

VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

CHAPTER 658

An Act to amend and reenact §§ 23-30.41, 23-30.42, 23-30.44, 23-30.45, 23-30.47, and 23-30.50 of the Code of Virginia, relating to the Virginia College Building Authority; projects; participating institutions.

[S 313]

Approved April 1, 2016

Be it enacted by the General Assembly of Virginia:

1. That §§ 23-30.41, 23-30.42, 23-30.44, 23-30.45, 23-30.47, and 23-30.50 of the Code of Virginia are amended and reenacted as follows:

§ 23-30.41. Definitions.

~~In As used in this chapter, the following words and terms shall, unless the context otherwise requires, have the following meanings a different meaning:~~

(a) "Authority," ~~means~~ the Virginia College Building Authority created by § 23-30.25.

(b) "Project," in the case of a participating institution ~~for higher education~~, ~~means~~ a structure or structures suitable for use as a dormitory or other multi-unit housing facility for students, faculty, officers or employees, a dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, athletic facility, health care facility, maintenance, storage or utility facility and other structures or facilities related to any of the foregoing or required or useful for the instruction of students or the conducting of research or the operation of an institution ~~for of~~ higher education, including parking and other facilities or structures essential or convenient for the orderly conduct of such institution ~~for of~~ higher education, and shall also include landscaping, site preparation, furniture, equipment and machinery and other similar items necessary or convenient for the operation of a particular facility or structure in the manner for which its use is intended but shall not include such items as books, fuel, supplies or other items the costs of which are customarily deemed to result in a current operating charge, and shall not include any facility used or to be used for sectarian instruction or as a place of religious worship nor any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity for any religious denomination.

(c) "Costs," as applied to a project or any portion thereof financed under the provisions of this chapter ~~embraces~~ ~~means~~ all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction and remodeling of a project including all lands, structures, real or personal property, rights, rights-of-way, air rights, franchises, easements and interests acquired or used for or in connection with a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to, during and for a period after completion of such construction and acquisition, provisions for reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations and improvements, the cost of architectural, engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, administrative expenses, expenses necessary or incident to determining the feasibility or practicability of constructing the project and such other expenses as may be necessary or incident to the construction and acquisition of the project, the financing of such construction and acquisition and the placing of the project in operation.

(d) "Bonds" or "revenue bonds," ~~means~~ revenue bonds of the Authority issued under the provisions of this chapter, including revenue refunding bonds, notes and other obligations, notwithstanding that the same may be secured by mortgage or by the full faith and credit or by any other lawfully pledged security of either one or more participating institutions ~~for higher education~~.

(e) "Institution ~~for higher education~~," a nonprofit educational institution within the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education.

(f) "Participating institution ~~for higher education~~," ~~an~~ means any (i) organization that is exempt from federal income taxation pursuant to § 501(c)(3) of the Internal Revenue Code and that is owned or controlled by a public institution of higher education or whose purpose is to support or otherwise benefit a public institution of higher education or (ii) nonprofit private institution ~~for of~~ higher education ~~which in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education that~~, pursuant to the provisions of this chapter, undertakes the financing and construction or acquisition of a project or undertakes the refunding or refinancing of obligations or of a mortgage or of advances as provided in this chapter.

§ 23-30.42. Powers and duties of Authority.

The Authority shall assist ~~participating~~ institutions ~~for higher education~~ in the acquisition,

construction, and financing, and the refinancing of projects begun after July 1, 1972, and for this purpose the Authority is authorized and empowered. In addition to such other powers as are granted to the Authority by law, it is further empowered:

(a) To determine the location and character of any project to be financed under the provisions of this chapter, and to construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, to enter into contracts for any or all of such purposes, to enter into contracts for the management and operation of a project, and to designate a participating institution ~~for higher education~~ as its agent to determine the location and character of a project undertaken by such participating institution ~~for higher education~~ under the provisions of this chapter and, as the agent of the Authority, to construct, reconstruct, remodel, maintain, manage, enlarge, alter, add to, repair, operate, lease, as lessee or lessor, and regulate the same, and, as the agent of the Authority, to enter into contracts for any or all of such purposes, including contracts for the management and operation of such project;

