

# VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

## CHAPTER 724

*An Act to amend and reenact §§ 62.1-198 and 62.1-199 of the Code of Virginia and to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 24.3, consisting of sections numbered 15.2-2430 through 15.2-2440, relating to creation of the Virginia Infrastructure Project Loan Fund; financing for the development of facilities to collect gas from solid waste management facilities and sewer and wastewater treatment facilities.*

[H 672]

Approved April 13, 2010

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

**1. That §§ 62.1-198 and 62.1-199 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 24.3, consisting of sections numbered 15.2-2430 through 15.2-2440, as follows:**

### **CHAPTER 24.3.**

#### **VIRGINIA INFRASTRUCTURE PROJECT LOAN FUND.**

*§ 15.2-2430. Definitions.*

*As used in this chapter, unless the context requires a different meaning:*

*"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of Title 62.1.*

*"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project.*

*"Fund" means the Virginia Infrastructure Project Loan Fund.*

*"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth.*

*"Project" means any undertaking by a local government to build or facilitate the building of a facility, located at or adjacent to (i) a solid waste management facility permitted by the Department of Environmental Quality or (ii) a sewerage system or sewage treatment work described in § 62.1-44.18 that is constructed and operated for the purpose of treating sewage and wastewater for discharge to state waters, which facility or work is constructed and operated for the purpose of (a) reclaiming or collecting methane or other combustible gas from the biodegradation or decomposition of solid waste, as defined in § 10.1-1400, that has been deposited in the solid waste management facility or sewerage system or sewage treatment work and (b) either using such gas to generate electric energy or upgrading the gas to pipeline quality and transmitting it off premises for sale or delivery to commercial or industrial purchasers or to a public utility or locality.*

*§ 15.2-2431. Creation and management of Fund.*

*There shall be set apart a permanent and perpetual fund, to be known as the Virginia Infrastructure Project Loan Fund, consisting of such sums that may be appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it to local governments, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private. The Fund shall be administered and managed by the Authority as prescribed in this chapter. The Authority shall establish guidelines regarding the distribution of loans from the Fund and prioritization of such loans, and shall establish interest rates and repayment terms of such loans as provided in this chapter. The Authority may disperse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund.*

*§ 15.2-2432. Deposit of money; expenditures; investments.*

*All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies, and savings institutions are authorized to give security for the deposits. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth.*

*§ 15.2-2433. Annual audit.*

*The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the accounts of the Authority, and the cost of such audit services as shall be required shall be borne by the Authority. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as are considered necessary under the circumstances. The Authority shall furnish copies of such audit to the Governor.*

*§ 15.2-2434. Collection of money due Fund.*

*The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan to a local government, including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.*

*§ 15.2-2435. Loans to local governments.*

*A. Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments to finance or refinance the cost of any project. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of indebtedness to be refinanced plus reasonable financing expenses.*

*B. The Authority shall determine the terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions, and other information as it may deem necessary or convenient. In addition to any other terms or conditions that the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant perform any of the following:*

*1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal and premium, if any, and interest on the loan from the Fund to the local government; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or in part, for future increases in rents, rates, fees, or charges;*

*2. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal and premium, if any, and interest on the loan from the Fund to the local government;*

*3. Create and maintain a special fund or funds for the payment of the principal and premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or for the operation, maintenance, repair, or replacement of the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable;*

*4. Create and maintain other special funds as required by the Authority; and*

*5. Perform other acts, including the conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title, and interest therein, to the Fund, or to take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal and premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:*

*a. The procurement of insurance, guarantees, letters of credit, and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;*

*b. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities, or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities, and systems to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;*

*c. The maintenance, replacement, renewal, and repair of the project; and*

*d. The procurement of casualty and liability insurance.*

*C. All local governments borrowing money from the Fund are authorized to perform any acts, take any actions, adopt any proceedings, and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Fund.*

*D. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government subject to the guidelines adopted by the Board of Directors of the Authority.*

