

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 758

An Act to authorize the creation of the Virginia Commercial Space Flight Authority and prescribing its powers and duties.

[H 2199]

Approved April 6, 1995

Whereas, it is the policy of the Commonwealth to encourage, stimulate and support economic development and the expansion of the Commonwealth's economy through its policies; and

Whereas, it is the policy of the Commonwealth to improve, identify, encourage, and promote new approaches to economic development throughout Virginia; and

Whereas, the Center for Commercial Space Infrastructure (CCSI) has been chartered by Virginia's Center for Innovative Technology to foster, through research, development, and education, the growth of technological systems and organizational entities required to engage in commercial space activities; and

Whereas, the commercial space flight field has enormous potential to benefit many fields of human endeavor, including life sciences, telecommunications, and environmental protection; and

Whereas, it is the desire of the Commonwealth to establish a commercial space flight center on Virginia's Eastern Shore; and

Whereas, an authority that is a political subdivision of the Commonwealth is needed to assist in the development of a commercial space flight center; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. § 1. Short title.

This act shall be known and may be cited as the "Virginia Commercial Space Flight Authority Act."

§ 2. Definitions.

The following terms, whenever used or referred to in this act, have the following meanings, except where the context clearly indicates otherwise:

"Authority" means the political subdivision of the Commonwealth created by this Act.

"Board" means the board of directors of the Authority.

"Bonds" means the notes, bonds, certificates and other evidences of indebtedness or obligations of the Authority.

"Federal agency" means the United States; the President of the United States; and any department, corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States.

"Person" means natural persons, firms, foundations, associations, corporations, business trusts, partnerships, joint ventures and public bodies, including but not limited to the Commonwealth of Virginia; any state; and any agency, department, institution, political subdivision or instrumentality of the Commonwealth or any state.

"Project" means the construction, improvement, furnishing, maintenance, acquisition or operation of any facility or the provision for or funding of any activity that will further the purposes described in § 3 of this act.

§ 3. Declaration of public purpose; Authority created.

The General Assembly has determined that there exists in the Commonwealth a need to (i) disseminate knowledge pertaining to scientific and technological research and development among public and private entities, including but not limited to knowledge in the area of commercial space flight, and (ii) promote industrial and economic development. In order to facilitate and coordinate scientific and technological research and development and to promote the industrial and economic development of the Commonwealth, which purposes are declared to be public purposes, there is created a political subdivision of the Commonwealth to be known as the "Virginia Commercial Space Flight Authority." The Authority's exercise of powers conferred by this act shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

§ 4. Board of directors.

The Authority shall be governed by a board of directors consisting of eleven members, two of whom shall be the President of the Center for Innovative Technology, the President of Old Dominion University, and the Secretary of Commerce and Trade, who shall serve as directors during their terms in offices. The remaining seven members shall be appointed by the Governor as follows: three members representative of the commercial space flight industry; two members representing the telecommunications industry; one member representing the County of Accomack, one member representing the County of Northampton, and one at-large member. Two of such directors appointed by the Governor shall be appointed for terms of one year, three for terms of two years, and three for terms

of three years, from the effective date of their appointment; and thereafter the members of the board shall be appointed for terms of three years. All members of the board appointed by the Governor shall be confirmed by each house of the General Assembly. Vacancies in the membership of the board shall be filled by appointment for the unexpired portion of the term. Members of the board shall be subject to removal from office in like manner as are state, county, town and district officers under the provisions of §§ 24.2-230 through 24.2-238 of the Code of Virginia. Immediately after such appointment, the directors shall enter upon the performance of their duties. The board shall annually elect one of its members as chairman and another as vice chairman, secretary, and a treasurer who may or may not be a member of the board. The board may also elect other subordinate officers, who may or may not be members of the board, as it deems proper. The chairman or, in his absence, the vice chairman shall preside at all meetings of the board. In the absence of both the chairman and vice chairman, the board shall appoint a chairman pro tempore, who shall preside at such meetings. Six directors shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority. The members of the board shall be entitled to reimbursement for their reasonable travel, meal and lodging expenses incurred in attending the meetings of the board or while otherwise engaged in the discharge of their duties. Such expenses shall be paid out of the treasury of the Authority upon vouchers signed by the chairman of the board or by such other person or persons as may be designated by the board for this purpose. The board may employ an Executive Director of the Authority, who shall serve at the pleasure of the board, to direct the day-to-day operations and activities of the Authority and carry out the powers and duties conferred upon him as may be delegated to him by the board. The Executive Director and employees of the Authority shall be compensated in the manner provided by the board and shall not be subject to the provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1 of the Code of Virginia.

