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SENATE BILL NO. 1349

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 2, 2011)

(Patron Prior to Substitute—Senator Norment)

A *BILL to amend and reenact § 2.2-2279 of the Code of Virginia, relating to the Virginia Small Business Financing Authority; definitions; eligible businesses.*

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-2279 of the Code of Virginia is 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 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 enterprise making sales or providing services to industries described in clause (i); (iii) enterprise for research and development, including but not limited to scientific laboratories; (iv) not-for-profit entity operating in the Commonwealth; (v) 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 *for-profit* business enterprises in the Commonwealth that satisfies one or more of the following requirements: (i) is a ~~for-profit enterprise 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, ~~(b)~~ (ii) has fewer than 250 employees, ~~(c)~~ (iii) has a net worth of \$2 million or less, ~~(d)~~ (iv) 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)~~ (v) 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. "Eligible business" shall also include a not-for-profit entity granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating in the Commonwealth. However, such not-for-profit entity shall be considered an eligible business for purposes of this article only if the not-for-profit entity first seeks public approval for the issuance of bonds from the economic or industrial development authority of each locality in which the entity plans to use the bond proceeds. The administrator of the economic or industrial development authority has three business days from the date of the receipt of the application to accept the application and place the application on the economic or industrial development authority's docket. Public approval shall be acted upon within the times set forth in Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2. If the administrator of the economic or industrial development authority fails to accept the application and place the application on the economic or industrial development authority's docket within three business days, or if public approval

60 *for the bonds fails or is not granted within the times set forth in Chapter 49 of Title 15.2, then the*
61 *not-for-profit entity shall be considered an eligible business, but only to the extent that it seeks issuance*
62 *of the bonds from the Authority for no greater principal amount and for the same primary purpose as*
63 *requested in the application to the economic or industrial development authority. The Authority shall*
64 *develop procedures to verify that a not-for-profit entity applied for and sought public approval of the*
65 *issuance of bonds from an economic or industrial development authority and that such public approval*
66 *was refused or not acted on within the times set forth in Chapter 49 of Title 15.2. If the locality in*
67 *which the not-for-profit entity plans to use the bond proceeds has not established an economic or*
68 *industrial development authority, the not-for-profit entity shall be considered an eligible business without*
69 *first seeking the issuance of its desired bonds from a bond issuing authority other than the Authority.*

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

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

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

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

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

81 (i)1. "Lease" means any lease containing an option to purchase the project or projects of the eligible
82 business being financed for a nominal sum upon payment in full, or provision thereof, of all bonds
83 issued in connection with the eligible business and all interest thereon and principal of and premium, if
84 any, thereon and all other expenses in connection therewith.

85 (ii)2. "Loan agreement" means an agreement providing for a loan of proceeds from the sale and
86 issuance of bonds by the Authority or by a lender with which the Authority has contracted to loan such
87 proceeds to one or more contracting parties to be used to pay the cost of one or more projects of an
88 eligible business and providing for the repayment of such loan including but not limited to all interest
89 thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith,
90 by such contracting party or parties and which may provide for such loans to be secured or evidenced
91 by one or more notes, debentures, bonds or other secured or unsecured debt obligations of such
92 contracting party or parties, delivered to the Authority or to a trustee under an indenture pursuant to
93 which the bonds were issued.

94 (iii)3. "Sales contract" means a contract providing for the sale of one or more projects of an eligible
95 business to one or more contracting parties and includes but is not limited to a contract providing for
96 payment of the purchase price including but not limited to all interest thereon, and principal of and
97 premium, if any, thereon and all other expenses in connection therewith, in one or more installments. If
98 the sales contract permits title to a project being sold to an eligible business to pass to such contracting
99 party or parties prior to payment in full of the entire purchase price, it also shall provide for such
100 contracting party or parties to deliver to the Authority or to the trustee under the indenture pursuant to
101 which the bonds were issued, one or more notes, debentures, bonds or other secured or unsecured debt
102 obligations of such contracting party or parties providing for timely payments of the purchase price
103 thereof.

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

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

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

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