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SENATE BILL NO. 967

Offered January 11, 2017

Prefiled January 3, 2017

A BILL to amend and reenact §§ 15.2-4901, 15.2-4902 and 15.2-4905 of the Code of Virginia, relating to local industrial development authorities; port facilities.

Patron—Cosgrove

Referred to Committee on Local Government**Be it enacted by the General Assembly of Virginia:**

1. That §§ 15.2-4901, 15.2-4902 and 15.2-4905 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-4901. Purpose of chapter.

It is the intent of the legislature by the passage of this chapter to authorize the creation of industrial development authorities by the localities in the Commonwealth so that such authorities may acquire, own, lease, and dispose of properties and make loans to the end that such authorities may be able to promote industry and develop trade by inducing manufacturing, industrial, governmental, nonprofit and commercial enterprises and institutions of higher education to locate in or remain in the Commonwealth and further the use of its agricultural products and natural resources, and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity. Such authority shall not itself be authorized to operate any such manufacturing, industrial, nonprofit or commercial enterprise or any facility of an institution of higher education.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to pollution control facilities to the end that such authorities may protect and promote the health of the inhabitants of the Commonwealth and the conservation, protection and improvement of its natural resources by exercising such powers for the control or abatement of land, sewer, water, air, noise and general environmental pollution derived from the operation of any industrial or medical facility and to vest such authorities with all powers that may be necessary to enable them to accomplish such purpose, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to medical facilities and facilities for the residence or care of the aged to the end that such authorities may protect and promote the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement and improvement of medical facilities and facilities for the residence or care of the aged in order to provide modern and efficient medical services to the inhabitants of the Commonwealth and care of the aged of the Commonwealth in accordance with their special needs and also by assisting in the refinancing of medical facilities and facilities for the residence or care of the aged owned and operated by organizations which are exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code of 1954, as amended, in order to reduce the costs to residents of the Commonwealth of utilizing such facilities and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health and welfare. It is not intended hereby that any such authority shall itself be authorized to operate any such medical facility or facility for the residence or care of the aged.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for use by organizations (other than institutions organized and operated exclusively for religious purposes) which are described in § 501(c)(3) of the Internal Revenue Code of 1954, as amended, and which are exempt from federal income taxation pursuant to § 501(a) of the Internal Revenue Code of 1954, as amended, to the end that such authorities may protect or promote the safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, improvement, financing, and refinancing of such facilities of the aforesaid entities and organizations in order to provide operations, recreational, activity centers, and other facilities for the use of the inhabitants of the Commonwealth and to vest such authorities with all

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59 powers that may be necessary to enable them to accomplish such purposes, which powers shall be
60 exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their safety,
61 health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself
62 be authorized to operate any such facility.

63 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to
64 industrial development authorities the powers contained herein with respect to facilities for private,
65 accredited and nonprofit institutions of collegiate education in the Commonwealth whose primary
66 purpose is to provide collegiate or graduate education and not to provide religious training or theological
67 education to the end that such authorities may protect and promote the health and welfare of the
68 inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion,
69 enlargement, and improvement of facilities of aforesaid institutions in order to provide improved
70 educational facilities for the use of the inhabitants of the Commonwealth and to vest such authorities
71 with all powers that may be necessary to enable them to accomplish such purposes, which powers shall
72 be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their
73 health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself
74 be authorized to operate any such educational facility.

75 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant
76 industrial development authorities the powers contained herein with respect to facilities for a locality, the
77 Commonwealth and its agencies, and governmental and nonprofit organizations and to vest such
78 authorities with all powers that may be necessary to enable them to accomplish such purposes, which
79 powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion
80 of their health, welfare, convenience or prosperity.

81 It is further the intent of the legislature and shall be the policy of the Commonwealth to grant to
82 industrial development authorities the powers contained herein with respect to facilities for museums and
83 historical education, demonstration and interpretation, together with any and all buildings, structures or
84 other facilities necessary or desirable in connection with the foregoing, for use by nonprofit
85 organizations in order to promote tourism and economic development in the Commonwealth, to promote
86 the knowledge of and appreciation by the citizens of the Commonwealth of the historical and cultural
87 development and heritage of the Commonwealth and the United States and to promote thereby their
88 health, welfare, convenience and prosperity. It is not intended hereby that any such authority shall itself
89 be authorized to operate any such facility.

