

# VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

## CHAPTER 339

*An Act to amend and reenact §§ 2.2-2279, 2.2-2285, 2.2-2287, 2.2-2292, 2.2-2294, and 2.2-2295 of the Code of Virginia, relating to the Small Business Financing Authority; not-for-profit entities.*

[S 838]

Approved March 16, 2003

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-2279, 2.2-2285, 2.2-2287, 2.2-2292, 2.2-2294, and 2.2-2295 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-2279. Short title; definitions.

A. This article shall be known and may be cited as the "Virginia Small Business Financing Act."

B. As used in this article, unless the context requires a different meaning:

*"Business enterprise" means (i) any industry for the manufacturing, processing, assembling, storing, warehousing, servicing, distributing, or selling of any products of agriculture, mining, or industry or professional services; (ii) commercial enterprises making sales or providing services to industries described in clause (i); (iii) enterprises for research and development, including but not limited to scientific laboratories; (iv) not-for-profit entity operating in the Commonwealth; or (v) such other businesses as will be in furtherance of the public purposes of this article.*

"Cost," as applied to the eligible ~~small~~ business, means the cost of construction; the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests; the cost of demolishing, removing, rehabilitating or relocating any buildings or structures on lands acquired, including the cost of acquiring any such lands to which such buildings or structures may be moved, rehabilitated or relocated; the cost of all labor, materials, machinery and equipment, financing charges, letter of credit or other credit enhancement fees, insurance premiums, interest on all bonds prior to and during construction or acquisition and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction or acquisition, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, commissions, guaranty fees, other expenses necessary or incident to determining the feasibility or practicality of constructing, financing or operating a project of an eligible ~~small~~ business; administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions, improvements and replacements, and such other expenses as may be necessary or incidental to the construction or acquisition of a project of an eligible ~~small~~ business or the financing of such construction, acquisition or expansion and the placing of a project of an eligible ~~small~~ business in operation. Any obligation or expense incurred by the Commonwealth or any agency thereof, with the approval of the Authority for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction or acquisition of a project of an eligible ~~small~~ business may be regarded as a part of the cost of a project of an eligible ~~small~~ business and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued therefor.

"Eligible ~~small~~ business" means any person engaged in one or more ~~small~~ business enterprises in the Commonwealth that satisfies one or more of the following requirements *for a for-profit enterprise*: (i) has received \$10 million or less in annual gross income under generally accepted accounting principles for each of its last three fiscal years or lesser time period if it has been in existence less than three years, (ii) has fewer than 250 employees, (iii) has a net worth of \$2 million or less, or (iv) such other satisfactory requirements as the Board shall determine from time to time if it finds and determines such person is in need of its assistance *or is a not-for-profit entity granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating in the Commonwealth.*

"Federal Act" means the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as amended from time to time.

"Indenture" means any trust agreement, deed of trust, mortgage or other security agreement under which bonds authorized pursuant to this article shall be issued or secured.

"Lender" means any federal- or state-chartered bank, federal land bank, production credit association, bank for cooperatives, federal- or state-chartered savings institution, building and loan association, small business investment company or any other financial institution qualified within the Commonwealth to originate and service loans, including but not limited to insurance companies, credit unions, investment banking or brokerage companies and mortgage loan companies.

"Loan" means any lease, loan agreement or sales contract as hereinafter defined:

(i) "Lease" means any lease containing an option to purchase the project or projects of the eligible ~~small~~ business being financed for a nominal sum upon payment in full, or provision thereof, of all

bonds issued in connection with the eligible ~~small~~ business and all interest thereon and principal of and premium, if any, thereon and all other expenses in connection therewith.

(ii) "Loan agreement" means an agreement providing for a loan of proceeds from the sale and issuance of bonds by the Authority or by a lender with which the Authority has contracted to loan such proceeds to one or more contracting parties to be used to pay the cost of one or more projects of an eligible ~~small~~ business and providing for the repayment of such loan including but not limited to all interest thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith, by such contracting party or parties and which may provide for such loans to be secured or evidenced by one or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties, delivered to the Authority or to a trustee under an indenture pursuant to which the bonds were issued.

