

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 445

An Act to amend and reenact §§ 2.2-2285, 15.2-5000 through 15.2-5004, 36-137, and 36-139, as it shall become effective, of the Code of Virginia, relating to the Department of Housing and Community Development; administration of the Private Activity Bonds program.

[H 1073]

Approved March 7, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2285, 15.2-5000 through 15.2-5004, 36-137, and 36-139, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 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 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 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 *jointly with the Director of the Department of Housing and Community Development and the Virginia Housing Development Authority*;

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.

§ 15.2-5000. Definitions.

As used in this chapter:

"Exempt project" for the purposes of the industrial development portion of the state ceiling means the following facilities:

1. Sewage, solid waste and qualified hazardous waste disposal facilities; and facilities for the local furnishing of electric energy or gas;
2. Certain facilities for the furnishing of water (including irrigation systems);
3. Mass commuting facilities;
4. Local district heating and cooling facilities.

"Industrial development bond" means those obligations issued by the Commonwealth and its issuing authorities which constitute manufacturing and exempt facility private activity bonds and the private use portion of governmental projects over the fifteen million-dollar threshold amount.

"Issuing authority" means any political subdivision, governmental unit, authority, or other entity of the Commonwealth which is empowered to issue private activity bonds.

"Local housing authority" means any issuer of multifamily housing bonds or single family housing bonds, created and existing under the laws of the Commonwealth, excluding the Virginia Housing Development Authority.

"Manufacturing facility" means any facility which is used in the manufacturing or production of tangible personal property, including the processing resulting in a change of condition of such property.

"Multifamily housing bond" means any obligation which constitutes an exempt facility bond under federal law for the financing of a qualified residential rental project within the meaning of § 142 of the Internal Revenue Code of 1986, as amended.

"Private activity bond" means a part or all of any bond (or other instrument) required to obtain an allocation from the state's volume cap pursuant to § 146 of the Internal Revenue Code of 1986, as amended, in order to be tax exempt, including but not limited to the following:

1. Exempt project bonds,
2. Manufacturing facility bonds,
3. Industrial development bonds,
4. Multifamily housing bonds,
5. Single family housing bonds,
6. ~~Student loan bonds,~~
7. Any other bond eligible for a tax exemption as a private activity bond pursuant to § 141 of the

Internal Revenue Code of 1986, as amended.

"Single family housing bonds" means any obligation described as a qualified mortgage bond under § 143 of the Internal Revenue Code of 1986, as amended.

"State ceiling" means the maximum amount of private activity bonds that the Commonwealth of Virginia may issue in a calendar year as limited by federal law under the Internal Revenue Code of 1986, as amended.

~~"Student loan bond" means an issue to finance student loans as defined in § 144 of the Internal Revenue Code of 1986, as amended.~~

§ 15.2-5001. Purpose of chapter.

It is the intent of the legislature by the passage of this chapter to allocate Virginia's total private activity bond issuing authority to those issuing authorities empowered to issue private activity bonds.

The Tax Reform Act of 1986 imposes restrictions on the issuance of ~~industrial development bonds, housing bonds, exempt facility bonds, and student loan bonds~~ designated in the Act as "private activity bonds." These restrictions include limitations on the aggregate amount of private activity bonds that may be issued in each state in any calendar year that may be regarded as exempt from federal income taxation. Section 146 (e) of the Tax Reform Act of 1986 provides the authority for each state to establish a system for the allocation of the state ceiling on private activity bonds.

It is the intent of the legislature to provide for the allocation of the state ceiling among issuers of such bonds in a manner which will promote the public purposes and maximize the public benefits created by the issuance of such bonds.

§ 15.2-5002. Allocation of state ceiling for 2008 and beyond.

