

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 691

An Act to amend and reenact §§ 15.2-6402, 15.2-6403, 15.2-6405 and 15.2-6409 of the Code of Virginia, relating to the Virginia Regional Industrial Facilities Act.

[S 679]

Approved April 6, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-6402, 15.2-6403, 15.2-6405 and 15.2-6409 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-6402. Procedure for creation of authorities.

The governing bodies of any three or more localities within the region, provided that two or more of the localities are cities or counties or a combination thereof, may, in conformance with the procedure set forth herein, create a regional industrial facility authority by adopting ordinances proposing to create an authority which shall (i) set forth the name of the proposed regional industrial facility authority (which shall include the words "industrial facility authority"); (ii) name the member localities; (iii) contain findings that the economic growth and development of the locality and the comfort, convenience and welfare of its citizens require the development of facilities and that joint action through a regional industrial facility authority by the localities which are to be members of the proposed authority will facilitate the development of the needed facilities; and (iv) authorize the execution of an agreement establishing the respective rights and obligations of the member localities with respect to the authority consistent with the provisions of this chapter. However, with regard to Planning Districts 3, 10, 11 and 12, the governing bodies of any two or more localities within the region, provided that one or more of the localities is a city or county, may adopt such an ordinance. Such ordinances shall be filed with the Secretary of the Commonwealth. Upon certification by the Secretary of the Commonwealth ~~to the governing bodies of each of the member localities~~ that the ordinances required by this chapter have been filed and, upon the basis of the facts set forth therein, satisfy such requirements, ~~and upon the entry of such certification in the minutes of the proceedings of the governing bodies of each of the member localities,~~ the proposed authority shall be and constitute an authority for all of the purposes of this chapter, to be known and designated by the name stated in the ordinances. *Upon the issuance of such certificate, the authority shall be deemed to have been lawfully and properly created and established and authorized to exercise its powers under this chapter.* Each authority created pursuant to this chapter is hereby created as a political subdivision of the Commonwealth. At any time subsequent to the creation of an authority under this chapter, the membership of the authority may, with the approval of the authority's board, be expanded to include any locality within the region that would have been eligible to be an initial member of the authority. The governing body of a locality seeking to become a member of an existing authority shall evidence its intent to become a member by adopting an ordinance proposing to join the authority that conforms, to the extent applicable, to the requirements for an ordinance set forth in clauses (i), (iii), and (iv) of this section.

§ 15.2-6403. Board of the authority.

A. All powers, rights and duties conferred by this chapter, or other provisions of law, upon an authority shall be exercised by a board of directors. A board shall consist of two members for each member locality. The governing body of each member locality shall appoint two members to the board. *Any person who shall be residents is a resident of the appointing member locality may be appointed to the board.* However, if an authority has only two member localities, the governing body of each locality may appoint three members each. However, in any instance in which the member localities are not equally contributing funding to the authority, and upon agreement by each member locality, the number of appointments to be made by each locality may be based upon the percentage of local funds contributed by each of the member localities. Each member of a board shall serve for a term of four years and may be reappointed ~~for one additional term~~. However, the board may elect to provide for staggered terms, in which case the members that draw an initial two-year term shall be eligible for reappointment ~~for one additional four-year term~~ *terms. If a vacancy occurs by reason of the death, disqualification or resignation of a board member, the governing body of the member locality that appointed the authority board member shall appoint a successor to fill the unexpired term.*

However, with regard to any authority created by Planning Districts 10, 11 and 12, only members of the appointing governing body of each member locality shall be appointed to the board. In the event such board members feel it is necessary to have an odd number of members, they may establish a rotation system that will allow one locality to appoint one extra member to serve for up to two years. Each locality will, in turn, appoint such extra member. Once the cycle is completed, the rotation shall be repeated.

Each member locality may appoint up to two alternate board members. Alternates shall be selected in the same manner as board members, and may serve as an alternate for either board member from the member locality that appoints the alternate. Alternates shall be appointed for terms that coincide with one or more of the board members from the member locality that appoints the alternate. If a board member is not present at a meeting of the authority, the alternate shall have all the voting and other rights of the board member not present and shall be counted for purposes of determining a quorum. Alternates are required to take an oath of office and are entitled to reimbursement for expenses in the same manner as board members.

B. Each member of a board shall, before entering upon the discharge of the duties of his office, take and subscribe to the oath prescribed in § 49-1. Members shall be reimbursed for actual expenses incurred in the performance of their duties from funds available to the authority.

