility by the responsible public entity to ensure that they conform to the standards acceptable to the responsible public entity;

4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage) or self-insurance, each in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;

5. Monitoring of the maintenance practices of the private entity by the responsible public entity and the taking of such actions as the responsible public entity finds appropriate to ensure that the qualifying transportation facility is properly maintained;

6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;

7. Filing of appropriate financial statements in a form acceptable to the responsible public entity on a periodic basis;

8. Compensation to the private entity which may include a reasonable development fee, a reasonable maximum rate of return on investment, and/or reimbursement of development expenses in the event of termination for convenience by the responsible public entity as agreed upon between the responsible public entity and the private entity;

9. The date of termination of the private entity's authority and duties under this chapter and dedication to the appropriate public entity; and

10. Guaranteed cost and completion guarantees related to the development and/or operation of the qualified transportation facility and payment of damages for failure to meet the completion guarantee.

B. The comprehensive agreement shall provide for such user fees as may be established from time to time by agreement of the parties. Any user fees shall be set at a level that takes into account any lease payments, service payments, and compensation to the private entity or as specified in the comprehensive agreement. A copy of any service contract shall be filed with the responsible public entity. A schedule of the current user fees shall be made available by the private entity to any member of the public on request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions except as required by agreement between the parties to preserve capacity and prevent congestion on the qualifying transportation facility. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees provided for therein comply with this chapter. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans for the development and/or operation of the qualifying transportation facility from time to time from amounts received from the federal government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the private entity under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the private entity and the persons specified therein as providing financing for the qualifying transportation facility. The comprehensive agreement may contain such other lawful terms and conditions to which the private entity and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds for the development and/or operation of one or more qualifying transportation facilities.

E. The comprehensive agreement shall provide for the distribution of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement. Without limitation, excess earnings may be distributed to the Commonwealth's Transportation Trust Fund, to the responsible public entity, or to the private entity for debt reduction or they may be shared with appropriate public entities. Any payments under a concession arrangement for which the Commonwealth is the responsible public entity shall be paid into the Transportation Trust Fund.

F. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

G. Notwithstanding any contrary provision of this chapter, a responsible public entity may enter into a comprehensive agreement with multiple private entities if the responsible public entity determines in writing that it is in the public interest to do so.

H. The comprehensive agreement may provide for the development and/or operation of phases or segments of the qualifying transportation facility.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562; 2006, c. 922.)

§ 56-566.1. Interim agreement.

A. Prior to or in connection with the negotiation of the comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development and/or operation of the facility or facilities. Such interim agreement may (i) permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying transportation facility, including project planning and development, advance right-of-way acquisition, design and engineering, environmental analysis and mitigation, survey, conducting transportation and revenue studies, and ascertaining the availability of financing for the proposed facility or facilities; (ii) establish the process and timing of the negotiation of the comprehensive agreement; and (iii) contain any other provisions related to any aspect of the development and/or operation of a qualifying transportation facility that the parties may deem appropriate.

B. Notwithstanding anything to the contrary in this chapter, a responsible public entity may enter in to an interim agreement with multiple private entities if the responsible public entity determines in writing that it is in the public interest to do so.

(2005, cc. 504, 562.)

§ 56-566.2. Multiple public entities.

A. If a private entity submits a proposal pursuant to subsection A of § 56-560 to develop and/or operate a qualifying transportation facility or a multimodal transportation facility that may require approval by more than one public entity, representatives of each of the affected public entities shall, prior to acceptance of such proposal, convene and determine which public entity shall serve as the coordinating responsible public entity. Such determination shall occur within 60 days of the receipt of a proposal by the respective public entities.

B. If public entities request proposals from private entities for the development and/or operation of a qualifying transportation facility or a multimodal transportation facility pursuant to subsection B of § 56-560, the determination of which public entity shall serve as the coordinating responsible public entity shall be made prior to any request for proposals.

C. Once a determination has been made in accordance with subsections A or B, the coordinating responsible public entity and the private entity shall proceed in accordance with this chapter.

(2005, cc. 504, 562.)

§ 56-567. Federal, state and local assistance.

A. The responsible public entity may take any action to obtain federal, state or local assistance for a qualifying transportation facility that serves the public purpose of this chapter and may enter into any contracts required to receive such federal assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying transportation facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state or federal government or any agency or instrumentality thereof.

B. The responsible public entity may agree to make grants or loans for the development and/or operation of the qualifying transportation facility from time to time from amounts received from the federal, state, or local government, or any agency or instrumentality thereof.

C. Nothing in this chapter or in an interim or comprehensive agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the Commonwealth or the affected jurisdictions.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562.)

§ 56-567.1. Financing.

Any financing of a qualifying transportation facility may be in such amounts and upon such terms and conditions as may be determined by the parties to the interim or comprehensive agreement. Without limiting the generality of the foregoing, the private entity and the responsible public entity may propose to utilize any and all revenues that may be available to them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations, enter into leases, concessions, and grant and loan agreements, access any designated transportation trust funds, borrow or accept grants from any state infrastructure bank and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

(2005, cc. 504, 562; 2006, c. 922.)

§ 56-568. Material default; remedies.

A. Upon the occurrence and during the continuation of material default, the responsible public entity may exercise any or all of the following remedies:

1. The responsible public entity may elect to take over the transportation facility or facilities and in such case it shall succeed to all of the right, title and interest in such transportation facility or

facilities, subject to any liens on revenues previously granted by the private entity to any person providing financing therefor.

2. The responsible public entity may terminate the interim or comprehensive agreement and exercise any other rights and remedies which may be available to it at law or in equity.

3. The responsible public entity may make or cause to be made any appropriate claims under the performance and/or payment bonds required by § 56-566.

B. In the event the responsible public entity elects to take over a qualifying transportation facility pursuant to subsection A, the responsible public entity may develop and/or operate the transportation facility, impose user fees for the use thereof and comply with any service contracts as if it were the private entity. Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including the maintenance of reserves and such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the transportation facility or facilities, including compensation to the responsible public entity for its services in operating and maintaining the qualifying transportation facility. Remaining revenues, if any, after all payments for operation and maintenance of the transportation facility or facilities, and to, or for the benefit of, secured parties, have been made, shall be paid to the private entity, subject to the negotiated maximum rate of return. The right to receive such payment, if any, shall be considered just compensation for the transportation facility or facilities. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the private entity by the election to take over the qualifying transportation facility. Assumption of operation of the qualifying transportation facility shall not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562.)

§ 56-569. Condemnation.

A. At the request of the private entity, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the private entity.

B. Except as provided in subsection A, until the Commission, after notice to the private entity and the secured parties, as may appear in the private entity's records, and an opportunity for hearing, has entered a final declaratory judgment that a material default has occurred and is continuing, the power of condemnation may not be exercised against a qualifying transportation facility.

C. After the entry of such final order by the Commission, any responsible public entity having the power of condemnation under state law may exercise such power of condemnation in lieu of, or at any time after taking over the transportation facility pursuant to subdivision A 1 of § 56-568, to acquire the qualifying transportation facility or facilities. Nothing in this chapter shall be construed to limit the exercise of the power of condemnation by any responsible public entity against a qualifying transportation facility after the entry by the Commission of a final declaratory judgment order pursuant to subsection B. Any person that has provided financing for the qualifying transportation facility and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562.)