90 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to
91 industrial development authorities the powers contained herein with respect to facilities devoted to the
92 staging of equine events and activities (other than racing) for use by governmental or nonprofit,
93 nonreligious organizations and operated by such governmental or nonprofit, nonreligious organizations in
94 order to promote the equine industry and equine-related activities (other than racing) which are integral
95 to the Commonwealth's economy and heritage and to promote thereby the safety, health, welfare,
96 convenience, and prosperity of the inhabitants of the Commonwealth.

97 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to
98 industrial development authorities the powers contained herein with respect to acquiring, developing,
99 owning and operating an industrial park, *including port facilities*, and any utilities that are intended
100 primarily to serve the park and to issue bonds for such purposes. The bonds may be secured by
101 revenues generated by the industrial park or the utilities being financed or by any other funds of the
102 authority.

103 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to
104 industrial development authorities created by one or more municipalities whose housing authorities have
105 not been activated as provided by §§ 36-4 and 36-4.1, in addition to the powers previously or hereafter
106 granted in this chapter, the powers contained herein with respect to facilities used primarily for single or
107 multi-family residences in order to promote safe and affordable housing in the Commonwealth and to
108 benefit thereby the safety, health, welfare and prosperity of the inhabitants of the Commonwealth. It is
109 not intended hereby that any such authority shall itself be authorized to operate any such facility or
110 exercise any powers of eminent domain set forth in § 36-27.

111 In any instance in this chapter where an industrial development authority may issue bonds through its
112 authority to finance, the authority may also refinance such bonds.

113 This chapter shall be liberally construed in conformity with these intentions.

114 **§ 15.2-4902. Definitions.**

115 Wherever used in this chapter, unless a different meaning clearly appears in the context:

116 "Authority" means any political subdivision, a body politic and corporate, created, organized and
117 operated pursuant to the provisions of this chapter, or if the authority is abolished, the board, body,
118 commission, department or officer succeeding to the principal functions thereof or to whom the powers
119 given by this chapter are given by law. *An authority may include an advisory port authority committee
120 created by ordinance by the governing body of the locality.*

"Authority facilities" or "facilities" means any or all (i) medical (including, but not limited to, office and treatment facilities), pollution control or industrial facilities; (ii) facilities for the residence or care of the aged; (iii) multi-state regional or national headquarters offices or operations centers; (iv) facilities for private, accredited and nonprofit institutions of collegiate, elementary, or secondary education in the Commonwealth whose primary purpose is to provide collegiate, elementary, secondary, or graduate education and not to provide religious training or theological education, such facilities being for use as academic or administration buildings or any other structure or application usual and customary to a college, elementary or secondary school campus other than chapels and their like; (v) parking facilities, including parking structures; (vi) facilities for use as office space by nonprofit, nonreligious organizations; (vii) facilities for museums and historical education, demonstration and interpretation, together with buildings, structures or other facilities necessary or desirable in connection with the foregoing, for use by nonprofit organizations; (viii) facilities for use by an organization (other than an organization organized and operated exclusively for religious purposes) which is described in § 501(c)(3) of the Internal Revenue Code of 1986, as amended, and which is exempt from federal income taxation pursuant to § 501(a) of such Internal Revenue Code; (ix) facilities for use by a locality, the Commonwealth and its agencies, or other governmental organizations, provided that any such facilities owned by a locality, the Commonwealth or its agencies or other public bodies subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not be exempt from competitive procurement requirements, under the exception granted in subsection B of § 2.2-4344; (x) facilities devoted to the staging of equine events and activities (other than racing events); however, such facilities must be owned by a governmental or nonprofit, nonreligious organization and operated by any such governmental or nonprofit, nonreligious organization; (xi) facilities for commercial enterprises that are not enterprise zone facilities (as defined in § 1394(b) of the Internal Revenue Code of 1986, as amended) now existing or hereafter acquired, constructed or installed by or for the authority pursuant to the terms of this chapter; however, facilities for commercial enterprise that are not enterprise zone facilities but which are taxable authority facilities shall constitute authority facilities only if the interest on any bonds issued to finance such facilities is not exempt from federal income taxation; (xii) enterprise zone facilities; *(xiii) port facilities acquired, constructed, or operated by the authority for purposes of facilitating the development and operation of modern and efficient seaports, harbors, wharves, docks, piers, terminals, warehouses, and similar facilities and equipment relating to waterfront industry;* and ~~(xiii)~~ (xiv) facilities used primarily for single or multi-family residences. Clause ~~(xiii)~~ (xiv) applies only to industrial development authorities created by one or more localities whose housing authorities have not been activated as provided by §§ 36-4 and 36-4.1. Any facility may be located within or outside or partly within or outside the locality creating the authority. Any facility may consist of or include any or all buildings, improvements, additions, extensions, replacements, machinery or equipment, and may also include appurtenances, lands, rights in land, water rights, franchises, furnishings, landscaping, utilities, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto, acquired, constructed, or installed by or on behalf of the authority. A pollution control facility shall include any facility acquired, constructed or installed or any expenditure made, including the reconstruction, modernization or modification of any existing building, improvement, addition, extension, replacement, machinery or equipment, and which is designed to further the control or abatement of land, sewer, water, air, noise or general environmental pollution derived from the operation of any industrial or medical facility. Any facility may be constructed on or installed in or upon lands, structures, rights-of-way, easements, air rights, franchises or other property rights or interests whether owned by the authority or others.