C. ~~A majority of the members of a board shall constitute a quorum; shall exist when a majority of the member localities are represented by at least one member of the board. and~~ The affirmative vote of a quorum of the board shall be necessary for any action taken by the board. No vacancy in the membership of a board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board. The board shall determine the times and places of its regular meetings, *which may be adjourned or continued, without further public notice, from day to day or from time to time or from place to place, but not beyond the time fixed for the next regular meeting, until the business before the board is completed.* Special meetings of a board shall be held when requested by a ~~majority of the~~ members of the board *representing two or more localities.* Any such request for a special meeting shall be in writing, and the request shall specify the time and place of the meeting and the matters to be considered at the meeting. A reasonable effort shall be made to provide each member with notice of any special meeting. No matter not specified in the notice shall be considered at such special meeting unless all the members of the board are present. *Special meetings may be adjourned or continued, without further public notice, from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business before the board is completed.*

D. Each board shall elect from its membership a chairman for each calendar year. The board may also appoint an executive director and staff who shall discharge such functions as may be directed by the board. The executive director and staff shall be paid from funds received by the authority.

E. Each board, promptly following the close of the fiscal year, shall submit an annual report of the authority's activities of the preceding year to the governing body of each member locality. Each such report shall set forth a complete operating and financial statement covering the operation of the authority during such year.

§ 15.2-6405. Powers of the authority.

Each authority is vested with the powers of a body corporate, including the power to sue and be sued in its own name, plead and be impleaded, and adopt and use a common seal and alter the same as may be deemed expedient. In addition to the powers set forth elsewhere in this chapter, an authority may:

1. Adopt bylaws, rules and regulations to carry out the provisions of this chapter;
2. Employ, either as regular employees or as independent contractors, consultants, engineers, architects, accountants, attorneys, financial experts, construction experts and personnel, superintendents, managers and other professional personnel, personnel, and agents as may be necessary in the judgment of the authority, and fix their compensation;
3. Determine the locations of, develop, establish, construct, erect, repair, remodel, add to, extend, improve, equip, operate, regulate, and maintain facilities to the extent necessary or convenient to accomplish the purposes of the authority;
4. Acquire, own, hold, lease, use, sell, encumber, transfer, or dispose of, in its own name, any real or personal property or interests therein;
5. Invest and reinvest funds of the authority;
6. Enter into contracts of any kind, and execute all instruments necessary or convenient with respect to its carrying out the powers in this chapter to accomplish the purposes of the authority;
7. Expend such funds as may be available to it for the purpose of developing facilities, including but not limited to (i) purchasing real estate; (ii) grading sites; (iii) improving, replacing, and extending water, sewer, natural gas, electrical, and other utility lines; (iv) constructing, rehabilitating, and expanding buildings; (v) constructing parking facilities; (vi) constructing access roads, streets, and rail lines; (vii) purchasing or leasing machinery and tools; and (viii) making any other improvements deemed necessary by the authority to meet its objectives;
8. Fix and revise from time to time and charge and collect rates, rents, fees, or other charges for the use of facilities or for services rendered in connection with the facilities;
9. Borrow money from any source for any valid purpose, including working capital for its operations, reserve funds, or interest; mortgage, pledge, or otherwise encumber the property or funds of the authority; and contract with or engage the services of any person in connection with any financing, including financial institutions, issuers of letters of credit, or insurers;
10. Issue bonds under this chapter;

11. Accept funds and property from the Commonwealth, persons, counties, cities, and towns and use the same for any of the purposes for which the authority is created;

12. Apply for and accept grants or loans of money or other property from any federal agency for any of the purposes authorized in this chapter and expend or use the same in accordance with the directions and requirements attached thereto or imposed thereon by any such federal agency;

13. *Make loans or grants to any person, partnership, association, corporation, business or governmental entity in furtherance of the purposes of this chapter, including for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the authority that have not been pledged or assigned for the payment of any of the authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans, and any security therefor. The word "revenues" as used in this subdivision includes grants, loans, funds and property, as set out in subdivisions 11 and 12.*

~~13~~ 14. Enter into agreements with any other political subdivision of the Commonwealth for joint or cooperative action in accordance with § 15.2-13; and

~~14~~ 15. Do all things necessary or convenient to carry out the purposes of this chapter.

§ 15.2-6409. Bond issues.

A. An authority may at any time and from time to time issue bonds for any valid purpose, including the establishment of reserves and the payment of interest. In this chapter, "bonds" includes notes of any kind, interim certificates, refunding bonds, or any other evidence of obligation.

B. The bonds of any issue shall be payable solely from the property or receipts of the authority, including, but not limited to:

1. Taxes, rents, fees, charges, or other revenues payable to the authority;
2. Payments by financial institutions, insurance companies, or others pursuant to letters or lines of credit, policies of insurance, or purchase agreements;
3. Investment earnings from funds or accounts maintained pursuant to a bond resolution or trust agreement; and
4. Proceeds of refunding bonds.