§ 5. Powers.

The Authority is hereby granted and shall have and may exercise all powers necessary or convenient for the carrying out of its statutory purposes, including, but without limiting the generality of the foregoing, the power to:

1. Sue and be sued, implead and be impleaded, complain and defend in all courts;
2. Adopt, use, and alter at will a common seal;
3. Acquire any project and property, real, personal or mixed, tangible or intangible, or any interest therein, by purchase, gift or devise and to sell, lease (whether as lessor or lessee), transfer, convey or dispose of any project or property, real, personal or mixed, tangible or intangible or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the board of the Authority;
4. Plan, develop, undertake, carry out, construct, equip, improve, rehabilitate, repair, furnish, maintain and operate projects;
5. Make bylaws for the management and regulation of its affairs;
6. Fix, alter, charge and collect rates, rentals, fees, and other charges for the use of projects of, the sale of products of, or services rendered by the Authority at rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority; the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties; the payment of the costs accomplishing its purposes set forth in § 3; the payment of the principal of and interest on its obligations; and the creation of reserves for such purposes, for other purposes of the Authority and to pay the cost of maintaining, repairing and operating any project or projects and fulfilling the terms and provisions of any agreements made with the purchasers or holders of any such obligations;
7. Borrow money, make and issue bonds including bonds as the Authority may, from time to time, determine to issue for the purpose of accomplishing the purposes set forth in § 3 or for refunding bonds previously issued by the Authority, whether or not such outstanding bonds have matured or are then subject to redemption, or any combination of such purposes; secure the payment of all bonds, or any part thereof, by pledge, assignment or deed of trust of all or any of its revenues, rentals, and receipts or of any project or property, real, personal or mixed, tangible or intangible, or any rights and interest therein; make such agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the Authority shall deem advisable; and in general to provide for the security for said bonds and the rights of holders thereof;
8. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes and the execution of its powers under this act, including interstate compacts and agreements with any person or federal agency;
9. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers and such other employees and agents as may be necessary, and to fix their compensation to be payable from funds made available to the Authority;
10. Receive and accept from any federal or private agency, foundation, corporation, association or person grants, donations of money, real or personal property for the benefit of the Authority, and to receive and accept from the Commonwealth or any state, and any municipality, county or other political

subdivision thereof and from any other source, aid or contributions of either money, property, or other things of value, to be held, used and applied for the purposes for which such grants and contributions may be made;

11. Render advice and assistance, and to provide services, to institutions of higher education including, but not limited to, Old Dominion University, and to other persons providing services or facilities for scientific and technological research or graduate education, provided that credit toward a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia;

12. Develop, undertake and provide programs, alone or in conjunction with any person or federal agency, for scientific and technological research, technology management, continuing education and in-service training; however, credit towards a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia; foster the utilization of scientific and technological research, information discoveries and data and obtain patents, copyrights and trademarks thereon; coordinate the scientific and technological research efforts of public institutions and private industry and collect and maintain data on the development and utilization of scientific and technological research capabilities;

13. Pledge or otherwise encumber all or any of the revenues or receipts of the Authority as security for all or any of the obligations of the Authority; and

14. Do all acts and things necessary or convenient to carry out the powers granted to it by this Act or any other acts.

§ 6. Form, terms, execution and sale of bonds; use of proceeds; interim receipts or temporary bonds; lost or destroyed bonds; faith and credit of state and political subdivisions not pledged; expenses.

