

CHAPTER 240

(Senate Bill 941)

AN ACT concerning

Natural Resources – Somers Cove Marina Commission

FOR the purpose of establishing the Somers Cove Marina Commission; providing that the Commission is a body politic and corporate and an instrumentality of the State; ~~providing that the commission is not subject to State procurement law but is required to comply with the minority business enterprise requirements for certain purposes;~~ authorizing the Commission to take certain actions under certain circumstances; providing for the membership and terms of members of the Commission; prohibiting a member of the Commission from receiving certain compensation; authorizing a member to receive certain reimbursement; providing for the election of a chair, ~~vice chair, and secretary-treasurer~~ and vice-chair of the Commission; providing for the appointment of a secretary-treasurer; prohibiting a secretary-treasurer who is not a member of the Commission from voting on matters before the Commission; requiring the Commission to meet at certain intervals; requiring written notice to be given to each member of the Commission a certain period of time before each meeting; establishing certain quorum and voting requirements; authorizing the Secretary of Natural Resources to remove a member of the Commission upon a certain vote of members; providing for the selection and evaluation of an Executive Director; requiring the Secretary of Natural Resources to perform certain duties under certain circumstances; requiring the Executive Director to perform certain duties under certain circumstances; providing that the Marina Manager is an employee of the State who has certain responsibilities; authorizing the Executive Director to execute certain leases, ~~contracts, events, or concessions~~ and contracts under certain circumstances; providing that a lease entered into before the creation of the Commission shall stay in effect for a certain period of time; prohibiting the Executive Director from executing certain leases or contracts under certain circumstances; providing that certain leases and contracts executed by the Executive Director must be reviewed and approved by the Commission and the Office of the Attorney General; authorizing the Secretary of Natural Resources to approve certain matters; requiring the Secretary to respond in a certain manner to a certain request within a certain period of time; providing that certain staff are employees of the Commission; providing that the Executive Director is an employee of the State and serves at the pleasure of the Secretary; requiring the Executive Director to procure certain goods and services in accordance with certain requirements; requiring the Executive Director to adopt a certain procurement policy; requiring the Commission to perform certain duties under certain circumstances; authorizing the Commission to accept gifts, contributions, or loans of money, supplies,

goods, and services; authorizing the Commission to accept appropriations, allotments, and loans of money from certain sources; altering provisions relating to the administration of the Somers Cove Improvement Fund; providing that any money obtained by the Commission from Somers Cove Marina shall be credited to the Fund; providing that moneys in the Fund are not moneys of the State; providing that moneys of the Fund are subject to certain audits; providing that moneys pledged for use by the State for Somers Cove Marina before the creation of the Commission shall be used for a certain purpose; defining certain terms; requiring the Department and the Commission to begin conducting a certain evaluation on a certain date; requiring the Department and the Commission to report certain findings and recommendations on a certain date; providing that certain State employees may remain employed at Somers Cove as State employees under certain circumstances; requiring the Commission to reimburse the Department for certain salaries under certain circumstances; requiring the State to pay the Executive Director's salary without reimbursement from the Commission until a certain determination is made; providing for a delayed effective date; and generally relating to the Somers Cove Marina Commission.

BY repealing and reenacting, with amendments,
 Article – Natural Resources
 Section 5–908.1
 Annotated Code of Maryland
 (2005 Replacement Volume and 2007 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Natural Resources

5–908.1.

(a) (1) In this section[,] **THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.**

(2) **“COMMISSION” MEANS THE SOMERS COVE MARINA COMMISSION.**

(3) **“Fund” means the Somers Cove Marina Improvement Fund.**

(4) **“UNENCUMBERED” MEANS NOT PLEDGED FOR USE BY THE STATE FOR SOMERS COVE MARINA BEFORE THE CREATION OF THE COMMISSION.**

(B) (1) (I) **THERE IS A SOMERS COVE MARINA COMMISSION.**

(II) THE COMMISSION IS A BODY POLITIC AND CORPORATE AND AN INSTRUMENTALITY OF THE STATE.