(b) To issue bonds, bond anticipation notes, and other obligations of the Authority for any of its corporate purposes, and to fund or refund the same all as provided in this chapter;

(c) Generally, to fix and revise from time to time and charge and collect rates, rents, fees, and charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with any person, partnership, association, or corporation or other body public or private in respect thereof and to designate a participating institution ~~for higher education~~ or a participating hospital as its agent to fix, revise, charge, and collect such rates, rents, fees, and charges and to make such contracts;

(d) To establish rules and regulations for the use of a project or any portion thereof and to designate a participating institution ~~for higher education~~ as its agent to establish rules and regulations for the use of a project in which such participating institution ~~for higher education~~ is participating;

(e) To employ consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment; and to fix their compensation;

(f) To receive and accept from any public agency loans or grants for or in aid of the construction of a project or any portion thereof; and to receive and accept loans, grants, aid, or contributions from any source of either money, property, labor, or other things of value to be held, used, and applied only for the purposes for which such loans, grants, aid, and contributions are made;

(g) To mortgage any project and the site thereof for the benefit of the holders of revenue bonds issued to finance such project;

(h) To make loans to any participating institution ~~for higher education~~ for the cost of a project in accordance with an agreement between the Authority and one or more participating institutions ~~for higher education~~; provided that no such loan shall exceed the total cost of the project as determined by such participating institution ~~or institutions for higher education~~ and approved by the Authority;

(i) To make loans to participating institutions ~~for higher education~~ to refund outstanding obligations, mortgages, or advances issued, made, or given by such participating institutions ~~for higher education~~ for the cost of a project;

(j) To charge to and equitably apportion among participating institutions ~~for higher education~~ its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter; *and*

(k) To do all things necessary or convenient to carry out the purposes of this chapter.

In carrying out the purposes of this chapter, the Authority may undertake a joint project for two or more participating institutions ~~for higher education~~ and, thereupon, all other provisions of this chapter shall apply to and for the benefit of the Authority and the participants in such joint project or projects.

§ 23-30.44. Acquisition of property.

The Authority is authorized and empowered, directly or by and through a participating institution ~~for higher education~~, as its agent, to acquire by purchase solely from funds provided under the authority of this chapter, or by gifts or devise, such lands, structures, property, real or personal, rights, rights-of-way, air rights, franchises, easements, and other interests in lands, including lands lying under water and riparian rights, ~~which that~~ are located within the Commonwealth as it may deem necessary or convenient for the acquisition, construction, or operation of a project, upon such terms and at such prices as may be considered by it to be reasonable and can be agreed upon between it and the owner thereof, and to take title thereto in the name of the Authority or in the name of one or more participating institutions ~~for higher education~~ as its agent.

§ 23-30.45. Execution of deeds and conveyances.

When the principal of and interest on revenue bonds of the Authority issued to finance the cost of a particular project or projects for one or more participating institutions ~~for higher education~~, including any revenue refunding bonds issued to refund and refinance such revenue bonds, have been fully paid and retired or when adequate provision has been made to fully pay and retire the same, and all other conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and the lien of such resolution or trust agreement has been released in accordance with the provisions

thereof, the Authority shall promptly do such things and execute such deeds and conveyances as are necessary and required to convey title to such project or projects to such participating institution ~~or institutions for higher education~~, free and clear of all liens and encumbrances, all to the extent that title to such project or projects is not, at the time, vested in such participating institution ~~or institutions for higher education~~.

§ 23-30.47. Issuance of revenue bonds.

(a) The Authority may from time to time issue revenue bonds for any corporate purpose and all such revenue bonds, notes, bond anticipation notes, or other obligations of the Authority issued pursuant to this chapter shall be and are hereby declared to be negotiable for all purposes notwithstanding their payment from a limited source and without regard to any other law or laws. In anticipation of the sale of such revenue bonds, the Authority may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed five years from the date of issue of the original note. Such notes shall be paid from any revenues of the Authority available therefor and not otherwise pledged, or from the proceeds of sale of the revenue bonds of the Authority in anticipation of which they were issued. The notes shall be issued in the same manner as the revenue bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions, or limitations ~~which~~ *that* a bond resolution of the Authority may contain.