§ 56-570. Utility crossings.

The private entity and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying transportation facility or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of or improvements to the qualifying transportation facility, which shall be construed to include construction of or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Should the private entity and any such public service company, public utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the private entity. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the private entity or any other person contractually responsible therefor under the interim or comprehensive agreement or under any other contract, license or permit. The Commission shall make a determination within 90 days of notification by the private entity that the qualifying transportation facility will cross utilities subject to the Commission's jurisdiction.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562.)

§ 56-571. Police powers; violations of law.

A. All police officers of the Commonwealth and of each affected local jurisdiction, shall have the same powers and jurisdiction within the limits of such qualifying transportation facility as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying transportation facility at any time for the purpose of exercising such powers and jurisdiction. This authority does not extend to the private offices, buildings, garages, and other

improvements of the private entity to any greater degree than the police power extends to any other private buildings and improvements.

B. To the extent the transportation facility is a road, bridge, tunnel, overpass, or similar transportation facility for motor vehicles, the traffic and motor vehicle laws of the Commonwealth or, if applicable, any local jurisdiction shall be the same as those applying to conduct on similar transportation facilities in the Commonwealth or such local jurisdiction. Punishment for offenses shall be as prescribed by law for conduct occurring on similar transportation facilities in the Commonwealth or such local jurisdiction.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562.)

§ 56-572. Dedication of assets.

The responsible public entity shall terminate the private entity's authority and duties under this chapter on the date set forth in the interim or comprehensive agreement. Upon termination, the authority and duties of the private entity under this chapter shall cease, and the qualifying transportation facility shall be dedicated to the responsible public entity or, if the qualifying transportation facility was initially dedicated by an affected jurisdiction, to such affected local jurisdiction for public use.

(1994, c. 855; 1995, c. 647; 2005, cc. 504, 562.)

§ 56-573. Sovereign immunity.

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying transportation facility or its operation, including but not limited to interconnection of the qualifying transportation facility with any other transportation facility. Counties, cities and towns in which a qualifying transportation facility is located shall possess sovereign immunity with respect to its construction and operation.

(1994, c. 855; 1995, c. 647.)

§ 56-573.1. Procurement.

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to this chapter; however, a responsible public entity may enter into an interim or a comprehensive agreement only in accordance with guidelines adopted by it as follows:

1. A responsible public entity may enter into an interim or a comprehensive agreement in accordance with guidelines adopted by it that are consistent with procurement through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310.

2. A responsible public entity may enter into an interim or a comprehensive agreement in accordance with guidelines adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such responsible public entity shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying transportation facility; (ii) the general reputation, qualifications, industry experience, and financial capacity of the private entity; (iii) the proposed design, operation, and feasibility of the qualifying transportation facility; (iv) the eligibility of the facility for priority selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and public entity comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; (ix) the safety record of the private entity; (x) the ability of the facility to address the needs identified in the appropriate state, regional or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency; and (xi) other criteria that the responsible public entity deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity, or urgency of a project; (ii) risk sharing including guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the Secretary of Transportation shall be required as more specifically set forth in the guidelines before the comprehensive agreement is signed.

3. Interim or comprehensive agreements for maintenance or asset management services for a transportation facility that is a highway, bridge, tunnel, or overpass, and any amendment or change order thereto that increases the highway lane-miles receiving services under such an agreement, shall be procured in accordance with guidelines that are consistent with procurement through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310. Furthermore, such contracts shall be of a size and scope to encourage maximum competition and participation by agency prequalified contractors and otherwise qualified contractors.

4. The provisions of subdivision 3 shall not apply to maintenance or asset management services agreed to as part of the initial provisions of any interim or comprehensive agreement entered into for the original construction, reconstruction, or improvement of any highway pursuant to Chapter 22 (§ 56-556 et seq.) of Title 56 and shall not apply to any concession that, at a minimum, provides for (i) the construction, reconstruction, or improvement of any transportation facility or (ii) the operation and maintenance of any transportation facility with existing toll facilities.

5. Nothing in this section shall require that professional services be procured by any method other than competitive negotiation in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

(1995, c. 647; 2002, cc. 570, 593; 2003, c. 968; 2005, cc. 504, 562; 2006, cc. 922, 936.)

§ 56-573.1:1. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § 56-560 to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, departments, and institutions, posting shall be on the Department of General Service's web-based electronic procurement program commonly known as "eVA;" and

2. For responsible public entities that are local public bodies, posting shall be on the responsible public entity's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the local responsible public entity.

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public comment on the proposals. The public comment period required by this subsection may include a public hearing in the sole discretion of the responsible public entity. After the end of the public comment period, no additional posting shall be required.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by a responsible public entity, the responsible public entity shall present the major business points of the interim or comprehensive agreement, including the use of any public funds, to its oversight board at a regularly scheduled meeting of the board that is open to the public.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, in

accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

(2006, c. 936; 2006, Sp. Sess. I, c. 1; 2007, c. 374.)

§ 56-573.2. Jurisdiction.

The Commission shall have exclusive jurisdiction to adjudicate all matters specifically committed to its jurisdiction by this chapter.

(1995, c. 647.)

§ 56-574. Preservation of the Virginia Highway Corporation Act of 1988.

Nothing in this chapter shall be construed to repeal or change in any manner the Virginia Highway Corporation Act of 1988, as amended (§ 56-535 et seq.). Nothing in the Virginia Highway Corporation Act of 1988, as amended, shall apply to qualifying transportation facilities undertaken pursuant to the authority of this chapter.

(1994, c. 855; 1995, c. 647.)

§ 56-575.

Not set out. (1994, c. 855.)

VI. APPENDIX
B. VIRGINIA PORT AUTHORITY (§ 62.1-128 ET SEQ.)

Title 62.1 - WATERS OF THE STATE, PORTS AND HARBORS.
Chapter 10 - Virginia Port Authority

§ 62.1-128. Authority created.

The Virginia Port Authority, hereinafter referred to as the Authority, is created as a body corporate and as a political subdivision of the Commonwealth. The Authority is hereby constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the Authority of the powers conferred by this chapter shall be deemed and held to be the performance of an essential governmental function of the Commonwealth.

(Code 1950, § 62-106.1; 1952, c. 61; 1954, c. 667; 1958, c. 174; 1968, c. 659; 1970, c. 171; 1981, c. 589; 1997, c. 232.)

§ 62.1-129. Board of Commissioners; members and officers; Executive Director; agents and employees.

All powers, rights and duties conferred by this chapter, or other provisions of law, upon the Authority shall be exercised by the Board of Commissioners of the Virginia Port Authority, hereinafter referred to as Board or Board of Commissioners. The Board shall consist of the State Treasurer and eleven members appointed by the Governor, subject to confirmation by the General Assembly, who shall serve at the pleasure of the Governor. The terms of members of the Board of Commissioners appointed or reappointed by the Governor on or after January 1, 1981, shall be for five years. Any appointment to fill a vacancy shall be for the unexpired term. Members of the Board shall receive their expenses and shall be compensated at the rate provided in § 2.2-2813 for each day spent on business of the Board. No member appointed by the Governor shall be eligible to serve more than two successive terms. A person heretofore or hereafter appointed to fill a vacancy may be appointed to serve two additional terms. Beginning with those members of the Board of Commissioners appointed or reappointed by the Governor on or after January 1, 1981: (i) appointments shall be made by the Governor in such a manner as to ensure the widest possible geographical representation of all parts of the Commonwealth, and (ii) no resident of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, or Virginia Beach shall be eligible for appointment or reappointment to the Board of Commissioners if his appointment or reappointment would increase or maintain the number of members of the Board of Commissioners residing in such cities above the number of three. One of the members appointed or reappointed from the cities previously mentioned in this section shall be a resident of the City of Portsmouth or the City of Chesapeake, one of the members appointed or reappointed shall be a resident of the City of Norfolk or the City of Virginia Beach, and one of the members appointed or reappointed shall be a resident of the City of Newport News or the City of Hampton.