*§ 15.2-2436. Prioritization of loans.*

*In approving loans, the Authority shall give preference to loans for projects that will (i) utilize private industry in the operation and maintenance of such projects where a material savings in cost can be shown over public operation and maintenance or (ii) serve two or more local governments to encourage regional cooperation.*

*§ 15.2-2437. Pledge of loans to secure bonds of Authority.*

*The Authority is empowered at any time and from time to time to transfer from the Fund to banks or trust companies designated by the Authority any or all assets of the Fund to be held in trust as security for the payment of the principal and premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199 of the Authority. The interests of the Fund in any obligations so transferred shall be subordinate to the rights of the trustee under the pledge. To the extent funds are not available from other sources pledged for such purpose, any payments of principal and interest received on the assets transferred or held in trust may be applied by the trustee thereof to the payment of the principal and premium, if any, and interest on such bonds of the Authority to which the obligations have been pledged, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal and premium, if any, and interest on such bonds of the Authority. Any assets of the Fund transferred in trust as set forth in this section and any payments of principal, interest, or earnings received thereon shall remain part of the Fund but shall be subject to the pledge to secure the bonds of the Authority and shall be held by the trustee to which they are pledged until no longer required for such purpose by the terms of the pledge. On or before January 10 each year, the Authority shall transfer, or shall cause the trustee to transfer, to the Fund any assets transferred or held in trust as set forth above that are no longer required to be held in trust pursuant to the terms of the pledge.*

*§ 15.2-2438. Sale of loans.*

*The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the Fund.*

*§ 15.2-2439. Powers of the Authority.*

*The Authority is authorized to do any act necessary or convenient to the exercise of the powers granted in this chapter or reasonably implied thereby.*

*§ 15.2-2440. Liberal construction of chapter.*

*The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special, or local, the provisions of this chapter shall be controlling.*

*§ 62.1-198. Legislative findings and purposes.*

*The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for water supply; land conservation or land preservation including land for parks and other recreational purposes; wastewater treatment facilities; drainage facilities; solid waste treatment, disposal and management facilities; recycling facilities; resource recovery facilities; energy conservation and energy efficiency projects; professional sports facilities; certain heavy rail transportation facilities; public safety facilities; airport facilities; the remediation of brownfields and contaminated properties; the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail; construction of local government buildings, including administrative and operations systems and other local government equipment and infrastructure; site acquisition and site development work for economic and community development projects; *recovered gas energy facilities*; and the location or retention of federal facilities in the Commonwealth and the support of the transition of former federal facilities from use by the federal government to other uses. This need can be alleviated in part through the creation of a resources authority. Its purpose is to encourage the investment of both public and private funds and to make loans, grants, and credit enhancements available to local governments to finance water and sewer projects, land conservation or land preservation programs or projects, drainage projects, solid waste treatment, disposal and management projects, recycling projects, energy conservation and energy efficiency projects, professional sports facilities, resource recovery projects, public safety facilities, airport facilities, the remediation of brownfields and contaminated properties, the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail, site acquisition and site development work for the benefit of economic development projects, technology, construction of local government buildings, including administrative and operations systems and other local government equipment and infrastructure, ~~and~~ infrastructure for broadband services, *recovered gas energy facilities*, and federal facilities or former federal facilities. The General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity of the people of the Commonwealth.*

*§ 62.1-199. Definitions.*

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created by this chapter.

"Board of Directors" means the Board of Directors of the Authority.

"Bonds" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, lease and sale-leaseback transactions or any other evidences of indebtedness of the Authority.

"Capital Reserve Fund" means the reserve fund created and established by the Authority in accordance with § 62.1-215.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, real estate appraisals, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred by the local government in the course of the development of the project, including the cost of any credit enhancements, carrying charges incurred before placing the project in service, interest on local obligations issued to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary. It also includes the amount of any contribution, grant or aid which a local government may make or give to any adjoining state, the District of Columbia or any department, agency or instrumentality thereof to pay the costs incident and necessary to the accomplishment of any project, including, without limitation, the items set forth above. The term also includes interest and principal payments pursuant to any installment purchase agreement.

"Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees and other forms of collateral or security.

