

LD8759396

## HOUSE BILL NO. 1292

Offered January 25, 1994

*A BILL to amend and reenact §§ 15.1-1374, 15.1-1375 and 15.1-1379 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.1-1387.1, relating to the Virginia Industrial Development and Revenue Bond Act.*

Patrons—Parrish, Brickley, Diamonstein, Hargrove, Harris, Rollison and Wilkins; Senators: Barry, Benedetti, Calhoun, Chichester, Colgan, Holland, E.M., Saslaw, Stosch and Woods

Referred to Committee on Finance

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

**1. That §§ 15.1-1374, 15.1-1375 and 15.1-1379 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.1-1387.1 as follows:**

§ 15.1-1374. Definitions.

Wherever used in this chapter, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall be given the following respective interpretations:

(a) "Authority" means any political subdivision, a body politic and corporate, created, organized and operated pursuant to the provisions of this chapter, or if said authority shall be abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers given by this chapter shall be given by law.

(b) "Municipality" means any county or incorporated city or town in the Commonwealth with respect to which an authority may be organized and in which it is contemplated the authority will function.

(c) "Governing body" means the board or body in which the general legislative powers of the municipality are vested.

(d) "Authority facilities" or "facilities" means any or all (i) medical (including, but not limited to, office and treatment facilities), pollution control or industrial facilities; (ii) facilities for the residence or care of the aged; (iii) multi-state regional or national headquarters offices or operations centers; (iv) facilities for private, accredited and nonprofit institutions of collegiate, elementary, or secondary education in the Commonwealth whose primary purpose is to provide collegiate, elementary, secondary, or graduate education and not to provide religious training or theological education, such facilities being for use as academic or administration buildings or any other structure or application usual and customary to a college, elementary or secondary school campus other than chapels and their like; (v) parking facilities, including parking structures; (vi) facilities for use as office space by nonprofit, nonreligious or nonsectarian organizations; (vii) 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; (viii) facilities for use by an organization (other than an organization organized and operated exclusively for religious purposes) which is described in § 501 (c) (3) of the Internal Revenue Code of 1986, as amended, and which is exempt from federal income taxation pursuant to § 501 (a) of such Internal Revenue Code; (ix) facilities for use by a county, a municipality, the Commonwealth and its agencies, or other governmental organizations, provided that any such facilities owned by a county, a municipality, the Commonwealth or its agencies or other public bodies subject to the Virginia Public Procurement Act (§ 11-35 et seq.) shall not be exempt from competitive procurement requirements, under the exception granted in § 11-45 D; (x) facilities devoted to the staging of equine events and activities (other than racing events); however, such facilities must be owned by a governmental or nonprofit, nonreligious or nonsectarian organization and operated by any such governmental or nonprofit, nonreligious or nonsectarian organization; and (xi) facilities for commercial enterprises, now existing or hereafter acquired, constructed or installed by or for the authority pursuant to the terms of this chapter; provided, in the case of facilities for commercial enterprises, (1) no portion of the proceeds of an issue to finance such facilities may be used to provide any of the following: any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports facility (including any handball or racquet ball court), hot tub facility, suntan facility, or racetrack; (2) not more than twenty-five percent of the proceeds of an issue to finance such facilities may be used to provide a facility the primary purpose of which is one of the following: retail food and beverage services (excluding grocery stores), automobile sales or service, the provision of recreation or entertainment (and not specifically prohibited in (1)), or banks, savings and loan institutions, or mortgage loan companies; and (3) no facility used primarily for

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single or multi-family residences shall be financed as a facility for a commercial enterprise. Any facility may be located within or without or partly within or without the municipality creating the authority. Any facility may consist of or include any or all buildings, improvements, additions, extensions, replacements, machinery or equipment, and may also include appurtenances, lands, rights in land, water rights, franchises, furnishings, landscaping, utilities, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto, acquired, constructed, or installed by or on behalf of the authority. A pollution control facility shall include any facility acquired, constructed or installed or any expenditure made, including the reconstruction, modernization or modification of any existing building, improvement, addition, extension, replacement, machinery or equipment, and which is designed to further the control or abatement of land, sewer, water, air, noise or general environmental pollution derived from the operation of any industrial or medical facility. Any facility may be constructed on or installed in or upon lands, structures, rights-of-way, easements, air rights, franchises or other property rights or interests whether owned by the authority or others.