The Board shall elect from its membership a chairman and vice-chairman and may also elect from its membership, or appoint from its staff, a secretary and treasurer and prescribe their powers and duties.

The Board of Commissioners shall appoint the chief executive officer of the Authority, who shall not be a member of the Board, who shall be known as the Executive Director and who shall serve at the pleasure of the Board. The Executive Director's compensation from the Commonwealth shall be fixed by the Board in accordance with law. This compensation shall be established at a level which will enable the Authority to attract and retain a capable Executive Director.

The Board may also appoint from the staff an assistant secretary and an assistant treasurer, who shall, in addition to other duties, discharge such functions of the secretary and treasurer, respectively, as may be directed by the Board.

(Code 1950, § 62-106.2; 1952, c. 61; 1954, c. 667; 1956, c. 207; 1958, c. 174; 1968, c. 659; 1970, c. 171; 1978, c. 655; 1980, c. 728; 1981, c. 589; 1983, cc. 218, 298, 338; 1987, c. 688.)

§ 62.1-129.1. Employees; employment; personnel rules; health insurance; retirement plans.

A. Employees of the Authority shall be employed on such terms and conditions as established by the Authority. The Board of Commissioners of the Authority shall develop and adopt personnel rules, policies, and procedures to give its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination because of race, religion, color, sex, or national origin.

B. The Authority shall issue a written notice to its employees regarding the Authority's status. The date upon which such written notice is issued shall be referred to herein as the "option date." Each employee may, by written request made within 180 days of the option date, elect not to become employed by the Authority. Any employee of the Virginia Port Authority who: (i) elects not to become employed by the Authority and who is not reemployed by any other department, institution, board, commission or agency of the Commonwealth; (ii) is not offered the opportunity to remain employed by the Authority; or (iii) is not offered a position with the Authority for which the employee is qualified or is offered a position that requires relocation or a reduction in salary, shall be eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.2-3200 et seq.). Any employee who accepts employment with the Authority shall not be considered to be involuntarily separated from state employment and shall not be eligible for the severance benefits conferred by the Workforce Transition Act.

C. Any employee of the Authority who is a member of any plan providing health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2, shall continue to be a member of such health insurance plan under the same terms and conditions. Notwithstanding subsection A of § 2.2-2818, the costs of providing health insurance coverage to such employees who elect to continue to be members of the state employees' health insurance plan shall be paid by the Authority. Alternatively, an employee may elect to become a member of any health insurance plan established by the Authority. The Authority is authorized to: (i) establish a health insurance

plan for the benefit of its employees and (ii) enter into agreements with the Department of Human Resource Management providing for the coverage of its employees under the state employees' health insurance plan, provided that such agreement requires the Authority to pay the costs of providing health insurance coverage under such plan.

D. Any retired employee of the Authority shall be eligible to receive the health insurance credit set forth in § 51.1-1400 provided the retired employee meets the eligibility criteria set forth in that section.

E. Any Authority employee who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1, shall continue to be a member of the Virginia Retirement System or other authorized retirement plan under the same terms and conditions. Alternatively, such employee may elect to become a member of the retirement program established by the Authority for the benefit of its employees pursuant to § 51.1-126.4. The following rules shall apply:

1. The Authority shall collect and pay all employee and employer contributions to the Virginia Retirement System or other such authorized retirement plan for retirement and group life insurance in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 for any employee who elects to remain a member of the Virginia Retirement System or other such authorized retirement plan.

2. Employees who elect to become members of the alternative retirement plan established by the Authority pursuant to § 51.1-126.4 shall be given full credit for their creditable service as defined in § 51.1-124.3, and vesting and benefit accrual under the retirement plan. For any such employee, employment with the Authority shall be treated as employment with any nonparticipating employer for purposes of the Virginia Retirement System or other retirement plan authorized pursuant to Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1.

3. For employees who elect to become members of the alternative retirement plan established by the Authority, the Virginia Retirement System or other such authorized plan shall transfer to the alternative retirement plan established by the Authority, assets equal to the actuarially determined present value of the accrued basic benefits as of the transfer date. For purposes hereof, the "basic benefits" means the benefits accrued under the Virginia Retirement System or other such authorized retirement plan based on creditable service and average final compensation as defined in § 51.1-124.3. The actuarial present value shall be determined by using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System or other such authorized retirement plan so that the transfer of assets to the alternative retirement plan established by the Authority will have no effect on the funded status and financial stability of the Virginia Retirement System or other such authorized retirement plan. The Authority shall reimburse the Virginia Retirement System for the cost of actuarial services necessary to determine the present value of the accrued basic benefit of employees who transfer to an Authority retirement plan.

4. The Authority may provide that employees of the Authority who are eligible to participate in the deferred compensation plan sponsored by the Authority shall be enrolled automatically in

such plan, unless such employee elects, in a manner prescribed by the Board, not to participate. The amount of the deferral under the automatic enrollment and the group of employees to which the automatic enrollment shall apply shall be set by the Board; provided however, that such employees are provided the opportunity to increase or decrease the amount of the deferral in accordance with the Internal Revenue Code of 1986, as amended.

(1997, c. 232; 2000, cc. 66, 657; 2008, cc. 325, 621.)

§ 62.1-129.2. Trust for postemployment benefits authorized; administration.

A. The Authority is hereby authorized to establish and maintain a trust or equivalent arrangement for the purpose of accumulating and investing assets to fund postemployment benefits other than pensions, as defined herein. Such trust or equivalent arrangement shall be irrevocable; the assets of such trust or similar arrangement shall be dedicated to providing benefits to retirees and their beneficiaries in accordance with the terms of the plan or programs providing postemployment benefits other than pensions; and the assets of such trust or equivalent arrangement shall be exempt from taxation and execution, attachment, garnishment or any other process against the Authority or a retiree or beneficiary. The funds of the trust or similar arrangement shall be deemed separate, and independent trust funds shall be segregated from all other funds of the Authority, and shall be invested and administered solely in the interests of the active or former employees (and their dependents or beneficiaries) entitled to postemployment benefits other than pensions covered by the Fund.

B. The Authority may make appropriations to any such trust or equivalent arrangement, and the Authority may require active and former employees covered by a postemployment benefit program to contribute to the trust or equivalent arrangement through payments or deductions from their wages, salaries, or pensions.

