

LD1662812

HOUSE BILL NO. 2527

Offered January 23, 1995

A BILL to amend and reenact §§ 9-205, 15.1-1399.15, 15.1-1399.16, 59.1-284.1, 59.1-284.2, and 59.1-284.4 of the Code of Virginia and to repeal § 59.1-284.5 of the Code of Virginia, relating to the duties of the Virginia Small Business Financing Authority.

Patrons—O'Brien, Callahan, Katzen, Morgan, Purkey and Way; Senator: Robb

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-205, 15.1-1399.15, 15.1-1399.16, 59.1-284.1, 59.1-284.2, and 59.1-284.4 of the Code of Virginia are amended and reenacted and § 59.1-284.5 of the Code of Virginia is repealed, as follows:

§ 9-205. Powers of the Authority.

The Authority is hereby granted all powers necessary or appropriate to carry out and effectuate its purposes including, but not limited to, the following powers to:

1. Have perpetual existence as a public body corporate and as a political subdivision of the Commonwealth;

2. Adopt, amend, and repeal bylaws, rules and regulations not inconsistent with this chapter, to regulate its affairs and to carry into effect the powers and the purposes of the Authority as herein stated and for the conduct of its business;

3. Sue and be sued in its name including but not limited to bringing actions pursuant to Article 6 (§ 15.1-227.52 et seq.) of Chapter 5.1 of Title 15.1 to determine the validity of any issuance or proposed issuance of its bonds under this chapter and the legality and validity of all proceedings previously taken or proposed in a resolution of the Authority to be taken for the authorization, issuance, sale and delivery of such bonds and for the payment of the principal thereof and interest thereon;

4. Have an official seal and alter it at will;

5. Maintain an office at such place or places within the Commonwealth as it may designate;

6. Make and execute contracts and all other instruments necessary and convenient for the performance of its duties and the exercise of its powers under this chapter upon such terms and conditions as it deems appropriate;

7. Employ office personnel, advisers, consultants, professionals and agents as may be necessary in its judgment, and to fix their compensation;

8. Procure insurance against any loss in connection with its property and other assets, including but not limited to loans in such amounts and from such insurers as it may deem advisable;

9. Borrow money and issue bonds as provided by this chapter;

10. Procure insurance or guarantees from any public or private entities, including any department, agency or instrumentality of the United States of America, or, subject to the provisions of and to the extent moneys are available in the fund created by § 9-211, insure or guarantee the payment of any bonds issued by the Authority, including the power to pay premiums on any such insurance or guarantees or other instruments of indebtedness;

11. Receive and accept from any source aid or contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this chapter (subject, however, to any conditions upon which grants or contributions are made) including, but not limited to gifts or grants from any department, agency or instrumentality of the United States of America;

12. Enter into agreements with any department, agency or instrumentality of the United States of America or of the Commonwealth and with lenders and enter into loans with contracting parties for the purpose of planning, regulating and providing for the financing or assisting in the financing of any eligible small business or any project thereof;

13. Enter into contracts or agreements with lenders for the servicing and/or processing of loans;

14. Provide technical assistance to local industrial development authorities and to profit and nonprofit entities in the development or operation by, or assistance to, persons engaged in small business enterprises and distribute data and information concerning the encouragement and improvement of small business enterprises in the Commonwealth;

15. To the extent permitted in the proceedings pursuant to which the bonds of the Authority are issued, consent to any modification with respect to the rate of interest, time for, and payment of, any installment of principal or interest, or any other term of any contract, loan, sales contract, lease, indenture or agreement of any kind to which the Authority is a party;

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16. To the extent permitted in the proceedings pursuant to which the bonds of the Authority are issued, enter into contracts with any lender containing provisions authorizing the lender to reduce the charges or fees, exclusive of loan payments, to persons unable to pay the regular schedule thereof when, by reason of other income or payment by any department, agency or instrumentality of the United States of America or the Commonwealth, the reduction can be made without jeopardizing the economic stability of the eligible small business being financed;

17. Allocate any of its property to the insurance or guarantee fund established by § 9-211 or to any other fund of the Authority, such property consisting of:

a. Moneys appropriated by the Commonwealth;

b. Premiums, fees and any other amounts received by the Authority with respect to financial assistance provided by the Authority;

c. Proceeds as designated by the Authority from the loan or other disposition of property held or acquired by the Authority;

d. Income from investments that were made by the Authority or on the behalf of the Authority from moneys in one or more of its funds; or

e. Any other moneys made available to the Authority consistent with this chapter;

18. To use any fund or funds of the Authority for any and all expenses to be paid by the Authority including, by way of example, but not by limitation: (i) any and all expenses for administrative, legal, actuarial, and other services; (ii) all costs, charges, fees and expenses of the Authority relating to the authorizing, preparing, printing, selling, issuing, and insuring of bonds and the funding of reserves; and (iii) all expenses and costs relating to the guaranteeing, insuring or procurement of guarantees, insurance or other instruments providing credit or the enhancement of credit for the bonds;

