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SENATE BILL NO. 1331

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Education and Health
on January 31, 2019)

(Patron Prior to Substitute—Senator Stanley)

A *BILL 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.*

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

60 operating in the Commonwealth.

61 "Federal Act" means the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as
62 amended from time to time.

63 "Indenture" means any trust agreement, deed of trust, mortgage, or other security agreement under
64 which bonds authorized pursuant to this article shall be issued or secured.

65 "Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended.

66 "Lender" means any federal- or state-chartered bank, federal land bank, production credit association,
67 bank for cooperatives, federal- or state-chartered savings institution, building and loan association, small
68 business investment company, or any other financial institution qualified within the Commonwealth to
69 originate and service loans, including ~~but not limited to~~ insurance companies, credit unions, investment
70 banking or brokerage companies, and mortgage loan companies.

71 "Loan" means any lease, loan agreement, or sales contract as ~~hereinafter~~ defined as follows:

72 (i) 1. "Lease" means any lease containing an option to purchase the project or projects of the eligible
73 business being financed for a nominal sum upon payment in full, or provision thereof, of all bonds
74 issued in connection with the eligible business and all interest thereon and principal of and premium, if
75 any, thereon and all other expenses in connection therewith.

76 (ii) 2. "Loan agreement" means an agreement providing for a loan of proceeds from the sale and
77 issuance of bonds by the Authority or by a lender with which the Authority has contracted to loan such
78 proceeds to one or more contracting parties to be used to pay the cost of one or more projects of an
79 eligible business and providing for the repayment of such loan including ~~but not limited to~~ all interest
80 thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith,
81 by such contracting party or parties and which may provide for such loans to be secured or evidenced
82 by one or more notes, debentures, bonds, or other secured or unsecured debt obligations of such
83 contracting party or parties, delivered to the Authority or to a trustee under an indenture pursuant to
84 which the bonds were issued.

85 (iii) 3. "Sales contract" means a contract providing for the sale of one or more projects of an eligible
86 business to one or more contracting parties and includes ~~but is not limited to~~ a contract providing for
87 payment of the purchase price including ~~but not limited to~~ all interest thereon, and principal of and
88 premium, if any, thereon and all other expenses in connection therewith, in one or more installments. If
89 the sales contract permits title to a project being sold to an eligible business to pass to such contracting
90 party or parties prior to payment in full of the entire purchase price, it also shall provide for such
91 contracting party or parties to deliver to the Authority or to the trustee under the indenture pursuant to
92 which the bonds were issued, one or more notes, debentures, bonds, or other secured or unsecured debt
93 obligations of such contracting party or parties providing for timely payments of the purchase price
94 thereof.

95 "Municipality" means any county or incorporated city or town in the Commonwealth.

96 "Preferred lender" means a bank that is subject to continuing supervision and examination by state or
97 federal chartering, licensing, or similar regulatory authority satisfactory to the Authority and that meets
98 the eligibility requirements established by the Authority.

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

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

109 "Revenues" means any and all fees, rates, rentals, profits, and receipts collected by, payable to, or
110 otherwise derived by, the Authority, and all other moneys and income of whatsoever kind or character
111 collected by, payable to, or otherwise derived by, the Authority in connection with loans to any eligible
112 business in furtherance of the purposes of this article.

113 "Statewide Development Company" means the corporation chartered under this article for purposes of
114 qualification as a state development company as such term is defined in the Federal Act.

115 **§ 15.2-4901. Purpose of chapter.**

116 It is the intent of the legislature by the passage of this chapter to authorize the creation of industrial
117 development authorities by the localities in the Commonwealth so that such authorities may acquire,
118 own, lease, and dispose of properties and make loans to the end that such authorities may be able to
119 promote industry and develop trade by inducing manufacturing, industrial, governmental, nonprofit and
120 commercial enterprises, and institutions of higher education to locate in or remain in the Commonwealth
121 and further the use of its agricultural products and natural resources, and to vest such authorities with all

122 powers that may be necessary to enable them to accomplish such purposes, which powers shall be
123 exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their
124 commerce, or through the promotion of their safety, health, welfare, convenience, or prosperity. Such
125 authority shall not itself be authorized to operate any such manufacturing, industrial, nonprofit or
126 commercial enterprise, or any facility of an institution of higher education.

