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SENATE BILL NO. 954

Offered January 16, 1997

A BILL to amend and reenact §§ 15.1-1374, 15.1-1375 and 15.1-1378 of the Code of Virginia, relating to industrial development authorities.

Patrons—Whipple; Delegates: Almand, Connally and Darner

Referred to the Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-1374, 15.1-1375 and 15.1-1378 of the Code of Virginia are amended and reenacted 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, that facilities for commercial enterprise that are taxable authority facilities shall constitute authority facilities only if the interest on any bonds issued to finance such facilities is not exempt from federal income taxation; *and (xii) facilities used primarily for single or multi-family residences. Clause (xii) applies only to industrial development authorities created by one or more municipalities whose housing authorities have not been activated as provided by §§ 36-4 and 36-4.1.* 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

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SB954

60 or installed or any expenditure made, including the reconstruction, modernization or modification of any
61 existing building, improvement, addition, extension, replacement, machinery or equipment, and which is
62 designed to further the control or abatement of land, sewer, water, air, noise or general environmental
63 pollution derived from the operation of any industrial or medical facility. Any facility may be
64 constructed on or installed in or upon lands, structures, rights-of-way, easements, air rights, franchises or
65 other property rights or interests whether owned by the authority or others.

66 (e) "Cost" means and includes, as applied to authority facilities, the cost of construction, the cost of
67 acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and
68 interests, the cost of demolishing, removing or relocating any buildings or structures on lands acquired,
69 including the cost of acquiring any lands to which such buildings or structures may be moved or
70 relocated, the cost of all labor, materials, machinery and equipment, financing charges, interest on all
71 bonds prior to and during construction and, if deemed advisable by the authority, for a period not
72 exceeding one year after completion of such construction, cost of engineering, financial and legal
73 services, plans, specifications, studies, surveys, estimates of cost and of revenues, other expenses
74 necessary or incident to determining the feasibility or practicability of constructing the authority
75 facilities, administrative expenses, provisions for working capital, reserves for interest and for extensions,
76 enlargements, additions and improvements, and such other expenses as may be necessary or incident to
77 the construction of the authority facilities, the financing of such construction and the placing of the
78 authority facilities in operation. Any obligation or expense incurred by the Commonwealth or any
79 agency thereof, with the approval of the authority, for studies, surveys, borings, preparation of plans and
80 specifications or other work or materials in connection with the construction of the authority facilities
81 may be regarded as a part of the cost of the authority facilities and may be reimbursed to the
82 Commonwealth or any agency thereof out of the proceeds of the bonds issued for such authority
83 facilities as hereinafter authorized.

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

86 (g) "Revenues" means any or all fees, rates, rentals and receipts collected by, payable to or otherwise
87 derived by the authority from, and all other moneys and income of whatsoever kind or character
88 collected by, payable to or otherwise derived by the authority in connection with the ownership, leasing
89 or sale of the authority facilities or in connection with any loans made by the authority under this
90 chapter.

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

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

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

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

102 (l) "Taxable authority facilities" means any private or commercial golf course, country club, massage
103 parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports
104 facility, suntan facility, race track, ~~single or multi-family residence~~, or a facility the primary purpose of
105 which is one of the following: (1) retail food and beverage services (excluding grocery stores), (2)
106 automobile sales and service, (3) the provision of recreation or entertainment, or (4) banks, savings and
107 loan institutions or mortgage loan companies.

108 § 15.1-1375. Purpose of chapter.

109 It is the intent of the legislature by the passage of this chapter to authorize the creation of industrial
110 development authorities by the several municipalities in this Commonwealth so that such authorities may
111 acquire, own, lease, and dispose of properties and make loans to the end that such authorities may be
112 able to promote industry and develop trade by inducing manufacturing, industrial, governmental,
113 nonprofit and commercial enterprises and institutions of higher education to locate in or remain in this
114 Commonwealth and further the use of its agricultural products and natural resources and to vest such
115 authorities with all powers that may be necessary to enable them to accomplish such purposes, which
116 powers shall be exercised for the benefit of the inhabitants of the Commonwealth either through the
117 increase of their commerce, or through the promotion of their safety, health, welfare, convenience or
118 prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such
119 manufacturing, industrial, nonprofit or commercial enterprise or any facility of an institution of higher
120 education.