~~(III) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE COMMISSION:~~

~~1. IS NOT SUBJECT TO STATE PROCUREMENT LAW; AND~~

~~2. MAY CONSTRUCT DEVELOPMENTS AND PROJECTS WITHOUT OBTAINING THE CONSENT OF ANY OTHER UNIT OF STATE GOVERNMENT AND WITHOUT ANY PROCEEDING, THE SATISFACTION OF ANY CONDITION, OR THE OCCURRENCE OF ANY EVENT.~~

~~(2) IN CARRYING OUT ITS DUTIES RELATING TO DEVELOPMENTS AND PROJECTS, THE COMMISSION SHALL COMPLY WITH TITLE 14, SUBTITLE 3 OF THE STATE FINANCE AND PROCUREMENT ARTICLE (MINORITY BUSINESS PARTICIPATION).~~

~~(3)~~ (2) THE COMMISSION CONSISTS OF THE FOLLOWING MEMBERS:

(I) TWO MEMBERS FROM SOMERSET COUNTY, APPOINTED BY THE BOARD OF COUNTY COMMISSIONERS OF SOMERSET COUNTY, ONE OF WHOM SHALL BE A MEMBER OF THE SOMERSET COUNTY BUSINESS COMMUNITY;

(II) TWO MEMBERS FROM THE CITY OF CRISFIELD, APPOINTED BY THE MAYOR OF CRISFIELD, ONE OF WHOM SHALL BE A MEMBER OF THE SOMERSET COUNTY BUSINESS COMMUNITY; AND

(III) THREE MEMBERS APPOINTED BY THE SECRETARY, ONE OF WHOM SHALL BE A CURRENT SLIP HOLDER AT SOMERS COVE MARINA.

~~(4)~~ (3) (I) THE TERM OF A MEMBER IS 4 YEARS.

(II) A MEMBER MAY NOT SERVE MORE THAN 2 CONSECUTIVE TERMS.

(III) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(IV) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

~~(5)~~ (4) A MEMBER IS NOT ENTITLED TO COMPENSATION EXCEPT FOR REIMBURSEMENT FOR EXPENSES AS PROVIDED IN THE BUDGET OF THE COMMISSION.

~~(6)~~ (5) (I) THE COMMISSION SHALL ELECT A CHAIR AND A VICE CHAIR OF THE COMMISSION FROM AMONG ITS MEMBERS.

(II) THE COMMISSION SHALL ~~ELECT~~ APPOINT A SECRETARY-TREASURER WHO NEED NOT BE A MEMBER OF THE COMMISSION.

(III) A SECRETARY-TREASURER WHO IS NOT A MEMBER OF THE COMMISSION MAY NOT VOTE ON MATTERS BEFORE THE COMMISSION.

~~(7)~~ (6) (I) THE COMMISSION SHALL MEET AT LEAST EVERY 2 MONTHS, AS DETERMINED BY THE CHAIR.

(II) AT LEAST 10 DAYS BEFORE EACH MEETING, WRITTEN NOTICE SHALL BE GIVEN TO EACH MEMBER OF THE COMMISSION.

~~(8)~~ (7) FIVE MEMBERS OF THE COMMISSION ARE A QUORUM.

~~(9)~~ (8) A MAJORITY VOTE OF THE MEMBERS PRESENT AT A MEETING HAVING A QUORUM IS NEEDED FOR THE COMMISSION TO ACT.

~~(10)~~ (9) (I) THE SECRETARY MAY REMOVE A MEMBER OF THE COMMISSION FOR ANY REASON UPON A MAJORITY VOTE OF THE MEMBERS OF THE COMMISSION.

(II) IF A MEMBER IS REMOVED, A NEW MEMBER SHALL PROMPTLY BE APPOINTED BY THE INDIVIDUAL OR BODY THAT APPOINTED THE REMOVED MEMBER.