C. Nothing in this section shall be construed to inhibit the Authority's right to revise or discontinue its plans or programs providing such postemployment benefits other than pensions for its active and former officers and employees as it may deem necessary. If all plans or programs providing such postemployment benefits other than pensions for which the trust or equivalent arrangement is established are repealed or terminated by the Authority, then there shall be no continuing responsibility for the Authority to continue to make appropriations to such trust or equivalent arrangement, and the assets of such trust or equivalent arrangement shall be used to provide any benefits continuing to be due to active or former employees (and their dependents or beneficiaries) under such plans or programs. If there are no active or former employees (or dependents or beneficiaries) due a benefit under any plan or program providing such postemployment benefits other than pensions for which the trust or equivalent arrangement was established, then any remaining assets may revert to the Authority.

D. Postemployment benefits other than pensions shall be defined by the Authority pursuant to applicable accounting standards and law. Such benefits may include, but are not limited to, medical, prescription drug, dental, vision, hearing, life or accident insurance (not provided through a pension plan), long-term care benefits, long-term disability benefits (not covered under a pension plan) provided to individuals who have terminated their service and to the dependents

of such individuals, and may be provided by purchasing insurance, by a program of self-insurance, or by a combination of both. However, postemployment benefits other than pensions shall not include defined benefit pension plans for retirees and eligible dependents of retirees, termination benefits or other pension benefits. Such postemployment benefits other than pensions may be provided to the officers and employees or to their dependents, estates, or designated beneficiaries. Any benefits arising from any postemployment benefits other than pension programs shall be clearly defined and strictly construed.

E. Notwithstanding any other provision of law, the moneys and other property comprising the trust or equivalent arrangement established hereunder and the moneys or other properties comprising the retirement program established pursuant to § 51.1-126.4 shall be invested, reinvested and managed by the Authority or the trust company or bank having powers of a trust company within or without the Commonwealth who is selected by the Board to act as a trustee for the fund, with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with the same aims. Such investments shall be diversified so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. Such investments shall not be limited by Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2.

(2008, cc. 597, 622.)

§ 62.1-130. Powers and duties of Executive Director.

The Executive Director shall employ or retain such other agents or employees subordinate to the Executive Director as may be necessary, subject to the Board's approval. The Executive Director shall also exercise such of the powers and duties relating to ports conferred upon the Board as may be delegated to him by the Board, including powers and duties involving the exercise of discretion. The Executive Director shall also exercise and perform such other powers and duties as may be lawfully delegated to him, and such powers and duties as may be conferred or imposed upon him by law.

(Code 1950, § 62-106.3; 1952, c. 61; 1954, c. 667; 1968, c. 659; 1981, c. 589.)

§ 62.1-131. Office and branch offices; title to property.

The Authority shall, in the Hampton Roads Area, have and maintain its principal office, at which all of its records shall be kept, and from which its business shall be transacted. It may, if necessary, establish a branch office or offices within or without the Commonwealth or the United States. The title to all property of every kind belonging to the former Hampton Roads Port Commission or the former State Port Authority of Virginia or the former Division of Ports Department of Conservation and Development, shall be vested in the Commonwealth of Virginia for the Virginia Port Authority.

(Code 1950, § 62-106.4; 1952, c. 61; 1958, c. 174; 1968, c. 659; 1970, c. 171; 1981, c. 589.)

§ 62.1-132. Local authorities subordinate to Authority.

Any conflict between any authority granted to the several port cities and towns or other entities of this Commonwealth, or the exercise of that authority, and the exercise of the authority granted to the Board of Commissioners under this chapter shall be resolved in favor of the exercise of such authority by the Board of Commissioners.

(Code 1950, § 62-106.6; 1952, c. 61; 1968, c. 659; 1970, c. 171; 1981, c. 589.)

§ 62.1-132.1. General powers.

The Authority is vested with the powers of a body corporate, including, without limitation, to:

1. Sue and be sued;
2. Make contracts;
3. Adopt and use a common seal, and alter such seal at its pleasure;
4. Procure insurance, participate in insurance plans, and provide self-insurance. The purchase of insurance, participation in an insurance plan, or the creation of a self-insurance plan by the Authority shall not be deemed a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors, employees, or agents are otherwise entitled; and
5. Develop policies and procedures generally applicable to the procurement of goods, services and construction based on competitive principles.

(1981, c. 589; 1997, c. 232.)

§ 62.1-132.2. Bylaws and organization.

The Authority shall have the power to adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed. Such bylaws, rules, and regulations may provide for such committees and their functions as the Authority may deem necessary or expedient.

(1981, c. 589.)

§ 62.1-132.3. Stimulation of commerce.

It shall be the duty of the Authority, on behalf of the Commonwealth, to foster and stimulate the commerce of the ports of the Commonwealth, to promote the shipment of goods and cargoes through the ports, to seek to secure necessary improvements of navigable tidal waters within the Commonwealth, and in general to perform any act or function which may be useful in

developing, improving, or increasing the commerce, both foreign and domestic, of the ports of the Commonwealth.

(1981, c. 589.)

§ 62.1-132.4. Rates and rate structures.

The Authority shall have power to establish a traffic bureau or other office to investigate and seek improvement in any rates, rate structures, practices, and charges affecting or tending to affect the commerce of the ports of the Commonwealth. Notwithstanding any provision of law to the contrary, the Authority shall not disclose proprietary information and data furnished to it in confidence, including but not limited to ship tally sheets, ship manifests, information relating to tonnages and cargoes, information, and annual budgets furnished to it by any entity, including but not limited to any entity operating a terminal on behalf of the Virginia Port Authority.

(1981, c. 589; 1997, c. 197.)

§ 62.1-132.5. Planning.

The Authority shall initiate and further plans for the development of the ports of the Commonwealth, and, to this end, shall keep informed as to the present requirements and likely future needs of those ports.

(1981, c. 589.)

§ 62.1-132.6. Powers not restrictive; exemptions from Public Procurement Act and the Virginia Personnel Act.

A. The Authority shall have the power to perform any act or carry out any function not inconsistent with state law, whether included in the provisions of this chapter, which may be, or tend to be, useful in carrying out the provisions of this chapter. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any of its powers in accordance with this chapter, provided the Authority implement, by policy or regulation adopted by the Board of Commissioners and approved by the Department of General Services, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

B. The provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 shall not apply to the Authority.

(1981, c. 589; 1997, cc. 232, 488.)

§ 62.1-132.7. Employment of personnel and legal counsel.

A. The Authority may appoint, employ, dismiss, and fix and pay compensation to employees, officers, agents, advisers, and consultants, including financial and technical advisers, engineers, and public accountants within and without the Commonwealth and the United States without regard to whether such employees are citizens of the United States. The Authority shall determine the duties and compensation of its employees, officers, agents, advisers, and consultants without the approval of any other agency or instrumentality.

B. The authority may retain legal counsel, subject to the approval of the Attorney General, to represent the Authority in rate cases and all other hearings, controversies, or matters involving the interests of the Authority.

(1981, c. 589; 1997, c. 232.)

§ 62.1-132.8. Consolidation of terminal operations.

The Authority shall effect consolidation of the water terminals of the several cities within the ports of the Commonwealth. It, specifically, shall bring about the centrally directed operation of all state-owned port facilities at Hampton Roads by such means as may prove necessary or desirable, not inconsistent with state law.

(1981, c. 589.)

§ 62.1-132.9. Foreign trade zones.

The Authority is empowered to develop, maintain, and operate foreign trade zones under such terms and conditions as are or may be prescribed by law.