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

136 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to
137 industrial development authorities the powers contained herein with respect to medical facilities and
138 facilities for the residence or care of the aged to the end that such authorities may protect and promote
139 the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition,
140 construction, equipping, expansion, enlargement, and improvement of medical facilities and facilities for
141 the residence or care of the aged in order to provide modern and efficient medical services to the
142 inhabitants of the Commonwealth and care of the aged of the Commonwealth in accordance with their
143 special needs and also by assisting in the refinancing of medical facilities and facilities for the residence
144 or care of the aged owned and operated by organizations which are exempt from taxation pursuant to
145 § 501(c)(3) of the Internal Revenue Code of 1954, as amended, in order to reduce the costs to residents
146 of the Commonwealth of utilizing such facilities and to vest such authorities with all powers that may
147 be necessary to enable them to accomplish such purposes, which powers shall be exercised for the
148 benefit of the inhabitants of the Commonwealth and for the promotion of their health and welfare. It is
149 not intended hereby that any such authority shall itself be authorized to operate any such medical facility
150 or facility for the residence or care of the aged.

151 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to
152 industrial development authorities the powers contained herein with respect to facilities for use by
153 organizations (other than institutions organized and operated exclusively for religious purposes) which
154 are described in § 501(c)(3) of the Internal Revenue Code of 1954, as amended, and which are exempt
155 from federal income taxation pursuant to § 501(a) of the Internal Revenue Code of 1954, as amended, to
156 the end that such authorities may protect or promote the safety, health, welfare, convenience, and
157 prosperity of the inhabitants of the Commonwealth by assisting in the acquisition, construction,
158 equipping, expansion, enlargement, improvement, financing, and refinancing of such facilities of the
159 aforesaid entities and organizations in order to provide operations, recreational, activity centers, and
160 other facilities for the use of the inhabitants of the Commonwealth and to vest such authorities with all
161 powers that may be necessary to enable them to accomplish such purposes, which powers shall be
162 exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their safety,
163 health, welfare, convenience, or prosperity. It is not intended hereby that any such authority shall itself
164 be authorized to operate any such facility.

165 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to
166 industrial development authorities the powers contained herein with respect to facilities for accredited
167 nonprofit private institutions of higher education in the Commonwealth whose primary purpose is to
168 provide collegiate or graduate education and not to provide religious training or theological education to
169 the end that such authorities may protect and promote the health and welfare of the inhabitants of the
170 Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, and
171 improvement of facilities of aforesaid institutions in order to provide improved educational facilities for
172 the use of the inhabitants of the Commonwealth and to vest such authorities with all powers that may be
173 necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit
174 of the inhabitants of the Commonwealth and for the promotion of their health, welfare, convenience, or
175 prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such
176 educational facility.

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

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

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

199 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to
200 industrial development authorities the powers contained herein with respect to acquiring, developing,
201 owning, and operating an industrial park and any utilities that are intended primarily to serve the park
202 and to issue bonds for such purposes. The bonds may be secured by revenues generated by the industrial
203 park or the utilities being financed or by any other funds of the authority.

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

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

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

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

222 *Article 3.*

223 *Public School Building and Facilities Modernization.*

224 **§ 22.1-141.1. Standards for buildings and facilities.**

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

232 **§ 22.1-141.2. Authority to modernize public school lease agreements.**

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

237 *B. In order to meet the design, construction, maintenance, and operation standards set forth in*
238 *§ 22.1-141.1 a school board may enter into a lease with a private developer that may include the*
239 *following: (i) design of the building and facilities; (ii) construction of the building and facilities; (iii)*
240 *financing of the project as defined in § 15.2-1815; (iv) operation of the heating, cooling, and renewable*
241 *energy systems, including interconnect agreements with the regulated electric utility, maintenance of all*
242 *such systems, responding to comfort complaints, and any other operational or maintenance-related*
243 *issues during the lease term; and (v) such other terms as mutually agreed upon by the local school*
244 *board and the private developer. Such lease may (a) be for the real property primarily used by the local*

245 school board and owned by the private entity, (b) be a capital or operating lease, (c) be exempt from
246 real property taxation pursuant to subdivision (a) (1) of Article X, Section 6 of the Constitution of
247 Virginia, and (d) contain a covenant that the rent shall not be reduced from the rent stated in the lease.
248 Such lease shall not exceed 35 years in duration.

249 **§ 56-589.1. Energy generation by public school buildings and facilities.**

250 A. A school board of a school division located in a locality that is a non-jurisdictional customer of a
251 utility pursuant to § 56-234 and that owns or operates a public school building or facility that
252 participates in school modernization pursuant to Article 3 (§ 22.1-141.1 et seq.) of Chapter 9 of Title
253 22.1 that generates energy derived from sunlight may enter into a contract to generate such energy on
254 terms and conditions as may be negotiated between the customer and the utility. Nothing in this section
255 shall render any contract or arrangement between a utility and a non-jurisdictional customer subject to
256 the jurisdiction of the State Corporation Commission.

257 B. The solar-powered renewable energy generation facilities associated with a public school building
258 or facility owned or operated by a school board shall be located on the same real property upon which
259 the public school buildings and facilities are located, and such solar-powered renewable energy
260 generation facilities shall not generate electricity for any use not located on such real property.