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HOUSE BILL NO. 1073

Offered January 9, 2008

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A BILL to amend and reenact §§ 2.2-2285, 2.2-2309, 2.2-2310, 15.2-5000 through 15.2-5004, 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.

Patron—Suit

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-2285, 2.2-2309, 2.2-2310, 15.2-5000 through 15.2-5004, 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;

INTRODUCED

HB1073

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

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

67 a. Moneys appropriated by the Commonwealth;

68 b. Premiums, fees and any other amounts received by the Authority with respect to financial
69 assistance provided by the Authority;

70 c. Proceeds as designated by the Authority from the loan or other disposition of property held or
71 acquired by the Authority;

72 d. Income from investments that were made by the Authority or on the behalf of the Authority from
73 moneys in one or more of its funds; or

74 e. Any other moneys made available to the Authority consistent with this article;

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

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

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

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

88 22. ~~Administer the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2;~~

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

91 ~~24-23. Take any action necessary or convenient for the exercise of the powers granted by this article~~
92 ~~or reasonably implied from them.~~

93 § 2.2-2309. Creation, administration, and management of Virginia Export Fund.

94 A. In addition to any other fund or account the Authority may create pursuant to subdivision ~~23~~ 22
95 of § 2.2-2285, there shall be a permanent fund known as the Virginia Export Fund (the Fund). The Fund
96 shall be comprised of (i) sums appropriated to it by the General Assembly, (ii) receipts by the Fund
97 from loans or loan guarantees made against it, (iii) all income from the investment of moneys held by
98 the Fund, and (iv) any other sums designated for deposit to the Fund from any source, public or private.
99 The Fund shall be administered and managed by the Authority, and all moneys in the Fund shall be
100 used to provide loans or loan guarantees as provided in subsection D. Any balances remaining in the
101 Fund shall not revert to the general fund but shall be retained in order to make additional loans or loan
102 guarantees.

103 B. All moneys belonging to the Fund shall be deposited to the credit of the State Treasurer and
104 recorded on the books of the State Comptroller. Earnings from investments and interest shall be returned
105 to the Fund.

106 C. The Authority, or its designated agent, may collect moneys due to the Fund. Proceedings to
107 recover moneys due to the Fund may be instituted by the Authority in the name of the Fund in any
108 appropriate court.

109 D. The Fund shall be used to make loans or to provide a guarantee for up to ninety percent of the
110 principal amount of any commercial loan or line of credit made by a lender for the purpose of
111 facilitating the sale of goods, products, or services outside of the United States by persons, firms, or
112 corporations utilizing a Virginia air, land, or sea port to ship such goods, products, or services. Such
113 guarantee shall not exceed one million dollars.

114 E. The Authority shall determine the terms and conditions of any loans or loan guarantee made
115 against the Fund and may allow for use of the Fund in single or multiple transactions. No loan shall
116 exceed a term of twelve months, nor shall a loan guarantee exceed a term of eighteen months. In the
117 case of loans, the Authority shall charge an annual interest rate. In the case of guarantees, the Authority
118 shall charge an annual guarantee fee. However, the Authority may waive such guarantee fees in an
119 economically distressed area as defined in § 58.1-439. In connection with applications for loans or loan
120 guarantees made against the Fund, the Authority may require the production of any document,

121 instrument, certificate, legal opinion, or other information it deems necessary or convenient.
122 F. All loans or loan guarantees made against the Fund shall be approved by the Board or an
123 authorized committee or subcommittee thereof.

124 § 2.2-2310. Creation, administration, and management of Virginia Small Business Growth Fund.

125 A. In addition to any other fund or account the Authority may create pursuant to subdivision 23 22
126 of § 2.2-2285, there shall be a permanent fund known as the Virginia Small Business Growth Fund (the
127 "Fund"). The Fund shall be comprised of (i) sums appropriated to it by the General Assembly, (ii) all
128 income from the investment of moneys held by the Fund, and (iii) any other sums designated for deposit
129 to the Fund from any source, public or private. The Fund shall be administered and managed by the
130 Authority, and all moneys in the Fund shall be used to create special reserve funds to cover potential
131 future losses from the loan portfolios of participating banks and lending institutions as provided in
132 subsection D. Any remaining balances in the Fund shall not revert to the general fund but shall be
133 retained in order to create additional special reserve funds.