This section shall apply to all private activity bonds issued by issuing authorities during ~~1990~~ 2008 and in years subsequent to ~~1990~~ 2008. The state ceiling for these calendar years shall be allocated as follows:

1. "Housing." For calendar years ~~1990~~ 2008 and beyond, an amount equal to ~~forty-one~~ 57 percent of the Virginia state ceiling on private activity bonds shall be set aside for single family and multifamily housing bonds. The housing portion of the state ceiling shall be divided between local housing authorities and the Virginia Housing Development Authority. The bond authority allocated to these issuers shall be distributed as follows:

Issuer	Portion of State Ceiling
Local Housing Authorities	14%
Virginia Housing Development Authority	27 43%
Total Housing Allocation	41 57%

2. "Industrial Development." For calendar years ~~1990~~ 2008 and beyond, an amount equal to ~~forty-one~~ 25 percent of the Virginia state ceiling on private activity bonds shall be set aside for the issuance of industrial development bonds for manufacturing and exempt facilities; *provided, however, that in the event that on July 1, 2008, the amount of private activity bonds allocated since January 1, 2008, for manufacturing and exempt facilities pursuant to the guidelines established under § 15.2-5003 shall have exceeded such 25 percent amount, the amount set aside for the Virginia Housing Development Authority under this section for calendar year 2008 shall be reduced by the amount of such excess, but in no event shall the amount of private activity bonds so allocated exceed 41 percent of the Virginia state ceiling on private activity bonds for calendar year 2008.*

3. "State allocation." For calendar years ~~1995~~ 2008 and beyond, an amount equal to eighteen percent of the Virginia state ceiling on private activity bonds shall be set aside for state issuing authorities ~~and~~ for allocations to ~~projects housing and to exempt projects and manufacturing facilities~~ of state and regional interests as determined by the Governor.

§ 15.2-5003. Administration.

The Board of Housing and Community Development shall establish guidelines in accordance with this chapter that shall detail (i) the specific administrative policies, criteria, and procedures for the allocation to local housing authorities set forth in subdivision 1 of § 15.2-5002 and (ii) the administrative procedures for the state allocation set forth in subdivision 3 of § 15.2-5002. The Virginia Housing Development Authority shall administer its allocation set forth in subdivision 1 of § 15.2-5002 and shall use such allocation to finance loans for single family and multi-family housing in accordance with the policies, criteria, and procedures in its rules and regulations applicable to such loans.

The Virginia Small Business Financing Authority shall establish guidelines in accordance with this chapter which detail the specific administrative policies, *criteria*, and procedures ~~of the private activity bond program in the Commonwealth for the use of the allocation for industrial development set forth in subdivision 2 of § 15.2-5002.~~ Specific application, allocation, and reporting requirements shall be provided by the guidelines. The guidelines of the *Board of Housing and Community Development and the Virginia Small Business Financing Authority* shall be in accordance with the limitations and restrictions contained in federal law.

§ 15.2-5004. Reallocation of bond authority.

The allocation formulas prescribed in this chapter are established to utilize the entire state ceiling on private activity bonds by providing issuing authority to housing and industrial development projects. The allocation formula to local housing authorities and the allocation for industrial development provided in § 15.2-5002 for industrial development, student loans and the state allocation shall be effective through November 1 of each calendar year. The allocation formula provided in § 15.2-5002 for housing shall be effective through September 1 of for such period in each calendar year as is set forth in the guidelines established pursuant to § 15.2-5003.

Any unused bond authority remaining in any category after the effective period of the allocation set forth in such guidelines shall be reallocated to housing and industrial projects and to qualified student loan bonds, according to guidelines established by the Virginia Small Business Financing Authority the Virginia Housing Development Authority (and any unused bond authority allocated to the Virginia Housing Development Authority shall continue to be allocated to the Virginia Housing Development Authority) in the amount requested by the Virginia Housing Development Authority, subject to the receipt by the Director of the Department of Housing and Community Development of assurances from the Virginia Housing Development Authority of anticipated usage of such amount of unused bond authority within the time period permitted by federal law, and any remaining amount that is not so reallocated (or continued to be allocated) to the Virginia Housing Development Authority shall be reallocated according to the guidelines established by the Board of the Department of Housing and Community Development and the Virginia Small Business Financing Authority. The guidelines shall also provide a priority system for the allocation reallocation of any such remaining unused bond authority not reallocated (or continued to be allocated) to the Virginia Housing Development Authority at year-end to projects that are eligible to carry forward issuing authority to later years. The provisions of this section shall not apply to the amount of the state ceiling set aside for the state allocation during any calendar year.

