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HOUSE BILL NO. 1012

Offered January 13, 2016

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A BILL 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.

Patron—Massie

Referred to Committee on Appropriations

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.

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,

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59 undertakes the financing and construction or acquisition of a project or undertakes the refunding or  
 60 refinancing of obligations or of a mortgage or of advances as provided in this chapter.

61 **§ 23-30.42. Powers and duties of Authority.**

62 The Authority shall assist *participating* institutions ~~for higher education~~ in the acquisition,  
 63 construction, and financing, and the refinancing of projects begun after July 1, 1972, and for this  
 64 purpose the Authority is authorized and empowered. In addition to such other powers as are granted to  
 65 the Authority by law, it is further empowered:

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

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

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

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

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

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

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

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

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

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

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

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

110 **§ 23-30.44. Acquisition of property.**

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

120 **§ 23-30.45. Execution of deeds and conveyances.**

121 When the principal of and interest on revenue bonds of the Authority issued to finance the cost of a  
 122 particular project or projects for one or more participating institutions for higher education, including  
 123 any revenue refunding bonds issued to refund and refinance such revenue bonds, have been fully paid  
 124 and retired or when adequate provision has been made to fully pay and retire the same, and all other  
 125 conditions of the resolution or trust agreement authorizing and securing the same have been satisfied and  
 126 the lien of such resolution or trust agreement has been released in accordance with the provisions  
 127 thereof, the Authority shall promptly do such things and execute such deeds and conveyances as are  
 128 necessary and required to convey title to such project or projects to such participating institution or  
 129 institutions for higher education, free and clear of all liens and encumbrances, all to the extent that title  
 130 to such project or projects is not, at the time, vested in such participating institution or institutions for  
 131 higher education.

132 **§ 23-30.47. Issuance of revenue bonds.**

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

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

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

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

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

182 and the site thereof for the purpose of securing the bondholders.

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

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

189 **§ 23-30.50. Rates, rents, fees and charges; sinking fund.**

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