C. Bonds shall be authorized by resolution of an authority and may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. The bonds shall:

1. Be issued at, above, or below par value, for cash or other valuable consideration, and mature at a time or times, whether as serial bonds or as term bonds or both, not exceeding forty years from their respective dates of issue;
2. Bear interest at the fixed or variable rate or rates determined by the method provided in the resolution or trust agreement;
3. Be payable at a time or times, in the denominations and form, and carry the registration and privileges as to conversion and for the replacement of mutilated, lost, or destroyed bonds as the resolution or trust agreement may provide;
4. Be payable in lawful money of the United States at a designated place;
5. Be subject to the terms of purchase, payment, redemption, refunding, or refinancing that the resolution or trust agreement provides;
6. Be executed by the manual or facsimile signatures of the officers of the authority designated by the authority, which signatures shall be valid at delivery even for one who has ceased to hold office; and
7. Be sold in the manner and upon the terms determined by the authority including private (negotiated) sale.

D. Any resolution or trust agreement may contain provisions which shall be a part of the contract with the holders of the bonds as to:

1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the authority or proceeds or benefits of any contract and conveying or otherwise securing any property rights;
2. Setting aside loan funding deposits, debt service reserves, capitalized interest accounts, cost of issuance accounts and sinking funds, and the regulation, investment, and disposition thereof;
3. Limiting the purpose to which, or the investments in which, the proceeds of the sale of any issue of bonds may be applied and restrictions to investments of revenues or bond proceeds in government obligations for which principal and interest are unconditionally guaranteed by the United States of America;
4. Limiting the issuance of additional bonds and the terms upon which additional bonds may be issued and secured and may rank on a parity with, or be subordinate or superior to, other bonds;
5. Refunding or refinancing outstanding bonds;
6. Providing a procedure, if any, by which the terms of any contract with bondholders may be altered or amended and the amount of bonds the holders of which must consent thereto, and the manner in which consent shall be given;
7. Defining the acts or omissions which shall constitute a default in the duties of the authority to bondholders and providing the rights of or remedies for such holders in the event of a default which

may include provisions restricting individual right of action by bondholders;

8. Providing for guarantees, pledges of property, letters of credit, or other security, or insurance for the benefit of the bondholders; and

9. Addressing any other matter relating to the bonds which the authority determines appropriate.

E. No member of an authority, member of a board, or any person executing the bonds on behalf of an authority shall be liable personally for the bonds or subject to any personal liability by reason of the issuance of the bonds.

F. An authority may enter into agreements with agents, banks, insurers, or others for the purpose of enhancing the marketability of, or as security for, its bonds.

G. A pledge by an authority of revenues as security for an issue of bonds shall be valid and binding from the time the pledge is made.

The revenues pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and binding against any person having any claim of any kind in tort, contract or otherwise against an authority, irrespective of whether the person has notice.

No resolution, trust agreement or financing statement, continuation statement, or other instrument adopted or entered into by an authority need be filed or recorded in any public record other than the records of the authority in order to perfect the lien against third persons, regardless of any contrary provision of public general or local law.

H. Except to the extent restricted by an applicable resolution or trust agreement, any holder of bonds issued under this chapter or a trustee acting under a trust agreement entered into under this chapter, may, by any suitable form of legal proceedings, protect and enforce any rights granted under the laws of Virginia or by any applicable resolution or trust agreement.

I. An authority may issue bonds to refund any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase or maturity of the bonds. Refunding bonds may be issued for the public purposes of realizing savings in the effective costs of debt service, directly or through a debt restructuring, for alleviating impending or actual default and may be issued in one or more series in an amount in excess of that of the bonds to be refunded.

J. For a period of thirty days after the date of the filing with the circuit court having jurisdiction over any of the political subdivisions that are members of the authority and in which the facility or any portion thereof being financed is located a certified copy of the initial resolution of the authority authorizing the issuance of bonds, any person in interest may contest the validity of the bonds, the rates, rents, fees and other charges for the services and facilities furnished by, for the use of, or in connection with, the facility or any portion thereof being financed, the pledge of revenues pledged to payment of the bonds, any provisions that may be recited in any resolution, trust agreement, indenture or other instrument authorizing the issuance of bonds, or any matter contained in, provided for or done or to be done pursuant to the foregoing. If such contest is not given within the thirty-day period, the authority to issue bonds, the validity of any other provision contained in the resolution, trust agreement, indenture or other instrument, and all proceedings in connection with the authorization and the issuance of the bonds shall be conclusively presumed to have been legally taken and no court shall have authority to inquire into such matters and no such contest shall thereafter be instituted.

Upon the delivery of any bonds reciting that they are issued pursuant to this chapter and a resolution or resolutions adopted under this chapter, the bonds shall be conclusively presumed to be fully authorized by all the laws of the Commonwealth and to have been sold, executed and delivered by the authority in conformity with such laws, and the validity of the bonds shall not be questioned by a party plaintiff, a party defendant, the authority, or any other interested party in any court, anything in this chapter or in any other statutes to the contrary notwithstanding.