

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 732

An Act to amend and reenact § 2.2-2279 of the Code of Virginia, relating to the Virginia Small Business Financing Authority; financing of energy projects and pollution control projects.

[H 864]

Approved April 6, 2014

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) *entity acquiring, constructing, improving, maintaining, or operating a qualified energy project*; (vii) *entity acquiring, constructing, improving, maintaining, or operating a qualified pollution control project*; or (viii) 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: (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) has fewer than 250 employees, (c) has a net worth of \$2 million or less, (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) *exists for the primary purpose of developing or operating a qualified energy project*, (f) *is required by state or federal law to develop or operate a qualified pollution control project*, or (g) 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.

"Qualified energy project" means a solar-powered or wind-powered electricity generation facility located in the Commonwealth on premises owned or leased by an eligible customer-generator, as defined in § 56-594, the electricity generated from which is sold exclusively to the eligible customer-generator under a power purchase agreement used to provide third party financing of the costs of such a renewable generation facility (third party power purchase agreement) pursuant to a pilot program established under Chapter 382 of the Acts of Assembly of 2013.

"Qualified pollution control project" means environmental pollution control and prevention equipment certified by the business enterprise or eligible business as being needed to comply with the federal Clean Air Act (42 U.S.C. § 7401 et seq.), the federal Clean Water Act (33 U.S.C. § 1251 et seq.), or the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

"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.