(iii) "Sales contract" means a contract providing for the sale of one or more projects of an eligible ~~small~~ business to one or more contracting parties and includes but is not limited to a contract providing for payment of the purchase price including but not limited to all interest thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith, in one or more installments. If the sales contract permits title to a project being sold to an eligible ~~small~~ business to pass to such contracting party or parties prior to payment in full of the entire purchase price, it also shall provide for such contracting party or parties to deliver to the Authority or to the trustee under the indenture pursuant to which the bonds were issued, one or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties providing for timely payments of the purchase price thereof.

"Municipality" means any county or incorporated city or town in the Commonwealth.

"Revenue Code" means the Internal Revenue Code of 1954, as amended.

"Revenues" means any and all fees, rates, rentals, profits and receipts collected by, payable to, or otherwise derived by, the Authority, and all other moneys and income of whatsoever kind or character collected by, payable to, or otherwise derived by, the Authority in connection with loans to any eligible ~~small~~ business in furtherance of the purposes of this article.

"Small business enterprise" means (i) any industry for the manufacturing, processing, assembling, storing, warehousing, servicing, distributing, or selling of any products of agriculture, mining or industry or professional services; (ii) commercial enterprises making sales or providing services to industries described in clause (i) hereof; (iii) enterprises for research and development, including but not limited to scientific laboratories; or (iv) such other businesses as will be in furtherance of the public purposes of this article.

"Statewide Development Company" means the corporation chartered under this article for purposes of qualification as a state development company as such term is defined in the Federal Act.

#### § 2.2-2285. Powers of the Authority.

The Authority is granted all powers necessary or appropriate to carry out and effectuate its purposes including, but not limited to, the following powers to:

1. Have perpetual existence as a public body corporate and as a political subdivision of the Commonwealth;

2. Adopt, amend, and repeal bylaws, rules and regulations not inconsistent with this article, to regulate its affairs and to carry into effect the powers and the purposes of the Authority and for the conduct of its business;

3. Sue and be sued in its name including but not limited to bringing actions pursuant to Article 6 (§ 15.2-2650 et seq.) of Chapter 26 of Title 15.2 to determine the validity of any issuance or proposed issuance of its bonds under this article and the legality and validity of all proceedings previously taken or proposed in a resolution of the Authority to be taken for the authorization, issuance, sale and delivery of such bonds and for the payment of the principal thereof and interest thereon;

4. Have an official seal and alter it at will;

5. Maintain an office at such place within the Commonwealth as it may designate;

6. Make and execute contracts and all other instruments necessary and convenient for the performance of its duties and the exercise of its powers under this article upon such terms and conditions it deems appropriate;

7. Employ office personnel, advisers, consultants, professionals and agents as may be necessary in its judgment, and to fix their compensation;

8. Procure insurance against any loss in connection with its property and other assets, including but not limited to loans in such amounts and from such insurers as it deems advisable;

9. Borrow money and issue bonds as provided by this article;

10. Procure insurance or guarantees from any public or private entities, including any department, agency or instrumentality of the United States of America, or, subject to the provisions of and to the extent moneys are available in the fund created by § 2.2-2290, insure or guarantee the payment of any bonds issued by the Authority, including the power to pay premiums on any such insurance or guarantees or other instruments of indebtedness;

11. Receive and accept from any source aid or contributions of money, property, labor or other

things of value to be held, used and applied to carry out the purposes of this article (subject, however, to any conditions upon which grants or contributions are made) including, but not limited to gifts or grants from any department, agency or instrumentality of the United States;

12. Enter into agreements with any department, agency or instrumentality of the United States or of the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of planning, regulating and providing for the financing or assisting in the financing of any eligible ~~small~~ business or any project thereof;

