

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 276

An Act to amend the Code of Virginia by adding in Title 15.1 a chapter numbered 45, consisting of sections numbered 15.1-1706 through 15.1-1722, relating to the Virginia Regional Industrial Facilities Act.

[S 1019]

Approved March 12, 1997

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 15.1 a chapter numbered 45, consisting of sections numbered 15.1-1706 through 15.1-1722, as follows:

CHAPTER 45.

VIRGINIA REGIONAL INDUSTRIAL FACILITIES ACT.

§ 15.1-1706. Definitions.

As used in this chapter the following words have the meanings indicated:

"Authority" means any regional industrial facility authority organized and existing pursuant to this chapter.

"Board" means the board of directors of an authority.

"Facility" means an industrial park consisting of real estate and all improvements located thereon or appurtenant thereto, intended to be occupied by manufacturing, warehousing, distribution, office, or other commercial enterprises.

"Governing bodies" means the boards of supervisors of counties and the councils of cities and towns which are members of an authority.

"Member localities" means the counties, cities, and towns, or combination thereof, which are members of an authority.

"Region" means the area within the boundaries of Planning Districts 4 and 5; any county with a population of no less than 6,300 and no more than 6,600; any county with a population of no less than 25,100 and no more than 26,000; and any county with a population of no less than 36,000 and no more than 39,565.

§ 15.1-1707. Findings; purpose; governmental functions.

A. The economies of many localities within the region have not kept pace with those of the rest of the Commonwealth. Individual localities in the region often lack the financial resources to assist in the development of economic development projects. Providing a mechanism for localities in the region to cooperate in the development of facilities will assist the region in overcoming this barrier to economic growth. The creation of regional industrial facility authorities will assist this area of the Commonwealth in achieving a greater degree of economic stability.

B. The purpose of a regional industrial facility authority is to enhance the economic base for the member localities by developing, owning, and operating one or more facilities on a cooperative basis involving its member localities.

C. The exercise of the powers granted by this chapter shall be in all respects for the benefit of the inhabitants of the region and other areas of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity.

§ 15.1-1708. Procedure for creation of authorities.

The governing bodies of any three or more localities within the region, provided that two or more of the localities are cities or counties or a combination thereof, may, in conformance with the procedure set forth herein, create a regional industrial facility authority by adopting ordinances proposing to create an authority which shall (i) set forth the name of the proposed regional industrial facility authority (which shall include the words "industrial facility authority"); (ii) name the member localities; (iii) contain findings that the economic growth and development of the locality and the comfort, convenience and welfare of its citizens require the development of facilities and that joint action through a regional industrial facility authority by the localities which are to be members of the proposed authority will facilitate the development of the needed facilities; and (iv) authorize the execution of an agreement establishing the respective rights and obligations of the member localities with respect to the authority consistent with the provisions of this chapter. Such ordinances shall be filed with the Secretary of the Commonwealth. Upon certification by the Secretary of the Commonwealth to the governing bodies of each of the member localities that the ordinances required by this chapter have been filed and, upon the basis of the facts set forth therein, satisfy such requirements, and upon the entry of such certification in the minutes of the proceedings of the governing bodies of each of the member localities, the proposed authority shall be and constitute an authority for all of the purposes of this chapter, to be known and designated by the name stated in the ordinances. Each authority created pursuant to this chapter is

hereby created as a political subdivision of the Commonwealth.

§ 15.1-1709. Board of the authority.

A. All powers, rights and duties conferred by this chapter, or other provisions of law, upon an authority shall be exercised by a board of directors. A board shall consist of two members for each member locality. The governing body of each member locality shall appoint two members to the board, who shall be residents of the appointing member locality. Each member of a board shall serve for a term of four years and may be reappointed for one additional term.

B. Each member of a board shall, before entering upon the discharge of the duties of his office, take and subscribe to the oath prescribed in § 49-1. Members shall be reimbursed for actual expenses incurred in the performance of their duties from funds available to the authority.