"Bonds" or "revenue bonds" embraces notes, bonds and other obligations authorized to be issued by the authority pursuant to the provisions of this chapter.

"Cost" means, as applied to authority facilities, 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 or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated; the cost of all labor, materials, machinery and equipment; financing charges and interest on all bonds prior to and during construction and, if deemed advisable by the authority, for a period not exceeding one year after completion of such construction; cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, and other expenses necessary or incident to determining the feasibility or practicability of constructing the authority facilities; administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements; and such other expenses as may be necessary or incident to the construction of the authority facilities, the financing of such construction and the placing of the authority facilities 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 of the authority facilities may be regarded as a part of the cost of the authority facilities and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued for such authority facilities as hereinafter authorized.

"Enterprise" means any industry for manufacturing, processing, assembling, storing, warehousing, distributing, or selling any products of agriculture, mining, or industry and for research and development or scientific laboratories, including, but not limited to, the practice of medicine and all other activities related thereto or for such other businesses or activities as will be in the furtherance of the public purposes of this chapter.

"Loans" means any loans made by the authority in furtherance of the purposes of this chapter from the proceeds of the issuance and sale of the authority's bonds and from any of its revenues or other moneys available to it as provided herein.

"Revenues" means any or all fees, rates, rentals and receipts collected by, payable to or otherwise derived by the authority from, and all other moneys and income of whatsoever kind or character collected by, payable to or otherwise derived by the authority in connection with the ownership, leasing or sale of the authority facilities or in connection with any loans made by the authority under this chapter.

"Taxable authority facilities" means any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports facility, suntan facility, race track, or facility the primary purpose of which is one of the following: (i) retail food and beverage services (excluding grocery stores), (ii) automobile sales and service, (iii) recreation or entertainment, or (iv) banks, savings and loan institutions or mortgage loan companies. The foregoing sentence notwithstanding, no facility financed as an enterprise zone facility using tax-exempt "enterprise zone facility bonds" (as such term is used in § 1394 of the Internal Revenue Code) shall constitute a taxable authority facility.

"Trust indenture" means any trust agreement or mortgage under which bonds authorized pursuant to this chapter may be secured.

§ 15.2-4905. Powers of authority.