134 B. All moneys belonging to the Fund shall be deposited to the credit of the State Treasurer and
135 recorded on the books of the State Comptroller. Earnings from investments and interest shall be returned
136 to the Fund.

137 C. The Authority, or its designated agent, may collect moneys owed to the Fund. Proceedings to
138 recover moneys owed to the Fund may be instituted by the Authority in the name of the Fund in any
139 appropriate court.

140 D. The Fund shall be used as a special reserve fund to cover potential future losses from the loan
141 portfolios of participating banks and lending institutions. The Authority shall (i) work with banks and
142 lending institutions to establish a separate account for the Virginia Small Business Growth Fund in each
143 participating bank or lending institution and (ii) deposit into such accounts moneys from the Fund in an
144 amount at least equal to the total of the sum of the bank or lending institution's and the individual
145 borrower's deposits into such account. Such matching sum by the Authority shall not exceed fourteen
146 percent of the principal amount of the loan.

147 E. The Authority shall determine the qualifications, terms, and conditions for the use of the Fund and
148 the accounts thereof. In connection with applications for claims made against the Fund, the Authority
149 may require the production of any document, instrument, certificate, legal opinion, or any other
150 information it deems necessary or convenient. All claims made against the Fund shall be approved by
151 the Board or an authorized committee or subcommittee thereof. All claims made against each account
152 shall be reported to the Board or an authorized committee thereof.

153 § 15.2-5000. Definitions.

154 As used in this chapter:

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

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

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

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

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

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

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

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

- 178 1. Exempt project bonds,
- 179 2. Manufacturing facility bonds,
- 180 3. Industrial development bonds,
- 181 4. Multifamily housing bonds,

- 182 5. Single family housing bonds,
- 183 6. ~~Student loan bonds,~~
- 184 7. Any other bond eligible for a tax exemption as a private activity bond pursuant to § 141 of the
- 185 Internal Revenue Code of 1986, as amended.

186 "Single family housing bonds" means any obligation described as a qualified mortgage bond under
 187 § 143 of the Internal Revenue Code of 1986, as amended.

188 "State ceiling" means the maximum amount of private activity bonds that the Commonwealth of
 189 Virginia may issue in a calendar year as limited by federal law under the Internal Revenue Code of
 190 1986, as amended.

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

193 § 15.2-5001. Purpose of chapter.

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

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

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

205 § 15.2-5002. Allocation of state ceiling for 1990 and beyond.

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

208 1. "Housing." For calendar years 1990 and beyond, an amount equal to ~~forty-one~~ 70 percent of the
 209 Virginia state ceiling on private activity bonds shall be set aside for single family and multifamily
 210 housing bonds. The housing portion of the state ceiling shall be divided between local housing
 211 authorities and the Virginia Housing Development Authority. The bond authority allocated to these
 212 issuers shall be distributed as follows:

213 Issuer	Portion of State Ceiling
214 Local Housing Authorities	14%
215 Virginia Housing	
216 Development Authority	2756%
217 Total Housing Allocation	4170%

218 2. "Industrial Development." For calendar years 1990 and beyond, an amount equal to ~~forty-one~~ 21
 219 percent of the Virginia state ceiling on private activity bonds shall be set aside for the issuance of
 220 industrial development bonds for manufacturing and exempt facilities.

221 3. "State allocation." For calendar years 1995 and beyond, an amount equal to ~~eighteen~~ nine percent
 222 of the Virginia state ceiling on private activity bonds shall be set aside for state issuing authorities ~~and~~
 223 for allocations to *housing and to industrial development* projects of state and regional interests as
 224 determined by the Governor.

225 § 15.2-5003. Administration.

226 The ~~Virginia Small Business Financing Authority~~ *Director of the Department of Housing and*
 227 *Community Development* shall establish guidelines in accordance with this chapter which detail the
 228 specific administrative policies and procedures of the private activity bond program in the
 229 Commonwealth. Specific application, allocation, and reporting requirements shall be provided by the
 230 guidelines. The guidelines of the ~~Virginia Small Business Financing Authority~~ *Director of the*
 231 *Department of Housing and Community Development* shall be in accordance with the limitations and
 232 restrictions contained in federal law.