C. A majority of the members of a board shall constitute a quorum, and the affirmative vote of a quorum of the board shall be necessary for any action taken by the board. No vacancy in the membership of a board shall impair the right of a quorum to exercise all the rights and perform all the duties of the board. The board shall determine the times and places of its regular meetings. Special meetings of a board shall be held when requested by a majority of the members of the board. Any such request for a special meeting shall be in writing, and the request shall specify the time and place of the meeting and the matters to be considered at the meeting. A reasonable effort shall be made to provide each member with notice of any special meeting. No matter not specified in the notice shall be considered at such special meeting unless all the members of the board are present.

D. Each board shall elect from its membership a chairman for each calendar year. The board may also appoint an executive director and staff who shall discharge such functions as may be directed by the board. The executive director and staff shall be paid from funds received by the authority.

E. Each board, promptly following the close of the fiscal year, shall submit an annual report of the authority's activities of the preceding year to the governing body of each member locality. Each such report shall set forth a complete operating and financial statement covering the operation of the authority during such year.

§ 15.1-1710. Office of authority; title to property.

Each board shall maintain the principal office of the authority within a member locality. All records shall be kept at such office. The title to all property of every kind belonging to an authority shall be titled to the authority, which shall hold it for the benefit of its member localities.

§ 15.1-1711. Powers of the authority.

Each authority is vested with the powers of a body corporate, including the power to sue and be sued in its own name, plead and be impleaded, and adopt and use a common seal and alter the same as may be deemed expedient. In addition to the powers set forth elsewhere in this chapter, an authority may:

1. Adopt bylaws, rules and regulations to carry out the provisions of this chapter;
2. Employ, either as regular employees or as independent contractors, consultants, engineers, architects, accountants, attorneys, financial experts, construction experts and personnel, superintendents, managers and other professional personnel, personnel, and agents as may be necessary in the judgment of the authority, and fix their compensation;
3. Determine the locations of, develop, establish, construct, erect, repair, remodel, add to, extend, improve, equip, operate, regulate, and maintain facilities to the extent necessary or convenient to accomplish the purposes of the authority;
4. Acquire, own, hold, lease, use, sell, encumber, transfer, or dispose of, in its own name, any real or personal property or interests therein;
5. Invest and reinvest funds of the authority;
6. Enter into contracts of any kind, and execute all instruments necessary or convenient with respect to its carrying out the powers in this chapter to accomplish the purposes of the authority;
7. Expend such funds as may be available to it for the purpose of developing facilities, including but not limited to (i) purchasing real estate; (ii) grading sites; (iii) improving, replacing, and extending water, sewer, natural gas, electrical, and other utility lines; (iv) constructing, rehabilitating, and expanding buildings; (v) constructing parking facilities; (vi) constructing access roads, streets, and rail lines; (vii) purchasing or leasing machinery and tools; and (viii) making any other improvements deemed necessary by the authority to meet its objectives;
8. Fix and revise from time to time and charge and collect rates, rents, fees, or other charges for the use of facilities or for services rendered in connection with the facilities;
9. Borrow money from any source for any valid purpose, including working capital for its operations, reserve funds, or interest; mortgage, pledge, or otherwise encumber the property or funds of the authority; and contract with or engage the services of any person in connection with any financing, including financial institutions, issuers of letters of credit, or insurers;
10. Issue bonds under this chapter;
11. Accept funds and property from the Commonwealth, persons, counties, cities, and towns and use the same for any of the purposes for which the authority is created;
12. Apply for and accept grants or loans of money or other property from any federal agency for

any of the purposes authorized in this chapter and expend or use the same in accordance with the directions and requirements attached thereto or imposed thereon by any such federal agency;

13. Enter into agreements with any other political subdivision of the Commonwealth for joint or cooperative action in accordance with § 15.1-21; and

14. Do all things necessary or convenient to carry out the purposes of this chapter.

§ 15.1-1712. Donations to authority; remittance of machinery and tools tax revenue.

A. Member localities are hereby authorized to lend or donate money or other property to an authority for any of its purposes. The member locality making the grant or loan may restrict the use of such grants or loans to a specific facility owned by the authority, within or without that member locality.

