

# VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

## CHAPTER 565

*An Act to amend and reenact §§ 2.2-2279, 2.2-2280, 2.2-2289, 2.2-2291, and 2.2-2292 of the Code of Virginia, relating to the Virginia Small Business Financing Authority; activities under the Public-Private Transportation Act of 1995.*

[S 1242]

Approved March 27, 2009

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

**1. That §§ 2.2-2279, 2.2-2280, 2.2-2289, 2.2-2291, and 2.2-2292 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 ~~(i)~~ 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~~ enterprise making sales or providing services to industries described in clause (i); ~~(iii)~~ ~~enterprises~~ enterprise 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~~ entity acquiring, constructing, improving, maintaining, or operating a qualified transportation facility under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.); or ~~(vi)~~ other business as will be in furtherance of the public purposes of this article.

"Cost," as applied to the eligible 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 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 business or the financing of such construction, acquisition or expansion and the placing of a project of an eligible 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 business may be regarded as a part of the cost of a project of an eligible business and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued therefor.

"Eligible business" means any person engaged in one or more business enterprises in the Commonwealth that satisfies one or more of the following requirements ~~for~~: ~~(i)~~ is a for-profit enterprise; ~~(i)~~ that (a) 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)~~ (b) has fewer than 250 employees, ~~(iii)~~ (c) has a net worth of \$2 million or less, ~~or~~ ~~(iv)~~ (d) exists for the sole purpose of developing or operating a qualified transportation facility under the Public-Private Transportation Act of 1995 (§ 56-556 et seq.), or (e) meets 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 (ii) 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.

"Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended.

"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 business being financed for a nominal sum upon payment in full, or provision thereof, of all bonds issued in connection with the eligible 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 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 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 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.

"Preferred lender" means a bank that is subject to continuing supervision and examination by state or federal chartering, licensing, or similar regulatory authority satisfactory to the Authority and that meets the eligibility requirements established by the Authority.

~~"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 business in furtherance of the 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.

§ 2.2-2280. Declaration of public purpose; Authority created.

A. The General Assembly finds and determines that (i) there exists in the Commonwealth a need to assist small ~~business and other eligible businesses~~ in the Commonwealth in obtaining financing for new business or in the expansion of existing business in order to promote and develop industrial development and to further the long-term economic development of the Commonwealth through the improvement of its tax base and the promotion of employment and (ii) it is necessary to create a governmental body to provide financial assistance to small ~~business and other eligible businesses~~ in the Commonwealth by providing loans, guarantees, insurance and other assistance to small ~~business and other eligible businesses~~, thereby encouraging the investment of private capital in small ~~business and other eligible businesses~~ in the Commonwealth. The creation of this governmental body to assist in such matters is essential to the industrial development of the Commonwealth. In making these determinations, the General Assembly has considered and affirmatively expresses its policy to assist small ~~and other eligible businesses~~ in Virginia, acknowledging that this determination has and will affect competition.

It is further declared that all of the foregoing are public purposes and that the activities of the Authority will serve a public purpose in that they will promote industry, develop trade and increase employment opportunities for the benefit of the inhabitants of the Commonwealth, either through the increase of commerce or through the promotion of safety, health, welfare, convenience or prosperity; and that the necessity of enacting the provisions herein set forth is in the public interest and is so declared as a matter of express legislative determination.

B. The Virginia Small Business Financing Authority is created, with such powers and duties as are set forth in this article, as a public body corporate and as a political subdivision of the Commonwealth. All powers, rights and duties conferred by this article or other provisions of law upon the Authority shall be exercised by the Board.

§ 2.2-2289. Power to issue umbrella bonds.

In addition to the powers of the Authority to issue bonds, it may issue bonds, the proceeds of which, after payment of the costs of issuance thereof, shall be used to make loans, no single loan to be in excess of ten million dollars in aggregate principal amount, to finance or refinance the projects of

eligible ~~small~~ businesses. The Authority shall adopt such rules and regulations as are necessary to carry out the purposes of this section and to provide procedures for the making of such loans and the repayment thereof.

§ 2.2-2291. Security for bonds; fees and expenses; limitations.

A. The bonds or instruments with respect to which financial assistance is provided by the Authority shall be secured or unsecured in a manner approved by the Board in its sole discretion.

B. The Board may set the premiums and fees to be paid to it for providing financial assistance under this article. The premiums and fees and expenses set by the Board shall be payable in the amounts, at the time and in the manner that the Board, in its discretion, requires. The premiums and fees need not be uniform among transactions and may vary in amount among transactions and at different stages during the terms of the transactions.

C. No portion of the proceeds of an issue of the Authority's bonds that are exempt under federal taxation as ~~industrial development~~ *qualified* bonds under Section 103 ~~(b)~~ 141 (e) of the *Internal Revenue Code* shall be used to provide facilities prohibited in Section 103 ~~(b)~~ ~~(6)~~ ~~(9)~~ 147 (e) of ~~such~~ *the Internal Revenue Code*.

§ 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~~ *private activity* bonds under Section 103 147 (f) of the *Internal Revenue Code*, unless otherwise specified by federal law or regulation, the public hearing for ~~industrial development~~ *private activity* 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 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~~ *private activity* 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 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)~~ 147 (f) (2) (E) of the *Internal Revenue Code*.