

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 289

An Act to amend and reenact §§ 3, 5, 6, 7, 9, 11, 12 and 13-a of Chapter 76 of the Acts of Assembly of 1974 which created the Lynchburg Parking Authority, relating to definitions, membership, powers, bonds and competition.

[H 1469]

Approved March 16, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 3, 5, 6, 7, 9, 11, 12 and 13-a of Chapter 76 of the Acts of Assembly of 1974 are amended and reenacted as follows:

§ 3. Definitions.

As used in this act the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

(a) The word "Authority" shall mean the Authority created under the provisions of this act, or, if the Authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this act to the Authority shall be given by law.

(b) The word "bonds" or the words "revenue bonds" shall mean revenue bonds, revenue refunding bonds or notes of the Authority issued under the provisions of this act.

(c) The word "cost" as applied to parking facilities or to extensions or additions thereto shall include the cost of construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all the lands, property, rights, easements and interests acquired by the Authority for such construction or reconstruction or the operation thereof, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, *the cost of issuance of bonds*, financing charges, interest prior to and during construction, and, if deemed advisable by the Authority, for one year after completion of construction, reasonable provision for working capital, cost of engineering and legal services, cost of plans and specifications, surveys and estimates of cost and of revenues, administrative expense and such other expenses as may be necessary or incident to such construction or reconstruction, the financing thereof and the placing of the parking facilities in operation. Any obligation or expense incurred by the Authority or by the organizing municipality prior to the issuance of bonds under the provisions of this act in connection with any of the foregoing items of cost may be regarded as a part of such cost.

(d) The words "governing body" shall mean the board, commission, council or other body by whatever name it may be known in which the general legislative powers of the municipality are vested.

(e) The word "municipality" shall mean the city of Lynchburg in the Commonwealth of Virginia.

(f) The words "parking facilities" shall mean and shall include lots, garages, parking terminals, or other facilities or structures for the off-street parking of motor vehicles, open to the public use for a fee, and may also include, but without limiting the generality of the foregoing, terminal facilities for trucks and busses, waiting rooms, lockers, and offices catering primarily to those using such parking facilities, and all facilities appurtenant thereto and all property, rights, easements and interests relating thereto which are deemed necessary for the construction or operation thereof; provided, however, the words "parking facilities" shall not mean or include the sale or dispensing of products used in or for the servicing of motor vehicles.

§ 5. Membership of the Authority.

The Authority organized under the provisions of this act shall consist of ~~five~~ *seven* members selected by the governing body of the organizing municipality who shall serve ~~for terms expiring one, two, three, four, and five years, respectively, from the date of appointment, the terms of such member to be designated by said governing body staggered five-year terms, and the initial terms for each director shall be five years or less to provide for staggered membership.~~ The successor of each member of the Authority shall be appointed for a term of five years but any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term and any member of the Authority may be reappointed.

Each member of the Authority before entering upon his duties shall take and subscribe an oath or affirmation to support the ~~Constitution~~ *Constitutions* of the United States and of the Commonwealth and to discharge faithfully the duties of his office and a record of each such oath shall be filed with the Secretary of the Authority.

The Authority shall select one of its members as Chairman and another as Vice-Chairman and shall also select a Secretary and a Treasurer who may but need not be members of the Authority. The offices of Secretary and Treasurer may be combined. The terms of office of the Chairman, Vice-Chairman, Secretary and Treasurer shall be as provided in the bylaws of the Authority.

A majority of the members of the Authority shall constitute a quorum and the affirmative vote of a

majority of all of the members of the Authority shall be necessary for any action taken by the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority. The members of the Authority shall serve without compensation but shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties.

§ 6. General Grant of Powers.

The Authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and each such Authority is hereby authorized and empowered:

- (a) to adopt bylaws for the regulation of its affairs and the conduct of its business;
- (b) to adopt an official seal and alter the same at pleasure;
- (c) to maintain an office at such place or places as it may designate;
- (d) to sue and be sued in its own name, plead and be impleaded;
- (e) to construct, reconstruct, equip, improve, extend, enlarge, maintain, repair and operate parking facilities within the corporate limits of the organizing municipality;
- (f) to issue revenue bonds of the Authority as hereinafter provided to pay the cost of such construction, reconstruction, equipment, improvement, extension or enlargement;
- (g) to issue revenue refunding bonds of the Authority as hereinafter provided;
- (h) to fix and revise from time to time and to charge and collect rates, rentals, fees and other charges for the services and facilities furnished by such parking facilities, and to establish and revise from time to time regulations in respect to the use, operation and occupancy of such parking facilities or part thereof;
- (i) to acquire in the name of the Authority by gift, or purchase, any lands or rights in lands and interest therein, and to acquire such personal property, as it may deem necessary in connection with the construction, reconstruction, improvement, extension, enlargement or operation of any parking facilities;
- (j) to lease (*as lessor or lessee*) all or any part of such parking facilities upon such terms and conditions and for such term of years as it may deem advisable to carry out the provisions of this act; provided, however, that no enterprise involving the sale or dispensation of any product or commodity used in or for the servicing of motor vehicles shall be conducted on any space thereon;
- (k) to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys and such employees and agents as may, in the judgment of the Authority, be deemed necessary, and to fix their compensation; provided, however, that all such expenses shall be payable solely from funds made available under the provisions of this act; and
- (l) to do all acts and things necessary or convenient to carry out the powers granted by this act.