§ 36-137. Powers and duties of Board; appointment of Building Code Academy Advisory Committee.

The Board shall exercise the following powers and duties, and such others as may be provided by law:

1. Provide a means of citizen access to the Department.
2. Provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities.
3. Monitor the policies and activities of the Department and have the right of access to departmental information.
4. Advise the Governor and the Director on matters relating to housing and community development.
5. Make such rules and regulations as may be necessary to carry out its responsibilities and repeal or amend such rules when necessary.
6. Issue a certificate of competence concerning the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board to present or prospective personnel of local governments and to any other persons seeking to become qualified to perform inspections pursuant to Chapter 6 (§ 36-97 et seq.) of this title, Chapter 9 (§ 27-94 et seq.) of Title 27, and any regulations adopted thereunder, who have completed training programs or in other ways demonstrated adequate knowledge.
7. Levy by regulation up to two percent of building permit fees authorized pursuant to § 36-105 to support training programs of the Building Code Academy established pursuant to § 36-139. Local building departments shall collect such levy and transmit it quarterly to the Department of Housing and Community Development. Localities that maintain, individual or regional, training academies accredited by the Department of Housing and Community Development shall retain such levy. However, such localities may send employees to training programs of the Building Code Academy upon payment of a fee calculated to cover the cost of such training. Any unspent balance shall be reappropriated each year for the continued operation of the Building Code Academy.

The Board shall appoint a Building Code Academy Advisory Committee (the Committee) comprised of representatives of code enforcement personnel and construction industry professions affected by the provisions of the building and fire prevention regulations promulgated by the Board. Members of the Committee shall receive no compensation but shall be entitled to be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties in accordance with § 2.2-2813. The Committee shall advise the Board and the Director on policies, procedures, operations, and other matters pertinent to enhancing the delivery of training services provided by the Building Code Academy.

8. Establish general policies, procedures, and programs for the Virginia Housing Partnership Revolving Fund established in Chapter 9 (§ 36-141 et seq.) of this title.

9. Determine the categories of housing programs, housing sponsors and persons and families of low and moderate income eligible to participate in grant or loan programs of the Virginia Housing Partnership Revolving Fund and designate the proportion of such grants or loans to be made available in each category.

10. Advise the Director of the Department on the program guidelines required to accomplish the policies and procedures of the Virginia Housing Partnership Revolving Fund.

11. Advise the Virginia Housing Development Authority on matters relating to the administration and management of loans and grants from the Virginia Housing Partnership Revolving Fund.

12. Establish the amount of the low-income housing credit, the terms and conditions for qualifying for such credit, and the terms and conditions for computing any credit recapture amount for the Virginia income tax return.

13. Serve in an advisory capacity to the Center for Housing Research established by § 23-135.7:14.

14. Advise the Department in the development of the Consolidated Plan Strategy to guide and coordinate the housing programs of the Department, the Virginia Housing Development Authority, and other state agencies and instrumentalities.

15. Advise the Governor and the Department on the expansion of affordable, accessible housing for older Virginians and Virginians with disabilities, including supportive services.

16. *Establish guidelines for the allocation of private activity bonds to local housing authorities in accordance with the provisions of the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2.*

§ 36-139. (Effective July 1, 2008) Powers and duties of Director.

The Director of the Department of Housing and Community Development shall have the following responsibilities:

1. Collecting from the governmental subdivisions of the Commonwealth information relevant to their planning and development activities, boundary changes, changes of forms and status of government, intergovernmental agreements and arrangements, and such other information as he may deem necessary.

2. Making information available to communities, planning district commissions, service districts and governmental subdivisions of the Commonwealth.

3. Providing professional and technical assistance to, and cooperating with, any planning agency, planning district commission, service district, and governmental subdivision engaged in the preparation of development plans and programs, service district plans, or consolidation agreements.

4. Assisting the Governor in the providing of such state financial aid as may be appropriated by the General Assembly in accordance with § 15.2-4216.

5. Administering federal grant assistance programs, including funds from the Appalachian Regional Commission, the Economic Development Administration and other such federal agencies, directed at promoting the development of the Commonwealth's communities and regions.