(1981, c. 589.)

§ 62.1-132.10. Publications of Authority.

A. The Authority may issue periodicals and carry and charge for advertising therein.

B. The Authority may compile and disseminate in a single publication all port charges, rules, and practices in effect at the several ports in the Commonwealth.

(1981, c. 589.)

§ 62.1-132.11. Police powers; penalties.

The Authority is empowered to adopt and enforce reasonable rules and regulations governing (i) the maximum and minimum speed limits of motor vehicles using Authority property, (ii) the kinds and sizes of vehicles which may be operated upon Authority property, (iii) materials which shall not be transported through or over Authority property, and (iv) other matters affecting the safety and security of Authority property. Such rules and regulations shall have the force and effect of law (i) after publication one time in full in a newspaper of general circulation in the city

or county where the affected property is located, and (ii) when posted where the public using such property may conveniently see them. Violation of any rule or regulation which would have been a violation of law or ordinance if committed on a public street or highway shall be tried and punished as if it had been committed on a public street or highway. Any other violation of such rules and regulations shall be punishable as a Class 1 misdemeanor.

(1981, c. 589.)

§ 62.1-132.11:1. Prevention and suppression of fire.

The Authority may take such steps as necessary, not inconsistent with other provisions of law, to prevent and suppress fires on the waters of Hampton Roads, its tributaries and other waters in the vicinity of Hampton Roads, and on property adjacent to such waters which is accessible to a fire boat. In furtherance of this purpose, the Authority may, out of such funds as may become available, purchase, equip, maintain, use, and provide and train a crew or crews for a fire boat or fire boats.

(1983, c. 303.)

§ 62.1-132.11:2. Maritime Incident Response Advisory Board established; duties; composition; appointment; terms.

The Maritime Incident Response Advisory Board is hereby established and is hereafter referred to as the Board. The purpose of the Board shall be to recommend and direct the development of goals, objectives, policies and plans needed to develop and improve management of maritime fire and incident issues in Hampton Roads and throughout the Commonwealth. This shall include recommendations for the use of state general funds for essential equipment and operation costs, including personnel, material, maintenance, supplies and training to promote an effective and efficient firefighting and incident management force. The Board shall be composed of fourteen members appointed by the Governor as follows: eight members with experience or expertise, personal or professional, in the areas of fire fighting or port management, one representative of the Hampton Roads Maritime Association, one representative of the Hampton Roads Maritime Incident Response Team, one representative of the Virginia Port Authority, the Executive Director of the Port Authority or his designee, the Commissioner of Marine Resources or his designee, and one citizen member.

Initial appointments shall be made as follows: four members shall be appointed for two years, five members shall be appointed for three years, and five members shall be appointed for four-year terms. The Governor shall designate the term to be served by each appointee at the time of appointment. Thereafter, all members shall be appointed for terms of four years each. Vacancies shall be filled for the unexpired terms. No member shall be eligible to serve more than two successive four-year terms; however, after expiration of a term of three years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto.

The Board shall elect a chairman and vice-chairman from among its members. Members of the Board shall receive no compensation for their services as members of the Board, but the nongovernmental member shall receive reasonable expenses. Upon the request of the Board, such staff support as is necessary for the conduct of the Board's business shall be furnished by the Port Authority.

(2000, c. 1035.)

§ 62.1-132.12. Employment, jurisdiction, and power of special police officers.

A. The Authority may appoint and employ special police officers to enforce the laws of the Commonwealth and rules and regulations adopted pursuant to § 62.1-132.11 on Authority property. By agreement with the locality within which the property is located, the concurrent jurisdiction and authority of such special police, upon order entered of record by the circuit court for the locality, may be extended to a specific place or places in a locality outside the geographic boundaries of Authority property. Such special police officers shall have the powers vested in police officers under §§ 15.2-1704 and 52-8. Such special police officers may issue summons to appear, or arrest on view or on information without warrant as permitted by law, and conduct before the court of the city or county of competent jurisdiction any person violating, upon property under the control of the Authority, any rule or regulation of the Authority, any law of the Commonwealth, or any ordinance or regulation of any political subdivision of the Commonwealth.

B. The court or courts having jurisdiction for the trial of criminal offenses of the city or county wherein the offense was committed shall have jurisdiction to try persons charged with violating any such laws, ordinances, rules, or regulations. Fines and costs assessed or collected for violation of any such law, ordinance, rule, or regulation shall be paid into the Literary Fund.

(1981, c. 589; 2008, cc. 324, 529.)

§ 62.1-132.12:1. Agreements with private terminal operators.

The Authority may enter into agreements with private maritime cargo terminal operators that require services comparable to services provided by the Authority to permit special police officers appointed and employed by the Authority pursuant to § 62.1-132.12 to provide and enforce safety and security on the operator's property. Such agreements shall require the private maritime cargo terminal operator to compensate the Authority for the direct and indirect costs of the services provided by the Authority.

(2006, c. 220.)

§ 62.1-132.13. Cooperation with federal agencies.

The Authority is empowered to cooperate with, and to act as an agent for, the United States of America or any agency, department, corporation or instrumentality thereof in the maintenance,

development, improvement, and use of harbors and seaports of the Commonwealth, and in any other matter within the purposes, duties, and powers of the Authority.

(1981, c. 589.)

§ 62.1-132.14. Agreement of local cooperation with Corps of Engineers.

The Authority, in addition to such other state agencies as the Governor may designate, is empowered, on behalf of and as an agent for the Commonwealth, with the approval of the Governor and after review by the Attorney General, to enter into contractual agreements, known as agreements of local cooperation, developed and tendered by the United States Army Corps of Engineers for signature by local nonfederal interests. Specifically, the Authority and other agencies designated by the Governor may contract under such agreements:

- (1) To provide, free of cost to the United States, the fee simple title to lands, perpetual and/or temporary easements, rights of way and any other interest in lands for cut-off bends, the laying of pipelines, erection of dikes, sluiceways, spillways, dams, drains, deposit of dredged materials, and for other purposes, provided that the conveyance of fee simple title or perpetual easements in subaqueous beds of waterways of the Commonwealth shall require further authorization of the General Assembly;
- (2) To alter existing structures on such areas;
- (3) To simultaneously dredge designated areas not covered by the federal project when and where required;
- (4) To construct and maintain public wharves and public roads leading thereto;
- (5) To make contributions in money or property in lieu of providing disposal areas for dredged materials;
- (6) To hold the United States safe and harmless against claims for damages arising out of the project or work incident thereto;
- (7) To remove sewer pipes and submarine cables;
- (8) To construct and maintain marine railways for the public use; and
- (9) To provide or satisfy any other items or conditions of local cooperation as stipulated in the congressional document covering the particular project involved.

This section shall not be interpreted as limiting but as descriptive of the items of local cooperation, the accomplishment of which the Authority and other designated agencies are hereby authorized to bind themselves, subject to the lawful appropriation of funds required therefor; it being intended to authorize the Authority and other designated agencies to comply

fully and completely with all of the items of local cooperation as contemplated by Congress and as stipulated in the congressional acts or documents concerned.

(1981, c. 589; 1982, c. 168.)

§ 62.1-132.15. Grants and loans from federal agencies.

The Authority may apply for and accept grants or loans of money or property from any federal agency for any purpose authorized in this chapter. It may expend or use such money or property in accordance with any directions, requirements, or conditions which may be imposed by the agency.