233 § 15.2-5004. Reallocation of bond authority.

234 The allocation formulas prescribed in this chapter are established to utilize the entire state ceiling on
 235 private activity bonds by providing issuing authority to housing and industrial development projects. The
 236 ~~allocation formula~~ *allocation for housing and industrial development* provided in § 15.2-5002 ~~for~~
 237 ~~industrial development, student loans and the state allocation~~ shall be effective through November 1 of
 238 each calendar year. The allocation formula provided in ~~§ 15.2-5002~~ for housing shall be effective
 239 through ~~September 1~~ *such date* of each calendar year as is set forth in the guidelines established
 240 pursuant to § 15.2-5003 by the *Director of the Department of Housing and Community Development*.

241 Any unused bond authority remaining in any category after the effective period of the allocation set
 242 forth in such guidelines shall be reallocated to ~~housing and industrial projects and to qualified student~~

243 loan bonds, according to guidelines established by the Virginia Small Business Financing Authority the
 244 Virginia Housing Development Authority (and any unused bond authority allocated to the Virginia
 245 Housing Development Authority shall continue to be allocated to the Virginia Housing Development
 246 Authority) in the amount requested by the Virginia Housing Development Authority, subject to the
 247 receipt by the Director of the Department of Housing and Community Development of assurances from
 248 the Virginia Housing Development Authority of anticipated usage of such amount of unused bond
 249 authority within the time period permitted by federal law, and any remaining amount that is not so
 250 reallocated (or continued to be allocated) to the Virginia Housing Development Authority shall be
 251 reallocated according to guidelines established by the Director of the Department of Housing and
 252 Community Development. The guidelines shall also provide a priority system for the allocation
 253 reallocation of any such remaining unused bond authority not reallocated to the Virginia Housing
 254 Development Authority at year-end to projects that are eligible to carry forward issuing authority to later
 255 years. The provisions of this section shall not apply to the amount of the state ceiling set aside for the
 256 state allocation during any calendar year.

257 § 36-139. (Effective July 1, 2008) Powers and duties of Director.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 304 18. Designing and establishing program guidelines to meet the purposes of the Virginia Housing
305 Partnership Revolving Fund and to carry out the policies and procedures established by the Board.
- 306 19. Preparing agreements and documents for loans and grants to be made from the Virginia Housing
307 Partnership Revolving Fund; soliciting, receiving, reviewing and selecting the applications for which
308 loans and grants are to be made from such fund; directing the Virginia Housing Development Authority
309 as to the closing and disbursing of such loans and grants and as to the servicing and collection of such
310 loans; directing the Virginia Housing Development Authority as to the regulation and monitoring of the
311 ownership, occupancy and operation of the housing developments and residential housing financed or
312 assisted by such loans and grants; and providing direction and guidance to the Virginia Housing
313 Development Authority as to the investment of moneys in such fund.
- 314 20. Advising the Board on matters relating to policies for the low-income housing credit and
315 administering the approval of low-income housing credits as provided in § 36-55.63.
- 316 21. Establishing and administering program guidelines for a statewide homeless intervention program.
- 317 22. Administering 15 percent of the Low Income Home Energy Assistance Program (LIHEAP) Block
318 Grant and any contingency funds awarded and carry over funds, furnishing home weatherization and
319 associated services to low-income households within the Commonwealth in accordance with applicable
320 federal law and regulations.
- 321 23. Developing a strategy concerning the expansion of affordable, accessible housing for older
322 Virginians and Virginians with disabilities, including supportive services.
- 323 24. Serving as the Executive Director of the Commission on Local Government as prescribed in
324 § 15.2-2901 and perform all other duties of that position as prescribed by law.
- 325 25. Developing a strategy, in consultation with the Virginia Housing Development Authority, for the
326 creation and implementation of housing programs and community development for the purpose of
327 meeting the housing needs of persons who have been released from federal, state, and local correctional
328 facilities into communities.
- 329 26. *Administer the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2.*
- 330 27. Carrying out such other duties as may be necessary and convenient to the exercise of powers
331 granted to the Department.