§ 7. Revenue Bonds.

The Authority is hereby authorized to issue at one time or from time to time, revenue bonds of the Authority for the purpose of paying the cost of constructing, reconstructing, equipping, improving, extending or enlarging any one or more parking facilities. The bonds of each issue shall be dated, shall mature at such time or times not exceeding forty years from their date or dates and shall bear interest at such rate or rates as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds, ~~including any interest coupons to be attached thereto,~~ and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds ~~or coupons~~ shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. *Any bond may bear the facsimile signature of, or may be signed by, the person who at the actual time of the execution of the bond is the proper officer to sign the bond although at the date of the bond the person may not have been such officer. When all signatures on bonds are facsimiles, the bonds shall be authenticated by an agent appointed by the Authority or in such manner as the Authority may provide.* Notwithstanding any of the other provisions of this act or any recitals in any bonds issued under the provisions of this act, all such bonds shall be deemed to be negotiable instruments under the laws of this Commonwealth. The bonds may be issued in ~~coupon or~~ registered form ~~or both,~~ as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest *as the Authority may determine.* The Authority may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interests of the Authority.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds

shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Authority may deem proper, and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, ~~with or without coupons~~, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued under the provisions of this act without obtaining the consent of any commission, board, bureau or agency of the Commonwealth of Virginia or of any political subdivision, and without any other proceedings or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this act.

Revenue bonds issued under the provisions of this act shall not be deemed to constitute a debt of the Commonwealth or of any municipality or other political subdivision of the Commonwealth, or a pledge of the faith and credit of the Commonwealth or of any municipality or other political subdivision, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds.

§ 9. Trust Agreement.

In the discretion of the Authority, each or any issue of revenue bonds may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the ~~State~~ *Commonwealth*. The resolution authorizing the issuance of the bonds or such trust agreement may pledge the revenues to be received. In connection with the issuance of such bonds or in order to secure the payment thereof, the Authority shall have power under such agreement to mortgage all or any part of its property, real or personal then owned or thereafter acquired, to vest in the trustee thereunder the right to foreclose such mortgage and to provide the terms and conditions upon which such trustee or the holders of bonds or any proportion thereof may exercise the right of foreclosure. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the construction, reconstruction, equipment, improvement, maintenance, repair, operation and insurance of any parking facilities, the fixing and revising of rates, rentals, fees and charges, and the custody, safeguarding and application of all moneys, and for the employment of consulting engineers in connection with such construction, reconstruction, improvement, maintenance and operation. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Such resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustees, if any, and may restrict the individual right of action by bondholders. Such resolution or trust agreement may contain such other provisions in addition to the foregoing as the Authority may deem reasonable and proper for the security of the bondholders. Except as in this act otherwise provided, the Authority may provide for the payment of the proceeds of the sale of bonds and the revenues of any parking facilities or part thereof to such officer, board ~~of~~ *or* depository as it may designate for the custody thereof, and for the method of disbursements thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution or trust agreement may be treated as a part of the cost of operation.

All pledges of revenues under the provisions of this act shall be valid and binding from the time when such pledge is made. All such revenues so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledges without any physical delivery thereof *or filing with respect thereto* or further action, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof.

§ 11. Remedies.

Any holder of revenue bonds issued under the provisions of this act ~~or of any of the coupons appertaining thereto~~, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and

enforce any and all rights under the laws of the Commonwealth or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this act or by such resolution or trust agreement to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of rates, rentals, fees and charges for the use of or for the services and facilities furnished by any parking facilities.

§ 12. Exemption from Taxation.

As adequate off-street parking facilities are essential to the health, safety and general welfare of the public, and as the exercise of the powers conferred by this act to effect such purposes constitute the performance of essential municipal functions, and as parking facilities constructed under the provisions of this act constitute the performance of essential municipal functions, and as parking facilities constructed under the provisions of this act constitute public property and are used for municipal purposes, the Authority shall not be required to pay any taxes or assessments upon any such parking facilities or any part thereof, or upon the income therefrom, and any bonds issued under the provisions of this act, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation ~~within~~ *by the Commonwealth or by any political subdivision thereof.*

§ 13-a. Competing Parking Facilities.

So long as any bonds issued under the provisions of this act are outstanding, the municipality shall not construct, operate or maintain any parking facilities, other than such parking facilities as may be operated or maintained by the municipality on the date of passage by the municipality of a resolution organizing the Authority, which competes with parking facilities of the Authority. *The prohibition against competing parking facilities shall not apply to parking facilities that are constructed as part of a municipal building or facility.*