

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 714

An Act to amend and reenact §§ 15.1-227.7, 15.1-227.8, 15.1-227.9, 15.1-227.45 and 15.1-227.55 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 15.1-227.24:1 and 15.1-227.64:1, relating to the Public Finance Act of 1991.

[H 751]

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-227.7, 15.1-227.8, 15.1-227.9, 15.1-227.45 and 15.1-227.55 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.1-227.24:1 and 15.1-227.64:1 as follows:

§ 15.1-227.7. Powers generally; collection of rents and charges; liens on real estate; discharge and enforcement of liens.

Subject to the provisions of Articles 3 (§ 15.1-227.33 et seq.) and 4 (§ 15.1-227.39 et seq.) of this chapter, any unit has the power and is authorized:

1. To acquire, construct, reconstruct, improve, extend, enlarge, equip, maintain, repair and operate any project which is located within or ~~partly within and partly~~ without the unit;

2. To contract debts for any project, to borrow money for any project, and to issue its bonds to pay all or any part of the cost of acquiring, constructing, reconstructing, improving, extending, enlarging and equipping any project;

3. To refund any bonds previously issued by the unit or for which the unit is responsible or may assume responsibility for payment;

4. To provide for the rights of the owners of bonds issued by the unit;

5. To secure bonds issued by the unit as permitted by law;

6. To issue bonds to create any self-insurance reserve fund;

7. To issue bonds to pay all or any part of the cost of satisfying a final judgment imposed against the unit (including its local school board) by a court of competent jurisdiction;

8. To acquire in the name of the unit, by purchase, gift or the exercise of the power of eminent domain, land and rights and interests in land, including land under water and riparian rights, and to acquire personal property as the governing body of the unit may deem necessary in connection with any project;

9. To enter on any land, water or premises located within or without the unit for the purpose of making surveys, borings, soundings or examinations in connection with any project; any such entry shall not be deemed a trespass or an entry under any eminent domain proceedings, but the unit shall make reimbursement for any actual damages resulting from the entry;

10. To receive and accept from any federal or state agency grants for or in aid of the construction of any project, and to receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied for the purposes for which the aid or contributions may be made; and to comply with any conditions not inconsistent with the Constitution of Virginia or provision of law imposed by any federal or state agency as a prerequisite to obtaining any grant, including, but not limited to, the execution of any required contracts or arrangements;

11. To employ consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as may be necessary;

12. To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this chapter;

13. To enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter;

14. To do all things necessary or convenient to carry out the powers expressly given in this chapter and to carry out any project;

15. To assess, levy and collect unlimited ad valorem taxes on all property subject to taxation to pay the principal of and premium, if any, and interest on any bonds issued under the provisions of this chapter, subject to and in accordance with the provisions of any ordinance, resolution, trust agreement, indenture or other instrument providing for the issuance of the bonds; and

16. To fix and collect rates, rents, fees and other charges for the services and facilities furnished by, or for the use of, or in connection with any revenue-producing undertaking or undertakings, subject to and in accordance with the provisions of any ordinance, resolution, trust agreement, indenture or other instrument providing for the issuance of the bonds.

The rates, rents, fees or charges when made for the use of any revenue-producing undertaking may be collected by distress, levy, garnishment, attachment or as otherwise provided by law. Any unpaid rate, rent, fee or charge shall become a lien superior to the interest of any owner, lessee or tenant, and

next in succession to taxes, on the real property on or for which the use of any such undertaking was made and for which the rate, rent, fee or charge was imposed. However, the lien shall not bind or affect a subsequent bona fide purchaser of the real estate for valuable consideration without actual notice of the lien, until amount of the rate, rent, fee or charge is entered in the judgment records kept in the clerk's office where deeds are recorded with respect to the real estate against which the lien is asserted. It shall be the duty of the clerk in such office to keep, preserve and hold available for public inspection the judgment records and to cause entries to be made and indexed in them from time to time upon certification by the unit. The clerk shall be entitled to a fee of fifty cents per entry to be paid by the unit and added to the amount of the lien.

The lien on any real estate may be discharged by the payment to the unit of the total amount of the lien, plus interest at the judgment rate of interest provided for in § 6.1-330.54 from the date the rate, rent, fee or charge was due and payable to the date of payment, and the entry fee of fifty cents. It shall be the duty of the unit to deliver a certificate of payment to the person paying the lien. Upon presentation of the certificate, and the payment of a fee of twenty-five cents, the clerk having the record of the lien shall mark the lien satisfied.

Jurisdiction to enforce any lien shall be in equity, and the court may order any real estate subject to the lien, or any part of it, sold and the proceeds applied to the payment of the lien and the interest which may accrue to the date of payment.

Nothing contained in this section shall be construed to prejudice the right of the unit to recover the amount of any lien, or of the rate, rent, fee or charge, and the interest which may accrue, by action at law or otherwise.

§ 15.1-227.8. Public hearing before issuance of bonds.