13. Enter into contracts or agreements with lenders for the servicing and/or processing of loans;

14. Provide technical assistance to local industrial development authorities and to profit and nonprofit entities in the development or operation by, or assistance to, persons engaged in small business enterprises and distribute data and information concerning the encouragement and improvement of small business enterprises in the Commonwealth;

15. To the extent permitted in the proceedings pursuant to which the bonds of the Authority are issued, consent to any modification with respect to the rate of interest, time for, and payment of, any installment of principal or interest, or any other term of any contract, loan, sales contract, lease, indenture or agreement of any kind to which the Authority is a party;

16. To the extent permitted in the proceedings pursuant to which the bonds of the Authority are issued, enter into contracts with any lender containing provisions authorizing the lender to reduce the charges or fees, exclusive of loan payments, to persons unable to pay the regular schedule thereof when, by reason of other income or payment by any department, agency or instrumentality of the United States or the Commonwealth, the reduction can be made without jeopardizing the economic stability of the eligible ~~small~~ business being financed;

17. Allocate any of its property to the insurance or guarantee fund established by § 2.2-2290 or to any other fund of the Authority, such property consisting of:

- a. Moneys appropriated by the Commonwealth;
- b. Premiums, fees and any other amounts received by the Authority with respect to financial assistance provided by the Authority;
- c. Proceeds as designated by the Authority from the loan or other disposition of property held or acquired by the Authority;
- d. Income from investments that were made by the Authority or on the behalf of the Authority from moneys in one or more of its funds; or
- e. Any other moneys made available to the Authority consistent with this article;

18. Use any fund of the Authority for any and all expenses to be paid by the Authority including, but not limited to: (i) any and all expenses for administrative, legal, actuarial, and other services; (ii) all costs, charges, fees and expenses of the Authority relating to the authorizing, preparing, printing, selling, issuing, and insuring of bonds and the funding of reserves; and (iii) all expenses and costs relating to the guaranteeing, insuring or procurement of guarantees, insurance or other instruments providing credit or the enhancement of credit for the bonds;

19. Collect fees and charges the Authority determines to be reasonable in connection with its loans, insurance, guarantees, commitments and servicing thereof;

20. Sell, at public or private sale, with or without public bidding, any obligation held by the Authority;

21. Invest any funds not needed for immediate disbursement, including any funds held in reserve, in any obligations or securities that may be legally purchased by political subdivisions in the Commonwealth or as may be otherwise permitted by § 2.2-2305;

22. Administer the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2 and the Virginia Economic Development Revolving Fund in Chapter 22.1 (§ 59.1-284.1 et seq.) of Title 59.1;

23. Create and establish such funds and accounts as may be necessary or desirable for its purposes; and

24. Take any action necessary or convenient for the exercise of the powers granted by this article or reasonably implied from them.

§ 2.2-2287. Power to borrow money and issue bonds.

The Authority may borrow money and issue bonds to pay the cost of the projects for which the bonds have been issued, including but not limited to the power to issue bonds to renew or to pay bonds, including the interest thereon. Whenever it deems refunding expedient it may refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund outstanding bonds. Refunding bonds may be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded, or exchanged for the bonds to be refunded. The Authority may undertake the financing of the cost of a project for an eligible ~~small~~ business from the proceeds of its bonds by one or more of the following methods: (i) entering into a lease for the facilities of the eligible ~~small~~ business being financed; (ii) selling such facilities to the eligible ~~small~~ business under a sales contract; (iii) lending the proceeds of the sale of the bonds under a loan agreement with the eligible ~~small~~ business; (iv) entering into a loans to lenders transaction in the

manner described in § 2.2-2293; or (v) entering into such other transactions as the Board deems appropriate to accomplish the purposes of this article.

§ 2.2-2292. Public hearing and approval.

