

SENATE BILL NO. 728

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Transportation

on February 22, 2024)

(Patron Prior to Substitute--Senator Pillion)

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

Be it enacted by the General Assembly of Virginia:

1.

Amended Cumberland Airport Commission Act.

§ 1. Short title.

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

§ 2. Creation; public purpose.

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

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

27 Commission shall exist is authorized to join such Commission pursuant to the terms and conditions of this
28 Amended Act.

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

33 § 3. Definitions.

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

36 "Act" means the original Cumberland's Airport Commission Act of 1958.

37 "Amended Act" means this Amended Cumberland's Airport Commission Act of 2024.

38 "Commission" means the Cumberland's Airport Commission continued by this Amended Act and
39 shall consist of members from the participating political subdivisions.

40 "Commonwealth" means the Commonwealth of Virginia.

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

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

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

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

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

55 § 4. Participating political subdivision.

56 A participating political subdivision should budget for and set forth a financial contribution to be
57 made annually by such political subdivision to the Commission.

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

63 § 5. Appointment, tenure and payment of members.

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

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

76 § 6. Organization.

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

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

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

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

94 § 7. Powers.

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

- 97 1. To sue and be sued in its own name;
- 98 2. To have perpetual succession;
- 99 3. To adopt a corporate seal;
- 100 4. To maintain offices at such places as it may designate in the Town of Wise and in Wise County,
101 with the preferred location at Lonesome Pine Airport;
- 102 5. To acquire, establish, construct, enlarge, improve, maintain, equip, operate and regulate any
103 airport, air landing fields, structures, aviation facilities and other property incidental thereto within the
104 territorial limits of the participating political subdivisions subject to the limitation that such power shall
105 be limited to such items as may be necessary for the operation of the Lonesome Pine Airport;

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

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

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

117 9. To apply for and accept gifts, or grants of money or gifts, grants or loans of other property or
118 other financial assistance from the United States and agencies and instrumentalities thereof, the
119 Commonwealth and political subdivisions, agencies, and instrumentalities thereof, or any other person or
120 entity, for or in aid of the construction, acquisition, ownership, operation, maintenance, or repair of the
121 Commission's facilities or for the payment of principal of any indebtedness of the Commission, interest
122 thereon, or other cost incident thereto, and to this end the Commission shall have the power to render such
123 services, comply with such conditions, and execute such agreements and legal instruments as may be
124 necessary, convenient, or desirable or imposed as a condition to such financial aid;

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

128 11. To contract with a participating political subdivision;

129 12. To establish personnel policies and rules;

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

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

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

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

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

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

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

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

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

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

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

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

172 § 8. Name of airport.

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

174 § 9. Rules and regulations.

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

178 Unless the Commission shall by unanimous vote of the Commission determine that an emergency
179 exists, the Commission shall, prior to the adoption of any rule or regulation or alteration, amendment, or
180 modification thereof:

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

183 2. Post in a public place a notice declaring the Commission's intention to consider adopting such
184 rule, regulation, alteration, amendment, or modification and informing the public that the Commission
185 will at a public meeting consider the adoption of such rule or regulation or such alterations, amendment,
186 or modification, on a day and at a time to be specified in the notice, after the expiration of at least 10

187 business days from the first day of the posting of the notice thereof. The Commission's rules and
188 regulations shall be available for public inspection at the Commission's primary office.

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

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

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

205 § 10. Reports, records, and audits.

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

210 § 11. Procurement and small purchase procedures.

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

214 § 12. Deposit and investment of funds.

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

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

224 § 13. Fees, rents, and charges.

225 The Commission is hereby authorized to and shall fix, revise, charge, and collect fees, rents, and
226 other charges for the use and services of any facilities. Such fees, rents, and other charges shall be so fixed
227 and adjusted as to provide a fund sufficient with other revenues to pay the cost of maintaining, repairing,
228 and operating the facilities. Such fees, rents, and charges shall not be subject to supervision or regulation
229 by any commission, board, bureau, or agency of the Commonwealth or any participating political
230 subdivision.

231 § 14. Taxation.