19. To collect fees and charges, as the Authority determines to be reasonable, in connection with its loans, insurance, guarantees, commitments and servicing thereof;

20. To sell, at public or private sale, with or without public bidding, any obligation held by the Authority;

21. To invest any funds not needed for immediate disbursement, including any funds held in reserve, in any obligations or securities which may be legally purchased by political subdivisions in the Commonwealth or as may be otherwise permitted by § 9-230; and

22. *To administer the Private Activity Bonds program in chapter 33.2 (§ 15.1-1399.10 et seq.) of Title 15.1 and the Virginia Economic Development Revolving Fund in chapter 22.1 (§ 59.1-284.1 et seq.) of Title 59.1; and*

~~22.~~ 23. To take any action necessary or convenient for the exercise of the powers granted by this chapter or reasonably implied from them.

§ 15.1-1399.15. Administration.

The ~~Board of Housing and Community Development~~ Virginia Small Business Financing Authority shall by regulation establish the specific administrative policies and procedures of the private activity bond program in the Commonwealth. Specific application, allocation, and reporting requirements shall be provided by the regulations. The regulations of the ~~Board of Housing and Community Development~~ Virginia Small Business Financing Authority shall be in accordance with the limitations and restrictions contained in federal law.

§ 15.1-1399.16. Reallocation of bond authority.

The allocation formulas prescribed in this chapter are established to utilize the entire state ceiling on private activity bonds by providing issuing authority to housing and industrial development projects. The allocation formula provided in § 15.1-1399.14 for industrial development, student loans and the state allocation shall be effective through November 1 of each calendar year. The allocation formula provided in § 15.1-1399.14 for housing shall be effective through September 1 of each calendar year.

Any unused bond authority remaining in any category after the effective period of the allocation shall be reallocated to housing and industrial projects and to qualified student loan bonds, according to regulations established by the ~~Board of Housing and Community Development~~ Virginia Small Business Financing Authority. The regulations shall also provide a priority system for the allocation of any remaining unused bond authority at year-end to projects that are eligible to carry forward issuing authority to later years. The provisions of this section shall not apply to the amount of the state ceiling set aside for the state allocation during any calendar year.

§ 59.1-284.1. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Small Business Financing Authority established in § 9-201.

"Board" means the Board of Directors of the Authority.

"Department" means the Virginia Department of ~~Housing and Community~~ Economic Development.

"Eligible small business" means any person engaged in one or more small business enterprises in the Commonwealth which satisfies one or more of the following requirements: (i) has received \$10 million or less in annual gross income under generally accepted accounting principles for each of its last three

fiscal years or lesser time period if it has been in existence less than three years, (ii) has fewer than 250 employees, (iii) has a net worth of \$2 million or less, or (iv) has satisfied such other requirements as the Board shall determine from time to time if it finds and determines such person is in need of its assistance.

"Fund" means the Virginia Economic Development Revolving Fund.

~~"Board" means the Board of Housing and Community Development.~~

"Local government" means any county, city, town, municipal corporation, authority, district commission, or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth or any combination of any two or more of the foregoing.

"Project" means any economic development project undertaken by a local government or eligible small business to assist in creation or retention of jobs.

§ 59.1-284.2. Creation and management of Fund.

There shall be a permanent revolving fund known as the Virginia Economic Development Revolving Fund. The ~~fund~~ Fund shall be comprised of (i) sums appropriated to it by the General Assembly, (ii) receipts by the ~~fund~~ Fund from loans made by it, (iii) all income from the investment of moneys held by the ~~fund~~ Fund, and (iv) any other sums designated for deposit to the ~~fund~~ Fund from any source, public or private. The ~~fund~~ Fund shall be administered and managed by the Authority, under the direction of the Director of the Department and shall be used solely for the purpose of financing to finance projects undertaken by local governments or eligible small businesses as provided in ~~§ 59.1-284.5 the Virginia Small Business Financing Act, Chapter 28 (§ 9-197 et seq.) of Title 9 of the Code of Virginia.~~

§ 59.1-284.4. Collection of money due to the Fund.

The Department, or its designated agent, is empowered to collect amounts due to the ~~fund~~ Fund under any loan made to a local government pursuant to this chapter, including, if appropriate, taking the action required by § 15.1-227.61 to obtain payment from a local government of any amounts in default. Proceedings to recover amounts due to the fund may be instituted by the Department in the name of the ~~fund~~ Fund in any appropriate circuit court.

2. That the Virginia Small Business Financing Authority shall promulgate regulations in accordance with §§ 15.1-1399.15 and 15.1-1399.16 on or after July 1, 1995.

3. That the regulations promulgated by the Board of Housing and Community Development in accordance with §§ 15.1-1399.15 and 15.1-1399.16 shall remain in effect until such time as the Virginia Small Business Financing Authority shall promulgate regulations pursuant to the second enactment of this act.

4. That § 59.1-284.5 of the Code of Virginia is repealed.