B. The governing body of the member locality in which a facility owned by an authority is located may direct, by resolution or ordinance, that all machinery and tools tax revenue collected with respect to machinery and tools located upon the facility shall be remitted to the authority. Such revenues may be used for the payment of debt service on bonds of the authority and other obligations of the authority incurred with respect to such facility, but shall not constitute a pledge of the credit or taxing power of such locality.

§ 15.1-1713. Revenue sharing agreements.

Notwithstanding the requirements of Chapter 26.1:1 (§ 15.1-1167.1 et seq.) of this title, the member localities may agree to a revenue and economic growth-sharing arrangement with respect to tax revenues and other income and revenues generated by any facility owned by an authority. The obligations of the parties to any such agreement shall not be construed to be debt within the meaning of Article VII, Section 10 of the Constitution of Virginia. Any such agreement shall be approved by a majority vote of the governing bodies of the member localities reaching such an agreement but shall not require any other approval.

§ 15.1-1714. Applicability of land use regulations.

In any locality where planning, zoning, and development regulations may apply, an authority shall comply with and is subject to those regulations to the same extent as a private commercial or industrial enterprise.

§ 15.1-1715. Bond issues.

A. An authority may at any time and from time to time issue bonds for any valid purpose, including the establishment of reserves and the payment of interest. In this chapter, "bonds" includes notes of any kind, interim certificates, refunding bonds, or any other evidence of obligation.

B. The bonds of any issue shall be payable solely from the property or receipts of the authority, including, but not limited to:

1. Taxes, rents, fees, charges, or other revenues payable to the authority;
2. Payments by financial institutions, insurance companies, or others pursuant to letters or lines of credit, policies of insurance, or purchase agreements;
3. Investment earnings from funds or accounts maintained pursuant to a bond resolution or trust agreement; and
4. Proceeds of refunding bonds.

C. Bonds shall be authorized by resolution of an authority and may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. The bonds shall:

1. Be issued at, above, or below par value, for cash or other valuable consideration, and mature at a time or times, whether as serial bonds or as term bonds or both, not exceeding forty years from their respective dates of issue;
2. Bear interest at the fixed or variable rate or rates determined by the method provided in the resolution or trust agreement;
3. Be payable at a time or times, in the denominations and form, and carry the registration and privileges as to conversion and for the replacement of mutilated, lost, or destroyed bonds as the resolution or trust agreement may provide;
4. Be payable in lawful money of the United States at a designated place;
5. Be subject to the terms of purchase, payment, redemption, refunding, or refinancing that the resolution or trust agreement provides;
6. Be executed by the manual or facsimile signatures of the officers of the authority designated by the authority, which signatures shall be valid at delivery even for one who has ceased to hold office; and
7. Be sold in the manner and upon the terms determined by the authority including private (negotiated) sale.

D. Any resolution or trust agreement may contain provisions which shall be a part of the contract with the holders of the bonds as to:

1. Pledging, assigning, or directing the use, investment, or disposition of receipts of the authority or proceeds or benefits of any contract and conveying or otherwise securing any property rights;
2. Setting aside loan funding deposits, debt service reserves, capitalized interest accounts, cost of

issuance accounts and sinking funds, and the regulation, investment, and disposition thereof;

3. Limiting the purpose to which, or the investments in which, the proceeds of the sale of any issue of bonds may be applied and restrictions to investments of revenues or bond proceeds in government obligations for which principal and interest are unconditionally guaranteed by the United States of America;

4. Limiting the issuance of additional bonds and the terms upon which additional bonds may be issued and secured and may rank on a parity with, or be subordinate or superior to, other bonds;

5. Refunding or refinancing outstanding bonds;

6. Providing a procedure, if any, by which the terms of any contract with bondholders may be altered or amended and the amount of bonds the holders of which must consent thereto, and the manner in which consent shall be given;

7. Defining the acts or omissions which shall constitute a default in the duties of the authority to bondholders and providing the rights of or remedies for such holders in the event of a default which may include provisions restricting individual right of action by bondholders;

8. Providing for guarantees, pledges of property, letters of credit, or other security, or insurance for the benefit of the bondholders; and

9. Addressing any other matter relating to the bonds which the authority determines appropriate.

E. No member of an authority, member of a board, or any person executing the bonds on behalf of an authority shall be liable personally for the bonds or subject to any personal liability by reason of the issuance of the bonds.