(e) "Cost" means and includes, as applied to authority facilities, 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 or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all labor, materials, machinery and equipment, financing charges, interest on all bonds prior to and during construction and, if deemed advisable by the authority, for a period not exceeding one year after completion of such construction, cost of engineering, financial and legal services, *design*, plans, specifications, studies, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the authority facilities, *costs of site preparation, environmental remediation and reclamation, streets and roadways, lighting and landscaping, fire and police protection, parks and recreational facilities*, administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements, and such other expenses as may be necessary or incident to the construction of the authority facilities, the financing of such construction and the placing of the authority facilities 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 of the authority facilities may be regarded as a part of the cost of the authority facilities and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued for such authority facilities as hereinafter authorized.

(f) "Bonds" or "revenue bonds" embraces notes, bonds and other obligations authorized to be issued by the authority pursuant to the provisions of this chapter.

(g) "Revenues" means any or all fees, rates, rentals and receipts collected by, payable to or otherwise derived by the authority from, and all other moneys and income of whatsoever kind or character collected by, payable to or otherwise derived by the authority in connection with the ownership, leasing or sale of the authority facilities, ~~or in connection with~~ any loans made by the authority under this chapter *or any contracts entered into pursuant to § 15.1-1387.1*.

(h) "Commonwealth" means the Commonwealth of Virginia.

(i) "Trust indenture" means any trust agreement or mortgage under which bonds authorized pursuant to this chapter may be secured.

(j) "Enterprise" means any industry for the manufacturing, processing, assembling, storing, warehousing, distributing, or selling any products of agriculture, mining, or industry and for research and development or scientific laboratories, including, but not limited to, the practice of medicine and all other activities related thereto or for such other businesses or activities as will be in the furtherance of the public purposes of this chapter.

(k) "Loans" means any loans made by the authority in furtherance of the purposes of this chapter from the proceeds of the issuance and sale of the authority's bonds and from any of its revenues or other moneys available to it as provided herein.

§ 15.1-1375. 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 several municipalities in this Commonwealth so that such authorities may *finance*, 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 this 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. It is not intended hereby that any such authority shall 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 or educational 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 private, accredited and nonprofit institutions of collegiate 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 municipality, 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 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 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

183 organizations in order to promote tourism and economic development in the Commonwealth, to promote  
184 the knowledge of and appreciation by the citizens of the Commonwealth of the historical and cultural  
185 development and heritage of the Commonwealth and the United States and to promote thereby their  
186 health, welfare, convenience and prosperity. It is not intended hereby that any such authority shall itself  
187 be authorized to operate any such facility.

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

195 This chapter shall be liberally construed in conformity with these intentions. The amendments to this  
196 Code section adopted by the 1975 Session of the General Assembly shall not be construed to affect any  
197 litigation pending in any court prior to the effective date of said amendments.

198 § 15.1-1379. Issuance of bonds, notes and other obligations of authority.