~~(11)~~ ~~(I)~~ (C) (1) THE SECRETARY SHALL:

~~1.~~ (I) ~~NOMINATE~~ APPOINT AN EXECUTIVE DIRECTOR ~~TO THE COMMISSION FOR APPROVAL; AND~~

~~2.~~

(II) CONSULT WITH THE COMMISSION IN CONDUCTING THE ANNUAL PERFORMANCE EVALUATION OF THE EXECUTIVE DIRECTOR; AND

(III) REVIEW AND MAKE DETERMINATIONS ON REQUESTS FOR APPROVAL OF LEASES AND CONTRACTS SUBMITTED TO THE SECRETARY BY THE EXECUTIVE DIRECTOR IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION.

~~(H)~~ (2) THE EXECUTIVE DIRECTOR:

~~1.~~ (I) SHALL ADMINISTER THE FUND;

~~2.~~ (II) ON OR BEFORE MAY 1 OF EACH YEAR, AND AFTER CONSULTING WITH THE COMMISSION, SHALL PREPARE OPERATING AND CAPITAL BUDGETS FOR THE SUBSEQUENT FISCAL YEAR AND SUBMIT THE BUDGETS TO THE COMMISSION FOR REVIEW AND APPROVAL;

~~3.~~ (III) SHALL SUPERVISE THE MARINA MANAGER,
~~WHO SHALL:~~

~~A. BE AN EMPLOYEE OF THE STATE; AND~~

~~B. WILL BE RESPONSIBLE FOR DAY-TO-DAY OPERATIONS OF THE MARINA;~~

~~4. MUST BE FAMILIAR WITH AND FOLLOW STANDARD PROCUREMENT PROCEDURES FOR STATE AGENCIES;~~

~~5.~~ (IV) MAY EXECUTE LEASES, CONTRACTS, EVENTS, OR CONCESSIONS FOR LAND, BUILDINGS, OR FACILITIES OF LAND, BUILDINGS, OR FACILITIES AT SOMERS COVE MARINA AND EXECUTE CONTRACTS FOR EVENTS OR CONCESSIONS AT SOMERS COVE MARINA, PROVIDED THAT:

~~A. A LEASE OR CONTRACT EXECUTED BY THE EXECUTIVE DIRECTOR MAY NOT EXTEND LONGER THAN 5 YEARS AFTER THE CREATION OF THE COMMISSION;~~

~~B. THE LEASE OR CONTRACT EXECUTED BY THE EXECUTIVE DIRECTOR IS REVIEWED AND APPROVED BY THE COMMISSION, WITH AN ATTORNEY GENERAL FOR THE DEPARTMENT AVAILABLE FOR CONSULTATION; AND~~

~~C. A LEASE ENTERED INTO BEFORE THE CREATION OF THE COMMISSION SHALL STAY IN EFFECT;~~

~~6. MAY NOT EXECUTE A LEASE OR CONTRACT FOR IMPROVEMENTS AT THE MARINA FOR NONBOATING RELATED SERVICES OR GOODS WITHOUT THE APPROVAL OF THE SECRETARY, PROVIDED THAT THE SECRETARY SHALL RESPOND TO A REQUEST FOR APPROVAL WITHIN 30 DAYS AFTER RECEIPT IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION;~~

~~7. (V) SUBJECT TO THE APPROVAL OF THE SECRETARY, AND IN COOPERATION WITH THE COMMISSION, SHALL DEVELOP AN ANNUAL MASTER PLAN FOR THE OPERATIONS, MAINTENANCE, DEVELOPMENT, AND IMPROVEMENT OF SOMERS COVE MARINA THAT IMPROVES SERVICES TO THE GENERAL BOATING PUBLIC;~~

~~8. (VI) SHALL ADMINISTER, IN COOPERATION WITH THE COMMISSION, ALL UNENCUMBERED GRANTS;~~

~~9. A. (VII) 1. SHALL EMPLOY A STAFF TO OPERATE AND MAINTAIN SOMERS COVE MARINA, AND SET THE STAFF'S COMPENSATION; AND~~

~~B. 2. SHALL, EXCEPT FOR THE MARINA MANAGER, EMPLOY STAFF AS EMPLOYEES OF THE COMMISSION; AND~~

~~10. (VIII) BE SHALL BE AN EMPLOYEE OF THE STATE AND SERVE AT THE PLEASURE OF THE SECRETARY.~~

(3) (I) THE MARINA MANAGER SHALL BE AN EMPLOYEE OF THE STATE.

(II) THE MARINA MANAGER IS RESPONSIBLE FOR THE DAY-TO-DAY OPERATIONS OF THE MARINA.

(D) (1) A LEASE OF LAND, A BUILDING, OR OTHER FACILITY AT THE SOMERS COVE MARINA OR A CONTRACT FOR AN EVENT OR CONCESSION AT THE SOMERS COVE MARINA SHALL CONFORM TO THE ANNUAL MASTER PLAN APPROVED UNDER SUBSECTION (C)(2)(V) OF THIS SECTION.

(2) A LEASE OF LAND, A BUILDING, OR A FACILITY OR A CONTRACT FOR AN EVENT OR CONCESSION THAT IS EXECUTED BY THE EXECUTIVE DIRECTOR:

(I) MAY NOT BE FOR A TERM OF MORE THAN 5 YEARS OR BE RENEWED FOR MORE THAN AN ADDITIONAL 5 YEARS; AND

(II) SHALL BE REVIEWED AND APPROVED BY THE COMMISSION AND OFFICE OF THE ATTORNEY GENERAL.

(3) A LEASE ENTERED INTO BEFORE THE CREATION OF THE COMMISSION SHALL REMAIN IN EFFECT FOR THE DURATION OF THE TERM OF THE LEASE.

(4) (I) THE EXECUTIVE DIRECTOR MAY NOT EXECUTE A LEASE OR CONTRACT FOR NONBOATING RELATED IMPROVEMENTS OR GOODS AT THE MARINA WITHOUT THE APPROVAL OF THE SECRETARY.

(II) WITHIN 30 DAYS AFTER RECEIVING A REQUEST FOR APPROVAL OF A LEASE OR CONTRACT, THE SECRETARY SHALL PROVIDE THE EXECUTIVE DIRECTOR WITH AN INITIAL RESPONSE THAT MAY INCLUDE A PROCESS OR PLAN OF ACTION FOR ADDRESSING THE MERITS OF THE REQUEST.

(E) (1) THE EXECUTIVE DIRECTOR SHALL PROCURE GOODS AND SERVICES IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SUBSECTION.

(2) FOR GOODS AND SERVICES WITH AN EXPECTED VALUE OF \$1,000 TO \$5,000, THE EXECUTIVE DIRECTOR SHALL:

(I) MAKE A WRITTEN OR TELEPHONE REQUEST FOR BIDS;

(II) EVALUATE THE BIDS; AND

(III) AWARD THE CONTRACT TO THE RESPONSIBLE BIDDER THAT SUBMITS THE RESPONSIVE BID THAT IS THE LOWEST BID PRICE.

(3) FOR GOODS AND SERVICES WITH AN EXPECTED VALUE OF MORE THAN \$5,000, THE EXECUTIVE DIRECTOR SHALL:

(I) ADVERTISE THE SOLICITATION IN A LOCAL NEWSPAPER AND ON THE SOMERSET COUNTY WEBSITE;

(II) ISSUE INVITATIONS FOR BIDS TO ALL KNOWN PROSPECTIVE VENDORS;

(III) TABULATE AND EVALUATE THE BIDS;

(IV) SELECT FOR AWARD THE RESPONSIBLE BIDDER WHO SUBMITS THE RESPONSIVE BID THAT IS THE LOWEST BID PRICE; AND

(V) SUBMIT THE PROPOSED AWARD TO THE COMMISSION FOR REVIEW AND APPROVAL.

(4) THE EXECUTIVE DIRECTOR SHALL ADOPT A PROCUREMENT POLICY THAT INCLUDES PROVISIONS FOR MINORITY AND WOMEN-OWNED BUSINESS PARTICIPATION.

~~(E)~~ (F) (1) THE COMMISSION SHALL:

(I) ADOPT AN OPERATING BUDGET TO USE THE FUND TO IMPLEMENT THE MASTER PLAN;

(II) ADOPT A CAPITAL BUDGET THAT MAY USE FUNDS FROM SOMERSET COUNTY, THE CITY OF CRISFIELD, THE STATE, AND OTHER SOURCES TO IMPLEMENT THE MASTER PLAN;

(III) 1. APPLY FOR GRANTS FROM THE WATERWAY IMPROVEMENT FUND IN ACCORDANCE WITH TITLE 8, SUBTITLE 7 OF THIS ARTICLE; AND

2. SUBJECT TO THE SECRETARY'S APPROVAL, RECEIVE APPROVED GRANT AMOUNTS AT THE TIME OF ACCEPTANCE OF A BID OR BIDS FOR WATERWAY IMPROVEMENT WORK;

(IV) ASSESS SLIP AND OTHER FEES AND CHARGES AT SOMERS COVE MARINA AS NECESSARY IN ORDER TO IMPLEMENT THE MASTER PLAN;

(V) SET POLICY AND PROVIDE GENERAL OVERSIGHT OF MARINA OPERATIONS; AND

(VI) ADOPT RULES AND REGULATION NECESSARY FOR THE CONDUCT OF ITS OWN AFFAIRS.

(2) THE COMMISSION MAY:

(I) ACCEPT GIFTS, CONTRIBUTIONS, OR LOANS OF MONEY, SUPPLIES, GOODS, AND SERVICES, AND ACCEPT APPROPRIATIONS, ALLOTMENTS, AND LOANS OF MONEY FROM:

1. **THE STATE OR FEDERAL GOVERNMENT;**
2. **A FEDERAL CORPORATION;**
3. **A UNIT OR INSTRUMENTALITY OF THE FEDERAL GOVERNMENT; OR**
4. **A POLITICAL SUBDIVISION OR INSTRUMENTALITY OF THE STATE;**

(II) **EXERCISE A POWER USUALLY POSSESSED BY A PRIVATE CORPORATION IN PERFORMING SIMILAR FUNCTIONS UNLESS TO DO SO WOULD CONFLICT WITH STATE LAW; AND**

(III) **DO ALL THINGS NECESSARY ~~OR CONVENIENT~~ TO CARRY OUT THE MANDATES AND POWERS EXPRESSLY PROVIDED BY THIS SECTION.**

[(b)] ~~(D)~~ (G) There is a Somers Cove Marina Improvement Fund in the [Department] **COMMISSION**, to be used for the operation, maintenance, development, and improvement of the Somers Cove Marina facilities in Crisfield, Maryland.

[(c)] ~~(E)~~ (H) Any money obtained by the [Department] **COMMISSION** from Somers Cove Marina shall be credited to the Fund.

[(d)] (1) The Fund is a special, nonlapsing fund that is not subject to § 7-302 of the State Finance and Procurement Article.

(2) Any investment earnings of the Fund may not be transferred or revert to the General Fund of the State, but shall remain in the Fund.

(3) Moneys in the Fund may be used for administrative costs calculated in accordance with § 1-103(b)(2) of this article.]

~~(F)~~ (I) (1) **THE COMMISSION SHALL:**

(I) **MAINTAIN THE FUND IN A BANK ACCOUNT SEPARATE FROM STATE FUNDS;**

(II) **TRANSFER ANY UNENCUMBERED MONEYS IN THE FUND RUN BY THE DEPARTMENT TO THE COMMISSION'S FUND; AND**

(III) **REIMBURSE THE STATE FOR THE SALARY OF THE MARINA MANAGER.**

(2) MONEYS OF THE FUND ARE:

(I) NOT MONEYS OF THE STATE WITHIN THE MEANING OF ARTICLE VI OF THE STATE CONSTITUTION; AND

(II) SUBJECT TO AUDIT BY THE STATE, INCLUDING THE DEPARTMENT AND THE LEGISLATIVE AUDITOR.

(3) MONEYS PLEDGED FOR USE BY THE STATE FOR SOMERS COVE MARINA BEFORE THE CREATION OF THE COMMISSION SHALL BE USED FOR THE SAME PURPOSE AS ORIGINALLY PLEDGED.

~~(G)~~ **(J) ON OR BEFORE OCTOBER 1 OF EACH YEAR, THE COMMISSION SHALL PROVIDE TO THE DEPARTMENT AN ACCOUNTING OF REVENUES AND EXPENSES FROM SOMERS COVE MARINA FOR THE PREVIOUS FISCAL YEAR.**

~~(H)~~ **(K) (1) ON NOVEMBER 1, 2011, THE DEPARTMENT AND THE COMMISSION SHALL BEGIN TO EVALUATE THE COMMISSION'S WORK SO THAT THE DEPARTMENT AND THE COMMISSION MAY MAKE FINDINGS AND RECOMMENDATIONS CONCERNING THE COMMISSION'S ABILITY TO:**

(I) OPERATE, MAINTAIN, DEVELOP, AND IMPROVE SOMERS COVE MARINA IN AN EFFECTIVE MANNER; AND

(II) AFFORD ~~AND~~ OR ASSUME THE COSTS OF OPERATING, MAINTAINING, DEVELOPING, AND IMPROVING SOMERS COVE MARINA, INCLUDING THE SALARIES OF:

1. THE EXECUTIVE DIRECTOR; AND

2. EMPLOYEES OF THE STATE WHO REMAIN WORKING AT SOMERS COVE MARINA.

(2) ON NOVEMBER 1, 2013, BASED ON THE EVALUATION UNDERTAKEN IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, THE DEPARTMENT AND THE COMMISSION SHALL REPORT THEIR FINDINGS AND RECOMMENDATIONS, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The terms of the initial members of the Somers Cove Commission shall begin on January 1, 2009, and shall expire as follows:

(1) of the two members appointed by the Board of County Commissioners of Somerset County, one member on December 31, 2010, and one member on December 31, 2012;

(2) of the two members appointed by the Mayor of Crisfield, one member on December 31, 2010, and one member on December 31, 2012; and

(3) of the three members appointed by the Secretary, one member in 2010, one member in 2011, and one member in 2012.

(b) (1) A State employee, other than the Executive Director, who is in an appointed or full-time equivalent position or full-time contractual position, and who is employed at Somers Cove Marina on June 1, 2008, may remain employed as a State employee at the Marina subject to the authority of the Secretary under Title 1, Subtitle 1 of the Natural Resources Article and the provisions of the State Personnel Management System.

(2) ~~If the Department and the Commission determine that the Commission is financially able, the~~ The Somers Cove Marina Commission shall reimburse the Department of Natural Resources for the salary of the Executive Director and any other a State employee at the Marina who remains employed in accordance with subsection (b)(1) of this section.

(3) The State shall pay the Executive Director's salary without reimbursement from the Somers Cove Marina Commission until the Secretary of Natural Resources and the Somers Cove Marina Commission determine that the Commission is financially able to reimburse the State for the cost of the Executive Director's salary.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect November 1, 2008.

Approved by the Governor, April 24, 2008.