(1981, c. 589.)

§ 62.1-132.16. Fees and charges.

Under such terms and conditions as may be prescribed by law, the Authority may fix, alter, charge, and collect tolls, fees, rentals, and any other charges for the use of, or for services rendered by, any Authority facility. The Authority may impose, levy, and collect such other fees and charges as may assist in defraying the expenses of administration, maintenance, development, or improvement of the ports of the Commonwealth, their cargo handling facilities, and harbors.

(1981, c. 589.)

§ 62.1-132.17. Grants of funds and property.

Persons, counties, cities, and towns are hereby authorized to grant, and the Authority is empowered to accept, funds and property to use, within the scope of other powers and duties of the Authority, as stipulated by the grantor.

(1981, c. 589.)

§ 62.1-132.18. Acquisition of property.

A. The Authority is authorized to acquire, construct, maintain, equip, and operate marine terminals, port facilities, wharves, docks, ships, piers, quays, elevators, compressors, refrigeration storage plants, warehouses, and other structures necessary for the convenient use of the same in the aid of commerce. The Authority is further authorized to undertake or make arrangements for the dredging of approaches to each facility and the construction of shipping facilities and transportation facilities incident thereto. The Authority shall have the power to issue revenue bonds for such acquisitions and purposes.

B. When such facilities or equipment is acquired from any political subdivision of the Commonwealth, the Authority is authorized to give written assurances, including agreements to

reconvey properties to such political subdivision, for the installment payments for any terminals, facility, or equipment thus acquired.

(1981, c. 589.)

§ 62.1-132.19. Acquisition and lease of property.

A. The Authority is empowered to rent, lease, buy, own, acquire, construct, reconstruct, and dispose of harbors, seaports, port facilities, and such property, whether real or personal, as it may find necessary or convenient and issue revenue bonds therefor without pledging the faith and credit of the Commonwealth.

B. The Authority may lease to another such part or all of its real or personal property for such period and upon such terms and conditions as the Authority may determine.

C. The Authority shall neither expend funds nor incur any indebtedness for any improvement, repair, maintenance, or addition to any real or personal property owned by anyone other than the Authority, the Commonwealth, or a political subdivision of the Commonwealth, unless either (i) the use of such property is guaranteed to the Authority or the Commonwealth by a lease extending beyond the useful life of the improvement, repair, maintenance, addition, or new facility, or (ii) such expenditure or indebtedness is approved in writing by the Governor.

(1981, c. 589.)

§ 62.1-132.20. Craney Island Disposal Area.

A. No agency of the Commonwealth, including the Virginia Port Authority, shall have the authority to expand the Craney Island Disposal Area northward or westward or beyond its present capacity or to cause activities which will result in such expansion of the Craney Island Disposal Area. In addition, no state funds shall be expended for any activities which will result in the expansion of Craney Island northward or westward or beyond its present capacity as a disposal area for material dredged from any site, including the Hampton Roads Harbor. However, the Commonwealth and the Virginia Port Authority are authorized to expend state funds for a feasibility study and an environmental impact study related to the potential expansion of Craney Island to the east for an additional marine terminal.

B. The Virginia Port Authority is hereby directed, in coordination with other state and federal agencies, including the United States Army Corps of Engineers, to locate, establish, and use ocean disposal areas for ocean-suitable dredge materials from the Hampton Roads Harbor, or some other suitable site, and to use the existing Craney Island Disposal Area for dredge material suitable or unsuitable for alternate disposal, including ocean disposal, with priority given to materials dredged from the Southern Branch of the Elizabeth River. The construction of a marine terminal on the eastern side of Craney Island Disposal Area using dredge material to extend the disposal area eastward, as defined in the U.S. Army Corps of Engineers Feasibility Study approved on October 24, 2006, and authorized by Congress in the Water Resources Development Act of 2007, is hereby authorized.

C. Prior to the disposal of any dredged material either at an ocean area or on the Craney Island Disposal Area, after the Craney Island Disposal Area has attained its capacity limit, the appropriate state agencies shall investigate and consider the cost and availability of beneficial uses of the dredged material. The appropriate state agencies shall consult with state and federal agencies to ensure the environmental acceptability of any beneficial use. When such environmentally acceptable beneficial use is available and economically feasible, the appropriate state agencies shall pursue such use.

For purposes of this section, "Craney Island Disposal Area" means that parcel of land lying and being in the body of water known as Hampton Roads Harbor, within the City of Portsmouth and adjacent to the City of Suffolk.

(1991, c. 686; 1998, c. 543; 2009, c. 38.)

§§ 62.1-133. , 62.1-134.

Repealed by Acts 1981, c. 589.

§ 62.1-134.1. Expediting shipment of coal.

A. The Authority shall analyze the shipment of coal through the ports of the Commonwealth for the purpose of expediting such shipments. For this purpose, the Authority shall be authorized to collect, analyze, and require the furnishing of information, which is maintained in the ordinary course of business by the person, firm, or corporation providing such information, pertaining to the transportation of coal which has been moved to and from the ports of this Commonwealth, including:

1. From a railway company or any subsidiary thereof involved in the shipment or storage of coal - the inland origin; the identity of any transshipper, the rail destination; the route; the car movement record, whether such movement was pursuant to permit or agreement; the date of issuance of permits; the date and time of vessel registration; the position in vessel queue at the time of registration and at the time such vessel was ordered to berth for loading; and date such vessel was loaded;
2. From any railway company, supplier, mining company, or transshipper - the tonnage and classification of coal loaded aboard such vessel;
3. From any transshipper - the identity of any supplier, broker, transshipper, or purchaser of coal for shipment by railway;
4. From any ship line, shipping company, ship agent, wholesaler, retailer, broker, transshipper, or operator of any coal storage facility - the identity of any vessel loaded with coal, the date of such vessel's arrival at port, the date such vessel departed and the tonnage and classification of coal loaded aboard such vessel; and

5. From any of the parties mentioned in subdivisions 1, 2, 3, or 4 - any other information which is relevant and necessary to such analysis of shipment of coal through the ports of the Commonwealth provided such information is maintained in the ordinary course of business of such person, firm, or corporation.

B. Notwithstanding any provisions of law to the contrary, any person, firm, corporation or agent thereof engaged in the mining, consignment, sale, transportation, loading, unloading, storage, or handling of coal for shipment through any port of this Commonwealth, whether as a mining company, railway company, ship line, shipping company, ship agent, wholesaler, retailer, broker, transshipper, operator of any coal storage facility, or facility for the loading or unloading of railroad cars or ships, or any entity otherwise engaged in an activity which directly affects the transportation of coal to or from any port of this Commonwealth, within forty-five days after receiving a written request from the Authority, shall furnish the Authority with any such information as is described in subsection A of this section as is maintained in the ordinary course of business of the party requested to provide the information. In the event of willful noncompliance with the provisions of this section by any person, firm, or corporation, the Authority may petition an appropriate circuit court for injunctive relief or, in the alternative, for recovery of a civil penalty, payable to the Authority, in an amount no less than \$100 per day and no more than \$1,000 per day for each day noncompliance continues. Upon a finding that the defendant's noncompliance was willful, the court shall order compliance or payment of the civil penalty, as the case may be.