199 A. The authority shall have the power to issue bonds from time to time in its discretion, for any of  
200 its purposes, including the payment of all or any part of the cost of authority facilities and including the  
201 payment or retirement of bonds previously issued by it. All bonds issued by the authority shall be  
202 payable solely from the revenues and receipts derived from the leasing or sale by the authority of its  
203 facilities or any part thereof, ~~or~~ from payments received by the authority in connection with its loans *or*  
204 *from payments received by the authority under any contract entered into pursuant to § 15.1-1387.1*, and  
205 the authority may issue such types of bonds as it may determine, including (without limiting the  
206 generality of the foregoing) bonds payable, both as to principal and interest: (i) from its revenues and  
207 receipts generally; (ii) exclusively from the revenues and receipts of a particular facility or loan; ~~or~~ (iii)  
208 exclusively from the revenues and receipts of certain designated facilities or loans whether or not they  
209 are financed in whole or in part from the proceeds of such bonds; (iv) *in whole or in part from*  
210 *payments received by the authority under any contract entered into pursuant to § 15.1-1387.1; or* (v)  
211 *any combination of the foregoing*. Unless otherwise provided in the proceeding authorizing the issuance  
212 of the bonds, or in the trust indenture securing the same, all bonds shall be payable solely and  
213 exclusively from the revenues and receipts of a particular facility or loan. Bonds may be executed and  
214 delivered by the authority at any time and from time to time, may be in such form and denominations  
215 and of such terms and maturities, may be in registered or bearer form either as to principal or interest or  
216 both, may be payable in such installments and at such time or times not exceeding forty years from the  
217 date thereof, may be payable at such place or places whether within or without the Commonwealth, ~~may~~  
218 ~~bear interest at such rate or rates~~, may be payable at such time or times and at such place or places,  
219 may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as  
220 shall be provided and specified by the board of directors in authorizing each particular bond issue. *The*  
221 *bonds may bear interest payable at such time or times and at such rate or rates as determined by the*  
222 *board of directors of the authority or in such manner as the board of directors may provide, including*  
223 *the determination by reference to indices or formulas or by agents designated by the board of directors*  
224 *under guidelines established by it*. If deemed advisable by the board of directors, there may be retained  
225 in the proceedings under which any bonds of the authority are authorized to be issued an option to  
226 redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after  
227 such notice or notices and on such terms and conditions as may be set forth in such proceedings and as  
228 may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to  
229 confer on the authority any right or option to redeem any bonds except as may be provided in the  
230 proceedings under which they shall be issued. Any bonds of the authority may be sold at public or  
231 private sale in such manner and from time to time as may be determined by the board of directors of  
232 the authority to be most advantageous, and the authority may pay all costs, premiums and commissions  
233 which its board of directors may deem necessary or advantageous in connection with the issuance  
234 thereof. Issuance by the authority of one or more series of bonds for one or more purposes shall not  
235 preclude it from issuing other bonds in connection with the same facility or any other facility, but the  
236 proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior  
237 pledge or mortgage made for any prior issue of bonds. Any bonds of the authority at any time  
238 outstanding may from time to time be refunded by the authority by the issuance of its refunding bonds  
239 in such amount as the board of directors may deem necessary, but not exceeding an amount sufficient to  
240 refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any  
241 costs, premiums or commissions necessary to be paid in connection therewith. Any such refunding may  
242 be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either  
243 by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds  
244 to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby,

with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether or not the bonds proposed to be refunded shall be payable on the same date or on different dates or shall be due serially or otherwise.

B. All bonds shall be signed by the chairman or vice-chairman of the authority or shall bear his facsimile signature, and the corporate seal of the authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) or the assistant secretary (or assistant secretary-treasurer) of the authority or shall bear his facsimile signature, and any coupons attached thereto shall bear the facsimile signature of said chairman. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be an officer before 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. When the signatures of both the chairman or the vice-chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds must be authenticated by a corporate trustee or other authenticating agent approved by the authority.

C. If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, shall be less than the cost of the authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, 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 of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements or enlargements of the authority facilities for which such bonds shall have been issued.

D. 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 shall be destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter; provided, however, that nothing contained in this chapter shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

E. All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia (§ 8.1-101 et seq.), subject only to provisions respecting registration of the bonds.

F. In addition to all other powers granted to the authority by this chapter, the authority is authorized to provide for the issuance, from time to time of notes or other obligations of the authority for any of its authorized purposes. All of the provisions of this chapter which relate to bonds or revenue bonds shall apply to such notes or other obligations insofar as such provisions may be appropriate.

*§ 15.1-1387.1. Cooperation between authorities and other political subdivisions.*

*Any authority created under the provisions of this chapter may enter into contracts with counties, cities, towns or other political subdivisions within the Commonwealth for joint or cooperative action, including, without limitation, contracts with counties, cities or towns entered into pursuant to § 58.1-3245.4. Notwithstanding anything in this chapter to the contrary, any authority may pledge and apply any payments received by the authority under any contract with any county, city, town or other political subdivision to the payment of bonds issued by the authority for the purposes specified in the contract.*