A. The authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;

2. To adopt and use a corporate seal and to alter the same at pleasure;

3. To enter into contracts; however, any written contract of the authority shall contain provisions addressing the issue of whether attorney's fees shall be recoverable by the prevailing party in the event the contract is subject to litigation;

4. To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish one or more authority facilities including all real and personal properties which the board of directors of the authority may deem necessary in connection therewith and regardless of whether any such facilities shall then be in existence;

5. To lease to others any or all of its facilities and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have options to renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with or without consideration;

6. To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized;

7. To issue its bonds for the purpose of carrying out any of its powers including specifically, but without intending to limit any power conferred by this section or this chapter, the issuance of bonds to provide long-term financing of any pollution control facility, whether any such facility was constructed prior to or after the enactment hereof or the receipt of a commitment from an authority to undertake financing pursuant hereto, unless the major part of the proceeds of such bonds will be used to redeem any prior long-term financing of such facility other than financings pursuant to this chapter or any similar law;

8. As security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or from any part thereof or from any loans made by the authority;

9. To employ and pay compensation to such employees and agents, including attorneys, and real estate brokers whether engaged by the authority or otherwise, as the board of directors shall deem necessary in carrying on the business of the authority;

10. To exercise all powers expressly given the authority by the governing body of the locality which established the authority and to establish bylaws and make all rules and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the authority's affairs;

11. To appoint an industrial advisory committee, *port authority advisory committee (unless appointed by the local governing body)*, or similar committee or committees to advise the authority, consisting of such number of persons as it may deem advisable. Such persons may be compensated such amount per regular, special, or committee meeting as may be approved by the appointing authority, not to exceed \$50 per meeting day, and may be reimbursed for necessary traveling and other expenses incurred while on the business of the authority;

12. To borrow money and to accept contributions, grants and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, for the payment of principal of any bond of the authority, interest thereon, or other cost incident thereto, or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed; ~~and~~

13. To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this chapter including for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the authority which have not been pledged or assigned for the payment of any of the authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefor. An authority may also be permitted to forgive loans or other obligations if it is deemed to further economic development. The word "revenues" as used in this subdivision includes contributions, grants and other financial assistance, as set out in subdivision 12;

14. *To acquire, lease, construct, maintain, operate, and sell landings, wharves, docks, piers, and quays, and the approaches to and appurtenances thereof, ships, tracks, spurs, crossings, switchings, terminals, warehouses, elevators, compressors, refrigerated storage plants, terminal facilities of every kind necessary or useful in the transportation or storage of goods; to perform any services at such facilities in connection with the receipt, delivery, shipment, and transfer in transit, weighing, marking, tagging, ventilating, fumigating, refrigerating, icing, storing, and handling of goods; to prescribe and collect charges from vessels using any landings, wharves, docks, and piers, operated and maintained by the Authority and from persons using its other facilities; and to lease or sell any or all of such facilities or any concessions incident thereto for maintenance and operation of any or all thereof on such terms as the Authority deems proper and as may be recommended by the port authority advisory committee;*

15. *To promote and improve commerce and operate a free port and foreign trade zone in accordance with the requirements of state and federal law, as may be recommended by the port authority advisory committee; and*

16. *To undertake or make arrangements for dredging of approaches to any harbor or seaport facility in accordance with state and federal law and to construct shipping facilities that will facilitate waterfront development, as may be recommended by the port authority advisory committee.*

B. The authority shall not have power to operate any facility as a business other than as lessor and shall not have the power to operate any single or multi-family housing facilities. However, the authority shall have the power to apply for, establish, operate and maintain a foreign-trade zone in accordance with the provisions of Chapter 14 (§ 62.1-159 et seq.) of Title 62.1. Any meeting held by the board of directors at which formal action is taken shall be open to the public.

C. If a locality has created an industrial development authority pursuant to this chapter or any other provision of law, no other such authority, not created by such locality, shall finance facilities, except pollution control facilities, within the boundaries of such locality, unless the governing body of such locality in which the facilities are located or are proposed to be located, concurs with the inducement resolution adopted by the authority, and shows such concurrence in a duly adopted resolution. Notwithstanding the foregoing, nothing contained herein shall be deemed to invalidate or otherwise impair any existing financing by an authority or the financing of any facilities for which application has been made to an authority prior to July 1, 1981.