C. The aforesaid information and data shall be supplied to the Executive Director of the Authority and shall be for the exclusive use of the Executive Director and the staff of the Authority. Neither the Executive Director nor any staff member of the Authority shall disclose this information and data to any member of the Board of Commissioners of the Authority; nor to any person, firm, corporation or agent thereof engaged in the mining, consignment, sale, transportation, loading, unloading, storage, or handling of coal, whether such person, firm, corporation or agent be public or private and whether or not such person, firm, corporation, or agent be a subsidiary or unit of the Authority; nor to anyone outside the Authority.

D. In carrying out the functions heretofore described the Authority shall be deemed to be performing essential governmental functions as an agent of the Commonwealth of Virginia.

(1981, c. 464.)

§ 62.1-135.

Repealed by Acts 1981, c. 589.

§ 62.1-136. Power of eminent domain.

The Authority is hereby vested with the power of eminent domain to acquire property or any interest therein, however held, but not property of the Commonwealth or its agencies, and may exercise the same for the purposes set forth in §§ 62.1-132.18 and 62.1-132.19 in the manner and to the extent set forth in, and subject to the provisions of, Chapter 2 (§ 25.1-200 et seq.) of Title

25.1; provided that the Authority shall have no power to condemn any property belonging to any other political subdivision of the Commonwealth, or to any common carrier, or public utility or other public service corporation which is being devoted to public use or service. Whether property is being devoted to public use or service in the case of a public service corporation, common carrier, or public utility, shall be decided by the State Corporation Commission in a proceeding under § 25.1-102; and in the case of a political subdivision shall be decided by the court in which the proceeding is brought.

(Code 1950, § 62-106.8:1; 1962, c. 346; 1968, c. 659; 1981, c. 589; 2003, c. 940.)

§ 62.1-137.

Repealed by Acts 1981, c. 589.

§ 62.1-138. Powers of State Corporation Commission not affected.

Nothing contained in this chapter shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

(Code 1950, § 62-106.9; 1952, c. 61; 1968, c. 659.)

§ 62.1-139. Forms of accounts and records; annual report.

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived, shall be in such form as the Auditor of Public Accounts prescribes. Such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises. The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the preceding June 30.

(Code 1950, § 62-106.11; 1954, c. 667; 1968, c. 659; 1984, c. 734; 1985, c. 146; 2004, c. 650.)

§ 62.1-140. Definitions; bond resolution; form and requisites of bonds; sale and disposition of proceeds; temporary bonds.

A. As used in this section and in §§ 62.1-141 through 62.1-146, the term "port facility" means harbors, seaports and all facilities used in connection therewith and shall include all those facilities named in §§ 62.1-132.18 and 62.1-132.19.

The term "cost" as used in this chapter embraces the cost of construction, the cost of the acquisition of all land, rights-of-way, property, rights, easements and interests acquired by the Authority for such construction, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if deemed advisable by the Authority, for one year after completion of construction, engineering and legal expenses, cost of plans, specifications, surveys and estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing any port facility, administrative

expense, the creation of a working capital fund for placing the port facility in operation and such other expense as may be necessary or incident to the construction of such port facility, the financing of such construction and the placing of the same in operation.

The term "bonds" as used in this chapter means obligations of the Authority for the payment of borrowed money. For purposes of the limitations imposed by subsections B and C of § 62.1-140, contingent obligations to reimburse providers for amounts drawn under credit facilities, letters of credit, lines of credit, guarantees, standby bond purchase agreements, or other credit or liquidity enhancement facilities, including any such enhancement facility obtained by the Authority for deposit into any reserve account or fund relating to any bonds, shall not constitute bonds.

For purposes of the limitations imposed by subsections B and C of § 62.1-140, the term "revenue bonds" means bonds for which only the revenues of port facilities are pledged to the payment of the principal of and interest on said bonds.

B. The Authority is hereby authorized to provide by resolution for the issuance, at one time or from time to time, of bonds of the Authority for the purpose of paying all or any part of the cost of any Authority project for the acquisition, construction, reconstruction or control of port facilities or of any portion or portions thereof, provided that the total principal amount of bonds, including refunding bonds, outstanding at any time shall not exceed \$200 million, excluding from such limit any revenue bonds.

All of the bonds of one or more series of the bonds of the Authority at any time outstanding may be refunded by the Authority by the issuance of its refunding bonds in such amount as the Authority may deem necessary, but not exceeding an amount sufficient to provide for the payment of the principal of the bonds so to be refunded, together with all unpaid interest accrued and to accrue and with any redemption premium thereon and all costs and expenses incident to the authorization and issuance of such bonds as determined by the Authority. The proceeds of any such refunding bonds may, in the discretion of the Authority, be applied to the purchase or retirement at maturity or redemption of such outstanding revenue bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof, and may, pending such application, be placed in trust in accordance with the provisions of § 62.1-143 of this chapter to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the Authority. All refunding bonds may have all of the attributes of revenue bonds to the extent that such other provisions of this chapter relating to revenue bonds may be applicable to refunding bonds.

C. The principal of and the interest on all bonds issued by the Authority pursuant to the provisions of this chapter shall be payable solely from the funds herein provided for such payment. The bonds of each issue shall be dated, shall bear interest at the prevailing rate of interest at the time, shall mature at such time or times not exceeding forty years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the

denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth.

All bonds shall be signed by the Executive Director of the Authority or shall bear his facsimile signature, and the official seal of the Authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the secretary of the Authority, and any coupons attached thereto shall bear the facsimile signature of the Executive Director of the Authority. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine will best effect the purposes of this chapter.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of acquisition, construction, reconstruction and control of port facilities or the portion thereof for which such bonds shall have been issued, or, in the case of refunding bonds, to refund such bonds including any unpaid interest accrued and to accrue and any redemption premium thereon and all costs and expenses incident to the authorization and issuance of such bonds as shall be determined by the Authority upon the issuance of such refunding bonds, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds, or, if such bonds shall have been issued for paying the cost of a portion of the project, such surplus may be applied to the payment of the cost of any remaining portion of the project.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost.

The Authority shall not issue any bonds, other than revenue bonds or any refunding bonds issued by the Authority pursuant to the second paragraph of subsection B of § 62.1-140, which are not

specifically authorized by a bill or resolution passed by a majority vote of those elected to each house of the General Assembly. Refunding bonds may only be issued with the consent of the Governor. However, the Governor, in his sole discretion, may approve bonds which have not been authorized by the General Assembly if such bonds are to finance capital projects that emerge between legislative sessions, provided the debt is required to stimulate commerce consistent with § 62.1-132.3 and provided that:

1. The total amount of such bonds added to the total amount of Virginia Port Authority bonds currently authorized does not exceed the limit in § 62.1-140 B;
2. Funds are available within the appropriations, if needed, without adverse effect on other projects or programs, or from unappropriated nongeneral fund revenues or balances;
3. In the Governor's opinion such action may result in a measurable benefit to the Commonwealth;
4. The authorization includes a detailed description of the project, the project need, the total project costs, the estimated operating costs, and the fund sources for the project and its operating costs;
5. The requirements of Chapter 11.1 (§ 10.1-1182 et seq.), Title 10.1, regarding environmental impact statements, will be met as a precondition for the approval of the project; and
6. The authorization of any such debt as provided for in this section shall be promptly communicated to the Chairmen of the House Appropriations and Senate Finance Committees.