(b) The revenue bonds and notes of every issue shall be payable solely out of revenues to the Authority, subject only to any agreements with the holders of particular revenue bonds or notes pledging any particular revenues and subject to any agreements with any participating institution ~~for higher education~~. Notwithstanding that revenue bonds and notes may be payable from a special fund, they shall be and be deemed to be, for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds and notes for registration.

(c) The revenue bonds may be issued as serial bonds or as term bonds, or the Authority, in its discretion, may issue bonds of both types. The revenue bonds shall be authorized by resolution of the members of the Authority and shall bear such date or dates, mature at such time or times, not exceeding fifty years from their respective dates, bear interest at such rate or rates, payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. The revenue bonds or notes may be sold at public or private sale for such price or prices as the Authority shall determine. Pending preparation of the definitive bonds, the Authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(d) Any resolution or resolutions authorizing any revenue bonds or any issue of revenue bonds may contain provisions, which shall be a part of the contract with the holders of the revenue bonds to be authorized, as to:

(1) Pledging all or any part of the revenues of a project or projects, any revenue producing contract or contracts made by the Authority with any individual, partnership, corporation or association or other body, public or private, to secure the payment of the revenue bonds or of any particular issue of revenue bonds, subject to such agreements with bondholders as may then exist; (2) the rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues; (3) the establishment and setting aside of reserves or sinking funds, and the regulation and disposition thereof; (4) limitations on the right of the Authority or its agent to restrict and regulate the use of the project; (5) limitations on the purpose to which the proceeds of sale of any issue of revenue bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the revenue bonds or any issue of the revenue bonds; (6) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds; (7) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given; (8) limitations on the amount of moneys derived from the project to be expended for operating, administrative or other expenses of the Authority; (9) defining the acts or omissions to act which shall constitute a default in the duties of the Authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default; (10) the duties, obligations and liabilities of any trustee or paying agent; and (11) the mortgaging of a project and the site thereof for the purpose of securing the bondholders.

(e) Neither the members of the Authority nor any person executing the revenue bonds or notes shall be liable personally on the revenue bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The Authority shall have power out of any funds available therefor to purchase its bonds or notes. The Authority may hold, pledge, cancel or resell such bonds or notes subject to and in accordance with agreements with bondholders.

§ 23-30.50. Rates, rents, fees and charges; sinking fund.

The Authority may fix, revise, charge and collect rates, rents, fees and charges for the use of and for

the services furnished or to be furnished by each project and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. Such rates, rents, fees and charges shall be fixed and adjusted in respect of the aggregate of rates, rents, fees and charges from such project so as to provide funds sufficient with other revenues, if any, ~~(1)~~ (i) to pay the cost of maintaining, repairing and operating the project and each and every portion thereof, to the extent that the payment of such cost has not otherwise been adequately provided for, ~~(2)~~ (ii) to pay the principal of and the interest on outstanding revenue bonds of the Authority issued in respect of such project as the same shall become due and payable and ~~(3)~~ (iii) to create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, such revenue bonds of the Authority. Such rates, rents, fees and charges shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this Commonwealth other than the Authority. A sufficient amount of the revenues derived in respect of a project, except such part of such revenues as may be necessary to pay the cost of maintenance, repair and operation and to provide reserves and for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of any revenue bonds of the Authority or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such revenue bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the rates, rents, fees and charges and other revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking or other similar fund shall be a fund for all such revenue bonds issued to finance a project or projects ~~at by one or more participating institutions for higher education,~~ without distinction or priority of one over another; provided the Authority in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular project ~~at an by a participating institution for higher education~~ and for the revenue bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of revenue bonds having a subordinate lien in respect of the security herein authorized to other revenue bonds of the Authority and, in such case, the Authority may create separate or other similar funds in respect of such subordinate lien bonds.