F. An authority may enter into agreements with agents, banks, insurers, or others for the purpose of enhancing the marketability of, or as security for, its bonds.

G. A pledge by an authority of revenues as security for an issue of bonds shall be valid and binding from the time the pledge is made.

The revenues pledged shall immediately be subject to the lien of the pledge without any physical delivery or further act, and the lien of any pledge shall be valid and binding against any person having any claim of any kind in tort, contract or otherwise against an authority, irrespective of whether the person has notice.

No resolution, trust agreement or financing statement, continuation statement, or other instrument adopted or entered into by an authority need be filed or recorded in any public record other than the records of the authority in order to perfect the lien against third persons, regardless of any contrary provision of public general or local law.

H. Except to the extent restricted by an applicable resolution or trust agreement, any holder of bonds issued under this chapter or a trustee acting under a trust agreement entered into under this chapter, may, by any suitable form of legal proceedings, protect and enforce any rights granted under the laws of Virginia or by any applicable resolution or trust agreement.

I. An authority may issue bonds to refund any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase or maturity of the bonds. Refunding bonds may be issued for the public purposes of realizing savings in the effective costs of debt service, directly or through a debt restructuring, for alleviating impending or actual default and may be issued in one or more series in an amount in excess of that of the bonds to be refunded.

§ 15.1-1716. Investments in bonds.

Any financial institution, investment company, insurance company or association, and any personal representative, guardian, trustee, or other fiduciary, may legally invest any moneys belonging to them or within their control in any bonds issued by an authority.

§ 15.1-1717. Bonds exempt from taxation.

An authority shall not be required to pay any taxes or assessments of any kind whatsoever, and its bonds, their transfer, the interest payable on them, and any income derived from them, including any profit realized in their sale or exchange, shall be exempt at all times from every kind and nature of taxation by this Commonwealth or by any of its political subdivisions, municipal corporations, or public agencies of any kind.

§ 15.1-1718. Tax revenues of the Commonwealth or any other political subdivision not pledged.

Nothing in this chapter shall be construed as authorizing the pledging of the faith and credit of the Commonwealth of Virginia, or any of its revenues, or the faith and credit of any other political subdivision of the Commonwealth, or any of its revenues, for the payment of any bonds issued by an authority.

§ 15.1-1719. Forms of accounts and records; audit of same.

The accounts and records of an authority showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes, provided that such accounts correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises. The accounts and records of an authority shall be subject to audit pursuant to § 2.1-164, and the costs of such audit services shall be borne by the authority. An authority's fiscal year shall be the same as the Commonwealth's.

§ 15.1-1720. Tort liability.

No pecuniary liability of any kind shall be imposed on the Commonwealth or on any other political subdivision of the Commonwealth because of any act, agreement, contract, tort, malfeasance or nonfeasance by or on the part of an authority, its agents, servants or employees.

§ 15.1-1721. Dissolution of authority.

A member locality of an authority may withdraw from the authority only upon dissolution of the authority as set forth herein. Whenever the board determines that the purpose for which the authority was created has been substantially fulfilled or is impractical or impossible to accomplish and that all obligations incurred by the authority have been paid or that cash or a sufficient amount of United States government securities has been deposited for their payment, or provisions satisfactory for the timely payment of all its outstanding obligations have been arranged, the board may adopt resolutions declaring and finding that the authority shall be dissolved. Appropriate attested copies of such resolutions shall be delivered to the Governor so that legislation dissolving such authority may be introduced in the General Assembly. The dissolution of an authority shall become effective according to the terms of such legislation. The title to all funds and other property owned by such authority at the time of such dissolution shall vest in the member localities which have contributed to the authority in proportion to their respective contributions.

§ 15.1-1722. Chapter liberally construed.

This chapter, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof.