

CHAPTER 456

(House Bill 1373)

AN ACT concerning

Natural Resources – Somers Cove Marina Commission

FOR the purpose of including the Somers Cove Marina Commission as State personnel under the Maryland Tort Claims Act; specifying that Commission members who are not employees of the Department of Natural Resources may use certain vehicles and equipment under certain circumstances; authorizing the Department to transfer vehicles and other inventory to the Commission under certain circumstances; authorizing the Executive Director of the Commission to engage in emergency procurement under certain circumstances; requiring the Executive Director to submit a report to the Commission including certain information after use of the emergency procurement procedure; providing for the application of certain provisions relating to the purchase of items for direct resale or remanufacture; making this Act an emergency measure; 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 2008 Supplement)

BY repealing and reenacting, with amendments,
Article – State Government
Section 12–101
Annotated Code of Maryland
(2004 Replacement Volume and 2008 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.

(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.

(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.

(4) A member is not entitled to compensation except for reimbursement for expenses as provided in the budget of the Commission.

(5) (i) The Commission shall elect a chair and a vice chair of the Commission from among its members.

(ii) The Commission shall 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.

(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.

(7) Five members of the Commission are a quorum.

(8) A majority vote of the members present at a meeting having a quorum is needed for the Commission to act.

(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.

(c) (1) The Secretary shall:

(i) Appoint an Executive Director;

(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.

(2) The Executive Director:

(i) Shall administer the Fund;

(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;

(iii) Shall supervise the marina manager;

(iv) May execute leases of land, buildings, or facilities at Somers Cove Marina and execute contracts for events or concessions at Somers Cove Marina in accordance with subsection (c) of this section;

(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;

(vi) Shall administer, in cooperation with the Commission, all unencumbered grants;

(vii) 1. Shall employ a staff to operate and maintain Somers Cove Marina, and set the staff's compensation; and

2. Shall, except for the marina manager, employ staff as employees of the Commission; and

(viii) 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.

(4) ON APPROVAL OF AND SUBJECT TO THE CONDITIONS THAT THE DEPARTMENT MAY REQUIRE, COMMISSION STAFF WHO ARE NOT EMPLOYEES OF THE DEPARTMENT MAY USE VEHICLES OR EQUIPMENT OF THE DEPARTMENT.

(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) ON APPROVAL OF AND SUBJECT TO THE CONDITIONS THAT THE SECRETARY MAY REQUIRE, THE DEPARTMENT MAY TRANSFER ANY VEHICLE, EQUIPMENT, OR OTHER INVENTORY TO THE COMMISSION.

[(e)] (F) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION, 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) FOR AN EMERGENCY PROCUREMENT THAT THE EXECUTIVE DIRECTOR DETERMINES TO BE NECESSARY TO AVOID OR MITIGATE SERIOUS DAMAGE TO PUBLIC HEALTH, SAFETY, OR WELFARE, THE EXECUTIVE DIRECTOR SHALL:

(I) OBTAIN AS MUCH COMPETITION AS POSSIBLE UNDER THE CIRCUMSTANCES; AND

(II) AFTER AWARDING THE PROCUREMENT CONTRACT, SUBMIT TO THE COMMISSION AND THE SECRETARY A WRITTEN REPORT THAT

GIVES THE JUSTIFICATION FOR THE USE OF THE EMERGENCY PROCUREMENT PROCEDURE.

~~[(4)]~~ **(5)** The Executive Director shall adopt a procurement policy that includes provisions for minority- and women-owned business participation.

(6) THIS SUBSECTION DOES NOT APPLY TO PROCUREMENT IN SUPPORT OF ENTERPRISE ACTIVITIES FOR THE PURPOSE OF DIRECT RESALE OR REMANUFACTURE AND SUBSEQUENT RESALE.

~~[(f)]~~ **(G)** (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 regulations 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 to carry out the mandates and powers expressly provided by this section.

[(g)] (H) There is a Somers Cove Marina Improvement Fund in the Commission, to be used for the operation, maintenance, development, and improvement of the Somers Cove Marina facilities in Crisfield, Maryland.

[(h)] (I) Any money obtained by the Commission from Somers Cove Marina shall be credited to the Fund.

[(i)] (J) (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.

[(j)] (K) 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.

[(k)] (L) (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 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.

Article – State Government

12-101.

(a) In this subtitle, unless the context clearly requires otherwise, "State personnel" means:

(1) a State employee or official who is paid in whole or in part by the Central Payroll Bureau in the Office of the Comptroller of the Treasury;

(2) an employee or official of the:

(i) Maryland Transportation Authority;

(ii) Injured Workers' Insurance Fund;

(iii) Maryland Stadium Authority;

(iv) Maryland Environmental Service;

(v) overseas programs of the University College of the University System of Maryland;

(vi) Maryland Economic Development Corporation;

(vii) Maryland Technology Development Corporation;

(viii) Maryland African American Museum Corporation;

(ix) Maryland Automobile Insurance Fund;

(x) Maryland Health and Higher Educational Facilities Authority; [and]

(xi) Maryland Agricultural and Resource-Based Industry Development Corporation; **AND**

(XII) THE SOMERS COVE MARINA COMMISSION;

(3) a person who:

(i) is a member of a State board, commission, or similar State entity; or

(ii) 1. is providing a service to or for the State;

2. is not paid in whole or in part by the State; and

3. satisfies all other requirements for designation as State personnel as may be set forth in regulations adopted by the Treasurer pursuant to Title 10 of this article;

(4) an individual who, without compensation, exercises a part of the sovereignty of the State;

(5) a student enrolled in a State educational institution:

(i) who is providing services to third parties in the course of participation in an approved clinical training or academic program;

(ii) who, as determined by the Treasurer, is required to have liability insurance covering claims arising from services to third parties performed by the student in the course of the approved clinical training or academic program;

(iii) who, as determined by the Treasurer, cannot obtain commercial liability insurance at an affordable cost; and

(iv) who, as determined by the Treasurer, may be required to contribute to an insurance program for claims arising from services to third parties performed by the student in the course of the approved clinical training or academic program;

(6) a sheriff or deputy sheriff of a county or Baltimore City;

(7) an employee of a county who is assigned to a local department of social services, including a Montgomery County employee who carries out State programs administered under Title 3, Subtitle 4 of the Human Services Article;

(8) a State's Attorney of a county or Baltimore City, or an employee of an office of a State's Attorney;

(9) a member of a board of license commissioners of a county or Baltimore City appointed under the provisions of Article 2B of the Code, or an employee of a board of license commissioners;

(10) a member of a local board of elections, or an employee of a local board of elections;

(11) a judge of a circuit court of a county or Baltimore City, or an employee of a circuit court;

(12) a judge of an orphans' court of a county or Baltimore City, or an employee of an orphans' court;

(13) to the extent of a nonprofit organization's activities as a third party payee, and to the extent the nonprofit organization has no other insurance for this purpose, a nonprofit organization that has been approved by the Department of Human Resources or its designee to serve as a third party payee for purposes of providing temporary cash assistance, transitional assistance, or child-specific benefits to Family Investment Program recipients; or

(14) a student, faculty, or staff member of an institution of higher education who is providing a service under the Family Investment Program in accordance with § 5-305, § 5-306, or § 5-317 of the Human Services Article.

(b) In this subtitle, a unit of the State government includes the Montgomery County government to the extent that Montgomery County administers a State program under Title 3, Subtitle 4 of the Human Services Article.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Approved by the Governor, May 7, 2009.