6. Developing state community development policies, goals, plans and programs for the consideration and adoption of the Board with the ultimate authority for adoption to rest with the Governor and the General Assembly.

7. Developing a Consolidated Plan to guide the development and implementation of housing programs and community development in the Commonwealth for the purpose of meeting the housing and community development needs of the Commonwealth and, in particular, those of low-income and moderate-income persons, families and communities.

8. Determining present and future housing requirements of the Commonwealth on an annual basis and revising the Consolidated Plan, as necessary to coordinate the elements of housing production to ensure the availability of housing where and when needed.

9. Assuming administrative coordination of the various state housing programs and cooperating with the various state agencies in their programs as they relate to housing.

10. Establishing public information and educational programs relating to housing; devising and administering programs to inform all citizens about housing and housing-related programs that are available on all levels of government; designing and administering educational programs to prepare families for home ownership and counseling them during their first years as homeowners; and promoting educational programs to assist sponsors in the development of low and moderate income housing as well as programs to lessen the problems of rental housing management.

11. Administering the provisions of the Industrialized Building Safety Law (§ 36-70 et seq.).

12. Administering the provisions of the Uniform Statewide Building Code (§ 36-97 et seq.).

13. Establishing and operating a Building Code Academy for the training of persons in the content, application, and intent of specified subject areas of the building and fire prevention regulations promulgated by the Board of Housing and Community Development.

14. Administering, in conjunction with the federal government, and promulgating any necessary regulations regarding energy standards for existing buildings as may be required pursuant to federal law.

15. Identifying and disseminating information to local governments about the availability and utilization of federal and state resources.

16. Administering, with the cooperation of the Department of Health, state assistance programs for public water supply systems.

17. Advising the Board on matters relating to policies and programs of the Virginia Housing Partnership Revolving Fund.

18. Designing and establishing program guidelines to meet the purposes of the Virginia Housing Partnership Revolving Fund and to carry out the policies and procedures established by the Board.

19. Preparing agreements and documents for loans and grants to be made from the Virginia Housing

Partnership Revolving Fund; soliciting, receiving, reviewing and selecting the applications for which loans and grants are to be made from such fund; directing the Virginia Housing Development Authority as to the closing and disbursing of such loans and grants and as to the servicing and collection of such loans; directing the Virginia Housing Development Authority as to the regulation and monitoring of the ownership, occupancy and operation of the housing developments and residential housing financed or assisted by such loans and grants; and providing direction and guidance to the Virginia Housing Development Authority as to the investment of moneys in such fund.

20. Advising the Board on matters relating to policies for the low-income housing credit and administering the approval of low-income housing credits as provided in § 36-55.63.

21. Establishing and administering program guidelines for a statewide homeless intervention program.

22. Administering 15 percent of the Low Income Home Energy Assistance Program (LIHEAP) Block Grant and any contingency funds awarded and carry over funds, furnishing home weatherization and associated services to low-income households within the Commonwealth in accordance with applicable federal law and regulations.

23. Developing a strategy concerning the expansion of affordable, accessible housing for older Virginians and Virginians with disabilities, including supportive services.

24. Serving as the Executive Director of the Commission on Local Government as prescribed in § 15.2-2901 and perform all other duties of that position as prescribed by law.

25. Developing a strategy, in consultation with the Virginia Housing Development Authority, for the creation and implementation of housing programs and community development for the purpose of meeting the housing needs of persons who have been released from federal, state, and local correctional facilities into communities.

26. *Administering the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2 jointly with the Virginia Small Business Financing Authority and the Virginia Housing Development Authority.*

27. Carrying out such other duties as may be necessary and convenient to the exercise of powers granted to the Department.

2. That, pursuant to the requirements of Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2 of the Code of Virginia, as it has been amended and is amended by this act, guidelines of the Virginia Small Business Financing Authority embodying the amendments to Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2 contained in the first enactment of this act, shall be revised or promulgated prior to August 1, 2008, and to permit allocation for private activity bonds for exempt projects in amounts greater than \$10 million beginning August 1, 2008; provided that the guidelines shall not provide for allocations for such projects in excess of the maximum amounts allowed under Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2.