The bonds of each issue shall be dated, shall bear interest at such rate or rates as shall be fixed by the Authority, or as may be determined in such manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by the Authority, shall mature at such time or times not exceeding forty years from their date or dates, 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 bonds and 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. The bonds shall be signed by the chairman or vice chairman of the Authority or, if so authorized by the Authority, shall bear his facsimile signature, and the official seal of the Authority, or, if so authorized by the Authority, a facsimile thereof shall be impressed or imprinted thereon and attested by the secretary or any assistant secretary of the Authority, or, if so authorized by the Authority, with the facsimile signature of such secretary or assistant secretary. Any coupons attached to bonds issued by the Authority shall bear the signature of the chairman or vice chairman of the Authority or a facsimile thereof. 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 facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery and any bonds may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bonds shall be the proper officers to sign such bonds although at the date of such bonds such persons may not have been such officers. The bonds may be issued in coupon or in 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, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. Bonds issued in registered form may be issued under a system of book-entry for recording the ownership and transfer of ownership of rights to receive payment of principal of, and premium on, if any, and interest on such bonds. The Authority may contract for the services of one or more banks, trust companies, financial institutions or other entities or persons, within or without the Commonwealth for the authentication, registration, transfer, exchange and payment of the bonds, or may provide such services itself. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effect the purposes of this act.

The proceeds of the bonds of each issue shall be used solely for the purposes, and in furtherance of the powers, of the Authority as may be provided in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same.

In addition to the above powers, the Authority shall have the authority to issue interim receipts or temporary bonds as provided in § 15.1-227.18 of the Code of Virginia and to execute and deliver new bonds in place of bonds mutilated, lost or destroyed, as provided in § 15.1-227.23 of the Code of Virginia.

No obligation of the Authority shall be deemed to constitute a debt, or pledge of the faith and credit, of the Commonwealth or of any political subdivision thereof, but shall be payable solely from the revenues and other funds of the Authority pledged thereto. All such obligations shall contain on the face

thereof a statement to the effect that the Commonwealth, any political subdivision thereof and the Authority shall not be obligated to pay the same or the interest thereon except from revenues and other funds of the Authority pledged thereto, and that neither the faith and credit nor the taxing power of the Commonwealth or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligations.

All expenses incurred in carrying out the provisions of the act shall be payable solely from funds provided under the provisions of this act, and no liability shall be incurred by the Authority hereunder beyond the extent to which moneys shall have been provided under the provisions of this act.

§ 7. Trust indenture or agreement securing bonds.

At the discretion of the Authority, any bonds issued under the provisions of this act may be secured by a trust indenture or 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 Commonwealth. Such trust indenture or agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received and provide for the mortgage of any project or property or any part thereof. Such trust indenture or 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 providing for the repossession and sale by the Authority or any trustees under any trust indenture or agreement of any project, or part thereof, upon any default under the lease or sale of such project, setting forth the duties of the Authority in relation to the acquisition of property and the planning, development, acquisition, construction, rehabilitation, establishment, improvement, extension, enlargement, maintenance, repair, operation and insurance of the project or projects in connection with which such bonds shall have been authorized; the amounts of rates, rents, fees and other charges to be charged; the collection of such rates, rents, fees and other charges; the custody, safeguarding and application of all moneys; and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any national bank with its main office in the Commonwealth or any other state or any bank or trust company incorporated under the laws of the Commonwealth or another state 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. Any such trust indenture or agreement or resolution may set forth the rights of action by bondholders. In addition to the foregoing, any such trust indenture or agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders including, without limitation, provisions for the assignment to a corporate trustee or escrow agent of any rights of the Authority in any project owned by, or leases or sales of any projects made by, the Authority. All expenses incurred in carrying out the provisions of such trust indenture or agreement or resolution or other agreements relating to any project, including those to which the Authority may not be a party, may be treated as a part of the cost of the operation of the project or projects.