232 The exercise of the powers granted by this Amended Act shall in all respects be presumed to be
233 for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the
234 promotion of their health, safety, welfare, convenience, and prosperity, and as the operation and
235 maintenance of any project that the Commission is authorized to undertake will constitute the performance
236 of an essential governmental function, the Commission shall not be required to pay any taxes or
237 assessments upon any facilities acquired and constructed by it under the provisions of this Amended Act.
238 Under the provisions of this Amended Act, any profit made on the sale or transfer thereof shall at all times
239 be free and exempt from taxation by the Commonwealth and by any political subdivision thereof.

240 Persons, firms, partnerships, associations, corporations, and organizations leasing property of the
241 Commission or doing business on property of the Commission shall be subject to and liable for payment
242 of all applicable taxes of the political subdivision in which such leased property lies or in which business
243 is conducted, including, but not limited to, any leasehold tax on real property and taxes on tangible
244 personal property and machinery and tools, taxes for admission, taxes on hotel and motel rooms, taxes on
245 the sale of tobacco products, taxes on the sale of meals and beverages, privilege taxes and local general
246 retail sales and use taxes, taxes to be paid on licenses in respect to any business, profession, vocation or
247 calling, and taxes upon consumers of gas, electricity, telephone, and other public utility services.

248 § 15. Appropriation by political subdivision.

249 Any participating political subdivision is authorized to provide services, to donate real or personal
250 property, and to make appropriations to the Commission for the acquisition, construction, maintenance,
251 and operation of the Commission's facilities. Any such political subdivision is hereby authorized to issue
252 its bonds, including general obligation bonds, in the manner provided in the Public Finance Act (§ 15.2-
253 2600 et seq. of the Code of Virginia) or in any applicable municipal charter for the purpose of providing
254 funds to be appropriated to the Commission, and such political subdivisions may enter into contracts
255 obligating such bond proceeds to the Commission. The Commission may agree to assume, or reimburse
256 a participating political subdivision for, any indebtedness incurred by such participating political
257 subdivision with respect to facilities conveyed by it to the Commission. With the consent of the governing
258 body of the participating political subdivision, any such agreement may be made subordinate to the
259 Commission's indebtedness to others.

260 § 16. Commission budget.

261 1. The Commission shall annually prepare and submit to the participating political subdivisions (i)
262 a proposed operating budget showing its estimated general fund revenues and expenses on an accrual basis
263 for the forthcoming fiscal year, and if such estimated expenses exceed such estimated revenues, the portion
264 of the deficit proposed to be borne by each participating political subdivision, and (ii) a proposed capital
265 budget showing its estimated expenditures for such fiscal year for assets costing more than \$20,000, or
266 such higher amount as the Commission and the participating political subdivisions may determine, and

267 having an estimated useful life of 20 years or more and the source of funds for such expenditures, including
268 any amount requested from the participating political subdivisions. No depreciation shall be included in
269 the Commission's operating budget with respect to assets purchased by the Commission with funds
270 appropriated to it for such purpose by a participating political subdivision and, for this determination, it
271 shall be assumed that any appropriation so made is for the purchase of assets set forth in the applicable
272 Commission budget to the extent such purchase price is included in the approved budget. Assets purchased
273 by the Commission with bond proceeds shall be depreciated over the term of the bond issue in proportion
274 to the maturities, including sinking fund installments, of the bond issue.

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

278 3. If the governing body of a participating political subdivision agrees with the Commission's
279 proposed capital budget, it shall appropriate to the Commission such participating political subdivision's
280 portion of the expenditures set forth therein. Any such appropriation may be reduced by the participating
281 political subdivision's proportionate share of any grant funds received by the Commission for the purchase
282 of assets included in the Commission's approved capital budget in excess of the grant funds shown in such
283 capital budget as a source of funds for such expenditure, unless prohibited by the basic provider of the
284 grant funds.

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

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

294 § 17. Allocation of deficit.

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

301 § 18. Dissolution of Commission.

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

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

315 § 19. Liberal construction.

316 Neither this Amended Act, nor anything herein contained, is or shall be construed as a restriction
317 or limitation upon any powers that the Commission might otherwise have under any laws of the
318 Commonwealth, and this Amended Act is cumulative to any such powers. This Amended Act does and
319 shall be construed to provide a complete, additional, and alternative method for the accomplishment of

320 actions and undertakings authorized hereby and shall be regarded as supplemental and additional to
321 powers conferred by other laws.

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

325 § 20. Application of local ordinances, service charges, and taxes upon leaseholds.

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

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

333 § 21. Existing contracts, leases, franchises, not impaired.

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

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

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