"Federal facility" means any building or infrastructure used or to be used by the federal government, including any building or infrastructure located on lands owned by the federal government.

"Federal government" means the United States of America, or any department, agency or instrumentality, corporate or otherwise, of the United States of America.

"Former federal facility" means any federal facility formerly used by the federal government or in transition from use by the federal government to a facility all or part of which is to serve any local government.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision created by the General Assembly or pursuant to the Constitution and laws of the Commonwealth or any combination of any two or more of the foregoing.

"Local obligations" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, leases or any other evidences of indebtedness of a local government.

"Minimum capital reserve fund requirement" means, as of any particular date of computation, the amount of money designated as the minimum capital reserve fund requirement which may be established in the resolution of the Authority authorizing the issuance of, or the trust indenture securing, any outstanding issue of bonds or credit enhancement.

"Project" means (i) any water supply or wastewater treatment facility including a facility for receiving and stabilizing septage or a soil drainage management facility and any solid waste treatment, disposal, or management facility, recycling facility, federal facility or former federal facility, or resource recovery facility located or to be located in the Commonwealth, the District of Columbia or any adjoining state, all or part of which facility serves or is to serve any local government; and (ii) any federal facility located or to be located in the Commonwealth, provided that both the Board of Directors of the Authority and the governing body of the local government receiving the benefit of the loan, grant, or credit enhancement from the Authority make a determination or finding to be embodied in a resolution or ordinance that the undertaking and financing of such facility is necessary for the location or retention of such facility and the related use by the federal government in the Commonwealth. The term includes, without limitation, water supply and intake facilities; water treatment and filtration facilities; water storage facilities; water distribution facilities; sewage and wastewater (including surface and ground water) collection, treatment and disposal facilities; drainage facilities and projects; solid waste treatment, disposal or management facilities; recycling facilities; resource recovery facilities; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto. The term also includes energy conservation measures and facility technology infrastructure as defined in § 11-34.2 and other energy objectives as defined in § 67-101. The term also means any heavy rail transportation facilities operated by a transportation district, created under the Transportation District Act of 1964 (§ 15.2-4500 et seq.), which operates heavy rail freight service, including rolling stock, barge loading facilities, and any related marine or rail equipment. The term also means, without

limitation, the design and construction of roads, the construction of local government buildings, including administrative and operations systems and other local government equipment and infrastructure, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail. In addition, the term means any project as defined in § 5.1-30.1 and any professional sports facility, including a major league baseball stadium as defined in § 15.2-5800, provided that the specific professional sports facility projects have been designated by the General Assembly as eligible for assistance from the Authority. The term also means any equipment, facilities, and technology infrastructure designed to provide broadband service. The term also means facilities supporting, related to, or otherwise used for public safety including, but not limited to, law-enforcement training facilities and emergency response, fire, rescue and police stations. The term also means the remediation, redevelopment and rehabilitation of property contaminated by the release of hazardous substances, hazardous wastes, solid wastes or petroleum where such remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department of Environmental Quality, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived. The term also means any program or project for land conservation, parks, park facilities, land for recreational purposes, or land preservation, including but not limited to any program or project involving the acquisition of rights or interests in land for the conservation or preservation of such land. The term also means any program or project to perform site acquisition or site development work for the benefit of economic and community development projects for any local government. *The term also means any undertaking by a local government to build or facilitate the building of a recovered gas energy facility.*

*"Recovered gas energy facility" means a facility, located at or adjacent to (i) a solid waste management facility permitted by the Department of Environmental Quality or (ii) a sewerage system or sewage treatment work described in § 62.1-44.18 that is constructed and operated for the purpose of treating sewage and wastewater for discharge to state waters, which facility or work is constructed and operated for the purpose of (a) reclaiming or collecting methane or other combustible gas from the biodegradation or decomposition of solid waste, as defined in § 10.1-1400, that has been deposited in the solid waste management facility or sewerage system or sewage treatment work and (b) either using such gas to generate electric energy or upgrading the gas to pipeline quality and transmitting it off premises for sale or delivery to commercial or industrial purchasers or to a public utility or locality.*