§ 8. Moneys received deemed trust funds.

All moneys received pursuant to the authority of this act, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this act. The resolution authorizing the bonds of any issue or the trust indenture or agreement or resolution securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as a trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this act and such trust indenture or agreement or resolution may provide.

§ 9. Proceedings by bondholder or trustee to enforce rights.

Any holder of bonds issued under the provisions of this act or any of the coupons appertaining thereto, and the trustee under any trust indenture or agreement or resolution, except to the extent the rights herein given may be restricted by such trust indenture or agreement or resolution authorizing the issuance of such bonds, 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 trust indenture or agreement or resolution, and may enforce and compel the performance of all duties required by this act or by such trust indenture or agreement or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging, and collecting of rates, rentals, fees, and other charges.

§ 10. Bonds made securities for investment and deposit.

Bonds issued by the Authority under the provisions of this act are hereby made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are hereby made securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may hereafter be authorized by law.

§ 11. Refunding bonds; bonds for refunding and for costs of additional projects.

The Authority is hereby authorized to provide for the issuance of refunding bonds of the Authority for the purpose of refunding any bonds then outstanding that shall have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same shall be governed by the provisions of this Act insofar as the same may be applicable.

§ 12. Grants or loans of public or private funds.

The Authority is authorized to accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both or otherwise, to accomplish, in whole or in part, any of the purposes of this act. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth.

§ 13. Appropriations by any government.

Any government may make appropriations for the acquisition, construction, improvement, maintenance or operation of any project acquired, constructed, improved, maintained or operated by the Authority.

§ 14. Conveyance, lease or transfer of property by a city or county to the Authority.

Any city or county within the Commonwealth in order to provide for the construction, reconstruction, improvement, repair or management of any project, or in order to accomplish any of the purposes of this act may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to the Authority any real, personal or mixed property located within such city or county.

§ 15. Exemption of Authority from personnel and procurement procedures.

The provisions of Chapter 10 (§ 2.1-110 et seq.) of Title 2.1 and Chapter 7 (§ 11-35 et seq.) of Title 11 of the Code of Virginia shall not apply to the Authority in the exercise of any power conferred under this act.

§ 16. Moneys of Authority.

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other order of such person or persons as the Authority may authorize to execute such warrants or orders.

§ 17. Forms of accounts and records; audit; annual report.

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived, shall be in such form as the Auditor of Public Accounts prescribes. The Auditor of Public Accounts, and his legally authorized representatives, shall annually examine the accounts and books of the Authority. Such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises. The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the preceding June 30. The annual report shall be distributed in accordance with the provisions of § 2.1-467.

§ 18. Exemption from taxes or assessments.

The exercise of the powers granted by this act will be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of the projects by the Authority and the undertaking of activities in the furtherance of the purposes of the Authority will constitute the performance of the essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the Authority under the provisions of this act or upon the income therefrom, including sales and use taxes on the tangible personal property used in the operations of the Authority. The exemption hereby granted shall not be construed to extend to persons conducting on the premises of the facility businesses for which local or state taxes would otherwise be required.

Any bonds or refunding bonds issued under the provisions of this act and any transfer of such bonds shall at all times be free from state and local taxation. The interest on the bonds and any refunding bonds or bond anticipation notes shall at all times be exempt from taxation by the Commonwealth and by any political subdivision thereof.

§ 19. Title to property.

The Authority may acquire title to property in its own name.

2. That the Board of Directors of the Authority shall present a detailed plan for the use of general funds appropriated for the use of the Authority to achieve most effectively the purpose of this act to the Governor, the Chairmen of the Senate Finance and House Appropriations Committees, and the Director of the Department of Planning and Budget by November 1, 1995.