

# VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

## CHAPTER 818

*An Act to amend and reenact §§ 2.2-2279 and 15.2-4901 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 9 of Title 22.1 an article numbered 3, consisting of sections numbered 22.1-141.1 and 22.1-141.2, and by adding a section numbered 56-589.1, relating to the modernization of public school buildings and facilities.*

[S 1331]

Approved March 26, 2019

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-2279 and 15.2-4901 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9 of Title 22.1 an article numbered 3, consisting of sections numbered 22.1-141.1 and 22.1-141.2, and by adding a section numbered 56-589.1 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 (§ 33.2-1800 et seq.); (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) *entity that modernizes public school buildings or facilities pursuant to Article 3 (§ 22.1-141.1 et seq.) of Chapter 9 of Title 22.1; or* (ix) 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 (§ 33.2-1800 et seq.), (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 as follows:

(i) 1. "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) 2. "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) 3. "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.

#### **§ 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 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 safety, health, welfare, convenience, or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such facility.

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 accredited nonprofit private institutions of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education 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 facilities of aforesaid institutions in order to provide improved educational facilities for the use of the inhabitants of the Commonwealth 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, welfare, convenience, or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such educational facility.

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 a locality, the Commonwealth and its agencies, and governmental and nonprofit organizations 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, welfare, convenience, or prosperity.

It is further the 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 museums and historical education, demonstration, and interpretation, together with any and all buildings, structures, or other facilities necessary or desirable in connection with the foregoing, for use by nonprofit organizations in order to promote tourism and economic development in the Commonwealth, to promote the knowledge of and appreciation by the citizens of the Commonwealth of the historical and cultural

development and heritage of the Commonwealth and the United States and to promote thereby their health, welfare, convenience, and prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such facility.

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 devoted to the staging of equine events and activities (other than racing) for use by governmental or nonprofit, nonreligious organizations and operated by such governmental or nonprofit, nonreligious organizations in order to promote the equine industry and equine-related activities (other than racing) which are integral to the Commonwealth's economy and heritage and to promote thereby the safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth.

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 acquiring, developing, owning, and operating an industrial park and any utilities that are intended primarily to serve the park and to issue bonds for such purposes. The bonds may be secured by revenues generated by the industrial park or the utilities being financed or by any other funds of the authority.

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

*It is the further intent of the legislature and shall be the policy of the Commonwealth to grant industrial development authorities the powers contained herein with respect to public school buildings and facilities to promote the safety, health, welfare, convenience, and prosperity of the school children of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, improvement, financing, and refinancing of such facilities of school boards in order to provide for the modernization of public school buildings or facilities pursuant to Article 3 (§ 22.1-141.1 et seq.) of Chapter 9 of Title 22.1.*

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

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

#### Article 3.

#### *Public School Building and Facilities Modernization.*

##### **§ 22.1-141.1. Standards for buildings and facilities.**

*It is the intent of the General Assembly that new public school buildings and facilities and improvements and renovations to existing public school buildings and facilities be designed, constructed, maintained, and operated to generate more electricity than consumed and that such energy-positive building design be based on industry standards (i) contained in the design guide of the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE), entitled "Achieving Zero Energy—Advanced Energy Design Guide for K-12 School Buildings," dated February 1, 2018, and any subsequent updates or (ii) similar industry standards.*

##### **§ 22.1-141.2. Authority to modernize public school lease agreements.**

*A. Prior to undertaking the design, construction, maintenance, and operation of a new public school building or facility or the improvement or renovation of an existing school building or facility, a local school board may evaluate whether entering into a lease with a private entity will assist the school board in meeting the standards set forth in § 22.1-141.1.*

*B. In order to meet the design, construction, maintenance, and operation standards set forth in § 22.1-141.1, a school board may enter into a lease with a private entity that may include the following: (i) design of the building and facilities; (ii) construction of the building and facilities; (iii) financing of the project as defined in § 15.2-1815; (iv) operation of the heating, cooling, and renewable energy systems, including interconnect agreements with the regulated electric utility, maintenance of all such systems, responding to comfort complaints, and any other operational or maintenance-related issues during the lease term; and (v) such other terms as mutually agreed upon by the local school board and the private entity. Such lease may (a) be for the real property primarily used by the local school board and owned by the private entity, (b) be a capital or operating lease, (c) be exempt from real property taxation pursuant to subdivision (a) (1) of Article X, Section 6 of the Constitution of Virginia, and (d) contain a covenant that the rent shall not be reduced from the rent stated in the lease. Such lease shall not exceed 35 years in duration. The Virginia Public Procurement Act (§ 2.2-4300 et seq.) or the Public-Private Education Facilities and Infrastructure Act (§ 56-575.1 et seq.) shall apply to any lease agreement solicited by a local school board pursuant to this section.*

##### **§ 56-589.1. Energy generation by public school buildings and facilities.**

*A. A school board of a school division located in a locality that is a non-jurisdictional customer of a*

*utility pursuant to § 56-234 and that owns or operates a public school building or facility that has been modernized consistent with Article 3 (§ 22.1-141.1 et seq.) of Chapter 9 of Title 22.1 and generates energy derived from sunlight and the solar generating facility is interconnected pursuant to § 56-594 may enter into a contract to generate such energy on terms and conditions negotiated between the customer and the utility.*

*B. The solar-powered renewable energy generation facilities associated with a public school building or facility owned or operated by a school board shall be located on the same real property upon which the public school buildings and facilities are located. The solar facilities shall be located on the rooftops of the public school buildings and facilities, however up to 20 percent of the capacity may come from ground mounted solar facilities.*

*C. Neither jurisdictional customers nor non-jurisdictional customers that do not participate in a school modernization project consistent with Article 3 (§ 22.1-141.1 et seq.) of Chapter 9 of Title 22.1 shall bear any costs associated with such school modernization project by a participating non-jurisdictional customer.*