A. Notwithstanding any contrary provision of law, general or special, but subject to subsection B of this section, before the final authorization of the issuance of any bonds by a unit, the governing body of the unit shall hold a public hearing on the proposed bond issue. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the unit. The notice shall state the general purpose or purposes and the estimated maximum amount of the bonds proposed to be issued and shall specify the time and place of the hearing at which persons may appear and present their views. The hearing shall not be held less than six nor more than twenty-one days after the date the second notice appears in the newspaper.

B. No notice or public hearing shall be required for (i) bonds which have been approved by a majority of the qualified voters of the issuing unit *voting on the issuance of such bonds* or (ii) obligations issued pursuant to §§ 15.1-227.30, 15.1-227.31 or § 15.1-227.44.

§ 15.1-227.9. Provisions which may be embodied in bond ordinances or resolution; adoption; filing copy with court.

The governing body of any unit, subject to the approval of a majority of the qualified voters of the unit *voting on the issuance of such bonds* if required by the Constitution of Virginia or by this chapter, is authorized to provide by ordinance or resolution for the issuance, at one time or from time to time, of bonds of the unit for the purposes set forth in and subject to the provisions of this chapter.

Any such ordinance or resolution may contain provisions which shall be a part of the contract with the owners of the bonds as to:

1. The payment of the principal of and premium, if any, and the interest on bonds from ad valorem taxes to be levied without limitation as to rate or amount on all property subject to taxation and the pledging of the full faith and credit of the unit to secure the payment of bonds;

2. The pledge of specified revenues of the unit, other than taxes, ad valorem or otherwise, including, without limitation, the pledge of the revenues of any revenue-producing undertaking or undertakings, to the payment of the principal of and premium, if any, and interest on bonds;

3. The granting of a mortgage or deed of trust lien on any specific revenue-producing undertaking or undertakings to secure the payment of the principal of and premium, if any, and interest on bonds issued to finance in whole or in part the costs of the undertaking or undertakings, but only if the full faith and credit of the unit is not pledged to the payment of the bonds;

4. The securing of the payment of the principal of and premium, if any, and interest on bonds by an ordinance resolution, trust agreement, indenture or other instrument, which may (i) appoint any trust company or bank having the powers of a trust company within or without the Commonwealth as corporate trustee, (ii) set forth the rights and remedies of the bondholders and of the trustee, (iii) restrict the individual right of action by bondholders, and (iv) contain any other provisions as the governing body of the unit deems reasonable and proper for the security of the bondholders;

5. The payment of the principal of and premium, if any, and the interest on bonds from any one or more of the sources of funds provided for in this section or any combination of them and the pledging of any one or more of the sources of funds or any combination of them to secure the payment of the principal of and premium, if any, and interest on bonds;

6. The rates, rents, fees, charges, taxes and other revenues or receipts of any revenue-producing undertaking or undertakings and the amounts to be raised in each year by them, and the use and disposition of such rates, rents, fees, charges, taxes and other revenues and receipts of any undertaking

or undertakings;

7. The setting aside of reserves or sinking funds and the regulation and disposition of them;
8. Limitations on the right of the unit to restrict and regulate the use of any project;
9. Limitations on the purpose to which the proceeds of sale of any bonds may be applied;
10. Limitations on issuance of additional revenue bonds;
11. The procedure, if any, by which the terms of any contract with bondholders may be amended or discharged, the amount of bonds the owners of which shall consent to the amendment or abrogation, and the manner in which the consent must be given;
12. Conferring upon the bondholders or the trustee under any ordinance, resolution, trust agreement, indenture or other instrument remedies for enforcing the rights of the bondholders and requiring the governing body to carry out any agreement with the bondholders;
13. Any other matter required by any state or federal agency as a condition precedent to the obtaining of a direct grant or grants of money for or in aid of any project or to defray or partially to defray the cost of the labor and materials employed upon any project, or to obtain a loan or loans of money for or in aid of any project from any state or federal agency; and
14. Any provisions necessary to qualify the interest on the bonds for exclusion from gross income for federal income tax purposes and to maintain that exclusion.

Any ordinance or resolution authorizing the issuance of bonds may be finally adopted at the meeting at which it is introduced, which may be a regular or special meeting, by a majority of the members of the governing body. A certified copy of each such ordinance or resolution shall be filed in the circuit court having jurisdiction over the unit. When any town is situated partly in two or more counties, the certified copy of the ordinance or resolution may be presented to the circuit court of any of the counties. Except as expressly required by this article, the ordinance or resolution need not be published, posted or advertised.

§ 15.1-227.24:1. Defeasance of indebtedness; rights of owners.