(Code 1950, § 62-106.12; 1954, c. 667; 1958, cc. 174, 488; 1968, c. 659; 1972, c. 423; 1981, cc. 589, 590; 1991, c. 246; 1993, c. 656.)

§ 62.1-141. Trust agreement securing bonds; provisions of agreement or bond resolution; depository of proceeds or revenues; expenses.

In the discretion of the Authority any bonds issued under the provisions of this chapter may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received, but shall not convey or mortgage the port facilities or any part thereof; provided, however, the Authority may make a purchase-money agreement giving a chattel mortgage or lien on personal property or operating equipment purchased for use in its facilities. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the port facilities or the portion thereof in connection with which such bonds shall have been authorized, the rates to be charged, the custody, safeguarding and application of all moneys, and conditions or

limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of the operation of the port facilities or portion thereof.

(Code 1950, § 62-106.13; 1954, c. 667; 1968, c. 659; 1974, c. 148.)

§ 62.1-142. Charges for use of port facilities; sinking fund created from revenues for payment of bonds.

The Authority is hereby authorized to fix and revise charges for the use of the port facilities under its control and the different parts or sections thereof, and to contract with any person, partnership, association or corporation desiring the use of any part thereof, and to fix the terms, conditions, rents and rates of charges for such use. Such charges shall be so fixed and adjusted in respect of the aggregate of charges from the port facility or the portion or portions thereof in connection with which revenue bonds or refunding bonds shall have been issued under the provisions of this chapter as to provide a fund sufficient with other revenues, if any, to pay (a) the cost of maintaining, repairing and operating such port facility or portion or portions and (b) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such charges shall not be subject to supervision or regulation by any commission, board, bureau or agency of the Commonwealth or of any municipality, county or other political subdivision of the Commonwealth. The charges and all other revenues derived from the port facility or portion or portions in connection with which such bonds shall have been issued except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the charges and other revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without

distinction or priority of one over another. In addition to all other powers granted to the Authority by this chapter, the Authority is hereby authorized to pledge to the payment of the principal of and the interest on any bonds under the provisions of this chapter any moneys received or to be received by it under any appropriation made to it by the General Assembly, unless the appropriation is restricted by the General Assembly to specific purposes of the Authority or such pledge is prohibited by the law making such appropriations; provided, however, that nothing herein shall be construed to obligate the General Assembly to make any such appropriation.

(Code 1950, § 62-106.14; 1954, c. 667; 1958, c. 174; 1968, c. 659; 1981, c. 590.)

§ 62.1-143. Proceeds of bonds and revenues held in trust for certain purposes.

All moneys received pursuant to the provisions of this chapter, whether as proceeds from the sale of revenue bonds or refunding bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The Authority shall, in the resolution authorizing such bonds or in the trust agreement securing such bonds, provide for the payment of the proceeds of the sale of the bonds and the revenues to be received to a trustee, which shall be any trust company or bank having the powers of a trust company within or without the Commonwealth, who shall act as trustee of the funds, and hold and apply the same to the purposes of this chapter, subject to such regulations as this chapter and such resolution or trust agreement may provide. In the case of the proceeds of the sale of revenue bonds or revenues, the trustee may invest and reinvest such funds pending their need for the construction of the project in securities that are legal investments under the laws of the Commonwealth for funds held by fiduciaries. In the case of the proceeds of the sale of refunding bonds, the trustee may invest and reinvest such funds in direct obligations of, or obligations the principal of and the interest on which are guaranteed by, the United States of America. Such money and the interest, income and profits, if any, earned on such investment, shall be available for the payment of all or any part of the principal, interest, and redemption premium, if any, of the bonds being refunded. The proceeds of the sale of refunding bonds shall be so invested and applied as to assure that the principal, interest, and redemption premium, if any, on the bonds being refunded shall be paid in full on their respective maturity, redemption or interest payment dates. After the terms of the trust have been fully satisfied, and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the Authority for use by it in any lawful manner.

(Code 1950, § 62-106.15; 1954, c. 667; 1968, c. 1981, c. 590.)

§ 62.1-144. Remedies of bondholders and trustee.

Any holder of bonds, notes, certificates or other evidences of borrowing issued under the provisions of this chapter or of any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by such trust agreement, may either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted by this chapter or under such trust agreement or the resolution authorizing the issuance

of such bonds, notes or certificates and may enforce and compel the performance of all duties required by this chapter or by such agreement or resolution to be performed by the Authority or by any officer or agent thereof, including the fixing of charges and collection of the same.

(Code 1950, § 62-106.16; 1954, c. 667; 1968, c. 659.)

§ 62.1-145. Exercise of powers constitutes governmental functions; exemption from taxation.

The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience, and prosperity, and as the operation and maintenance of the project by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the project or any property acquired or used by the Authority under the provisions of this chapter or upon the income therefrom, including sales and use taxes on tangible personal property used in and about a marine terminal under the supervision of the Virginia Port Authority for handling cargo, merchandise, freight, and equipment; nor shall the agents, lessees, sublessees, or users of tangible personal property owned by or leased to the Authority be required to pay any sales or use tax upon such property or the revenue derived therefrom; and the bonds, notes, certificates, or other evidences of debt issued under the provisions of this chapter, their transfer and the income therefrom including any profit made on the sale thereof, shall be exempt from taxation by the Commonwealth and by any municipality, county, or other political subdivision thereof. The exemption from the retail sales and use tax shall apply to property acquired or used by the Authority, or by a nonstock, nonprofit corporation that operates a marine terminal or terminals solely on behalf of the Authority. Service charge payments to any city, county, or town authorized pursuant to subsection D of § 58.1-3403 shall be paid from the general fund. Service charge payments to any county, city, or town authorized pursuant to subsection B of § 58.1-3403 shall be paid by the Authority.

(Code 1950, § 62-106.17; 1954, c. 667; 1968, c. 659; 1974, c. 546; 1990, c. 694; 2000, c. 737; 2005, c. 581.)

§ 62.1-146. Bonds as legal investments.

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

(Code 1950, § 62-106.18; 1954, c. 667; 1968, c. 659.)

§ 62.1-147. Bonds not debt or pledge of credit of Commonwealth or political subdivision; payment of expenses.

Bonds and refunding bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the Commonwealth or of any political subdivision thereof or a pledge of the faith and credit of the Commonwealth or of any such political subdivision, but shall be payable solely from the funds provided therefor from revenues. All such bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth nor the Authority shall be obligated to pay the same or the interest thereon except from revenues of the port facility and that neither the faith and credit nor the taxing power of the Commonwealth or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds.

All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this chapter.

(Code 1950, § 62-106.19; 1954, c. 667; 1968, c. 659; 1981, c. 590; 1993, c. 656.)

§ 62.1-147.1. Legalization of prior actions.

Any bonds issued to refund bonds or other obligations of the Authority prior to the adoption of the amendments in this chapter relating to refunding bonds which could now be taken under this chapter are hereby approved, validated and ratified by the legislature of the Commonwealth.

(1981, c. 590.)

§ 62.1-147.2. Chapter liberally construed.

This chapter shall constitute full and complete authority for the doing of the acts and things herein authorized and shall be liberally construed to effect the purposes hereof.

(1997, c. 232.)