Whenever federal law requires public hearings and public approval as a prerequisite to obtaining federal tax exemption for the interest paid on industrial development bonds under Section 103 of the Revenue Code, unless otherwise specified by federal law or regulation, the public hearing for industrial development bonds of the Authority shall be conducted by the Authority and the procedure for the public hearing and public approvals shall be as follows:

1. For a public hearing by the Authority:

a. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the municipality in which the facility to be financed is to be located of intention to provide financing for a named applicant. The applicant shall pay the cost of notification. The notice shall also be mailed or otherwise delivered to the clerk of the local governing body of the municipality. The notice shall specify the time and place of hearing at which persons may appear and present their views. The hearing shall be held not less than six days nor more than ~~twenty-one~~ 21 days after the second notice shall appear in such newspaper. The hearing may be held at any place within the Commonwealth determined by the Board.

b. The notice shall contain (i) the name and address of the Authority; (ii) the name and address of the principal place of business, if any, of the applicant seeking financing; (iii) the maximum dollar amount of financing sought; and (iv) the type of business and purpose and specific location, if known, of the facility to be financed.

c. Every request for industrial development bond financing when submitted to the Authority shall be accompanied by a statement in the following form:

Name of Applicant: .....

Facility: .....

Date: .....

Maximum amount of financing sought: \$ .....

Estimated taxable value of the facility's real property in the municipality in which it is located. \$ .....

Estimated taxable value of the facility's real property once constructed or expanded. \$ .....

Estimated real property tax per year using present tax rates on the facility's real property once constructed or expanded. \$ .....

Estimated personal property tax per year from property to be located in expanded or constructed facility using present tax rate. \$ .....

Estimated merchants' capital tax per year from property to be located in expanded or constructed facility using present tax rate. \$ .....

Estimated dollar value per year of goods and services that will be

purchased in the Commonwealth during construction or expansion of facility.

\$.....

Estimated dollar value per year of goods and services that will be

purchased in the Commonwealth for the operation of the facility. \$ .....

Estimated dollar value per year of goods and services that will be produced and sold from the facility. \$ .....

Estimated number of employees during construction or expansion .....

Estimated number of regular employees on a year round basis during

operation of the facility .....

Average annual salary per regular employee during operation of the

facility. \$ .....

Estimated payroll for labor during construction or expansion of the

facility. \$ .....

If any of the above questions do not apply to the eligible ~~small~~ business being financed, indicate by writing N/A (not applicable) on the appropriate line.

2. For public approval, the Governor is appointed by this article as the applicable elected

representative within the meaning of Section 103 (k) of the Revenue Code.

§ 2.2-2294. Investment in, purchase or assignment of loans; conditions.

The Authority may invest in, purchase or make commitments to invest in or purchase, and take assignments or make commitments to take assignments, of loans made by lenders for the acquisition, construction, rehabilitation, expansion or purchase of a project for eligible ~~small~~ business.

§ 2.2-2295. Regulations of the Authority.

Prior to carrying out the powers granted under §§ 2.2-2293 and 2.2-2294, the Authority shall adopt rules and regulations governing its activities including but not limited to rules and regulations relating to the following:

1. Procedures for the submission of requests or invitations and proposals for making loans to lenders and the investment in, purchase, assignment and sale of loans;
2. The reinvestment by a lender of the proceeds, or an equivalent amount, from any loan to a lender in loans to provide financing for eligible ~~small~~ business in the Commonwealth;
3. Assurances that the eligible ~~small~~ business to be financed will improve employment conditions or otherwise improve industrial development in the Commonwealth;
4. Rates, fees, charges, and other terms and conditions for originating or servicing loans in order to protect against realization of an excessive financial return or benefit by the originator or servicer;
5. The type and amount of collateral or security to be provided to assure repayment of loans to lenders made by the Authority;
6. The type of collateral, payment bonds, performance bonds or other security to be provided for any loans made by a lender for construction loans;
7. The nature and amount of fees to be charged by the Authority to provide for expenses and reserves of the Authority;
8. Standards and requirements for the allocation of available money among lenders and the determination of the maturities, terms, conditions and interest rates for loans made, purchased, sold, assigned or committed pursuant hereto;
9. Commitment requirements for financing by lenders involving money provided, directly or indirectly, by the Authority; or
10. Any other appropriate matters related to the duties or exercise of the Authority's powers.