The governing body of any unit is authorized to provide by resolution or ordinance for the defeasance of any bonds of the unit now or hereafter outstanding, to the extent that the defeasance of such bonds is not otherwise provided for in the resolution, ordinance, indenture or other document governing the issuance of such bonds. Bonds to be defeased pursuant to this section shall be deemed defeased and no longer outstanding when there has been established with a bank or trust company designated by the unit an escrow or sinking fund consisting of cash and noncallable obligations of, or unconditionally guaranteed by, the United States of America or noncallable obligations of, or unconditionally guaranteed by, the Commonwealth of Virginia in an amount which together with interest to be earned on such obligations will be sufficient to pay all bonds to be defeased either at maturity or upon redemption; however, if such bonds are to be redeemed before their maturity, other than pursuant to any mandatory redemption, notice of the redemption of such bonds shall have been duly given or irrevocable instructions to redeem such bonds shall have been given by the unit.

Any escrow fund established pursuant to this section shall be irrevocably pledged to the payment of the bonds to be defeased and shall be used solely to pay such bonds at maturity or upon earlier redemption. It is the intent that any escrow fund established pursuant to this section shall constitute a special fund for the payment of the defeased bonds and that the defeased bonds shall not be included for the purpose of determining any limitation upon the amount of indebtedness of the unit which is imposed by law.

The owners of any outstanding bonds to be defeased shall be divested of all rights and security relating to the bonds, except the right to payment when due of principal, premium, if any, and interest, which shall be paid solely from the escrow fund.

§ 15.1-227.45. Issuance or exchange for indebtedness to be retired; sale and disposition of proceeds; rights of owners.

Any refunding bonds may be issued or exchanged for the indebtedness to be retired by them, including indebtedness not matured, redeemable or surrendered for retirement. Unless so exchanged, any unit may sell refunding bonds authorized under the provisions of this article in such manner, either at public or private sale, and for such price as the governing body of the unit may determine. The proceeds of any refunding bonds may be applied to (i) the payment of matured or redeemable indebtedness, including any redemption premium, (ii) the payment of unmatured indebtedness the evidences of which are on deposit with a bank or trust company designated by the unit for surrender to the unit upon receipt of payment in an amount not exceeding the amount of the indebtedness, or (iii) the establishment of an escrow or sinking fund consisting of cash and noncallable obligations of, or unconditionally guaranteed by, the United States of America or noncallable obligations of, or unconditionally guaranteed by, the Commonwealth of Virginia in an amount which together with interest to be earned on such obligations shall be sufficient to pay all indebtedness to be refunded either at maturity or upon redemption as provided for upon the creation of the escrow or sinking fund. Any escrow or sinking fund established, in whole or in part, from the proceeds of the sale of refunding bonds shall be irrevocably pledged to the payment of the indebtedness to be refunded and shall be used solely to pay the indebtedness at maturity or upon redemption or for the purchase of not less than all of the indebtedness

to be refunded. It is the intent that any escrow or sinking fund established pursuant to this section shall constitute a special fund for the payment of the refunded indebtedness and that the refunded indebtedness shall not be included for the purpose of determining any limitation upon the amount of indebtedness of the unit which is imposed by law.

The owners of any outstanding indebtedness to be refunded shall be divested of all rights and security relating to the indebtedness, except the right to payment when due of principal, premium, if any, and interest, which shall be paid solely from the escrow or sinking fund; provided that, in the case of debt issued before March 27, 1977, the governing body of the unit may provide that if the escrow or sinking fund is in any respect insufficient to make payment of principal, premium, if any, and interest, the original rights and security relating to the indebtedness shall be restored to the extent necessary to provide full payment.

§ 15.1-227.55. Contesting issuance of bonds; notice and hearing; service on member of governing body, etc.

Any person, corporation, or association desiring to contest the issuance of any bonds pursuant to the provisions of this chapter, or any other law, general or special, shall proceed by filing a motion for judgment within thirty days after the filing of the resolution or ordinance authorizing the issuance of the bonds with the circuit court having jurisdiction over the issuer, or in contesting the validity of a petition for or the results of a referendum, within thirty days after the date that the result of the election for the issuance of the bonds is certified, in the court having jurisdiction as provided in § 15.1-227.53. *For bonds which are not authorized pursuant to a referendum, or for which the authorizing resolution or ordinance is not required to be filed with the circuit court, the contestant shall proceed by filing a motion for judgment within thirty days after the adoption of the authorizing resolution or ordinance.* Upon the filing of a motion for judgment, the court shall fix a time and place for hearing the proceeding and shall enter an order requiring the publication of the motion for judgment or a summary of it approved by the court, together with the order setting forth the time and place of the hearing, once a week for two consecutive weeks in a newspaper published or having general circulation in the jurisdiction where the issuer is located. The date fixed for the hearing shall not be sooner than ten days after the date the second publication of the motion for judgment or summary and the order appears in the newspaper. In addition to such publication, the plaintiff shall secure personal service on at least one member of the governing body of the issuer.

§ 15.1-227.64:1. *Validation of bonds.*

All proceedings taken before July 1, 1992, for or with respect to the authorization, issuance, sale, execution or delivery of bonds by or on behalf of any unit are validated, ratified, approved and confirmed, and any bonds so issued, are valid, legal, binding and enforceable obligations of the unit.