121 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to

122 industrial development authorities the powers contained herein with respect to pollution control facilities
123 to the end that such authority may protect and promote the health of the inhabitants of the
124 Commonwealth and the conservation, protection and improvement of its natural resources by exercising
125 such powers for the control or abatement of land, sewer, water, air, noise and general environmental
126 pollution derived from the operation of any industrial or medical facility and to vest such authorities
127 with all powers that may be necessary to enable them to accomplish such purpose, which powers shall
128 be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their
129 commerce, or through the promotion of their safety, health, welfare, convenience or prosperity.

130 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to
131 industrial development authorities the powers contained herein with respect to medical facilities and
132 facilities for the residence or care of the aged to the end that such authorities may protect and promote
133 the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition,
134 construction, equipping, expansion, enlargement and improvement of medical facilities and facilities for
135 the residence or care of the aged in order to provide modern and efficient medical services to the
136 inhabitants of the Commonwealth and care of the aged of the Commonwealth in accordance with their
137 special needs and also by assisting in the refinancing of medical facilities and facilities for the residence
138 or care of the aged owned and operated by organizations which are exempt from taxation pursuant to
139 § 501(c) (3) of the Internal Revenue Code of 1954, as amended, in order to reduce the costs to residents
140 of the Commonwealth of utilizing such facilities and to vest such authorities with all powers that may
141 be necessary to enable them to accomplish such purposes, which powers shall be exercised for the
142 benefit of the inhabitants of the Commonwealth and for the promotion of their health and welfare. It is
143 not intended hereby that any such authority shall itself be authorized to operate any such medical facility
144 or facility for the residence or care of the aged.

145 It is the further intent of the legislature and shall be the policy of the Commonwealth of grant to
146 industrial development authorities the powers contained herein with respect to athletic, health and
147 recreational facilities for use by organizations (other than institutions organized and operated exclusively
148 for religious or education purposes) which are described in § 501 (c) (3) of the Internal Revenue Code
149 of 1954, as amended, and which are exempt from federal income taxation pursuant to § 501 (a) of the
150 Internal Revenue Code of 1954, as amended, to the end that such authorities may protect or promote the
151 safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth by assisting
152 in the acquisition, construction, equipping, expansion, enlargement, improvement, financing, and
153 refinancing of such facilities of the aforesaid entities and organizations in order to provide operations,
154 recreational, activity centers, and other facilities for the use of the inhabitants of the Commonwealth and
155 to vest such authorities with all powers that may be necessary to enable them to accomplish such
156 purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and
157 for the promotion of their safety, health, welfare, convenience or prosperity. It is not intended hereby
158 that any such authority shall itself be authorized to operate any such facility.

159 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to
160 industrial development authorities the powers contained herein with respect to facilities for private,
161 accredited and nonprofit institutions of collegiate education in the Commonwealth whose primary
162 purpose is to provide collegiate or graduate education and not to provide religious training or theological
163 education to the end that such authorities may protect and promote the health and welfare of the
164 inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion,
165 enlargement, and improvement of facilities of aforesaid institutions in order to provide improved
166 educational facilities for the use of the inhabitants of the Commonwealth and to vest such authorities
167 with all powers that may be necessary to enable them to accomplish such purposes, which powers shall
168 be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their
169 health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself
170 be authorized to operate any such educational facility.

171 It is the further intent of the legislature and shall be the policy of the Commonwealth to grant
172 industrial development authorities the powers contained herein with respect to facilities for a
173 municipality, the Commonwealth and its agencies, and governmental and nonprofit and to vest such
174 authorities with all powers that may be necessary to enable them to accomplish such purposes, which
175 powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion
176 of their health, welfare, convenience or prosperity.

177 It is further the intent of the legislature and shall be the policy of the Commonwealth to grant
178 industrial development authorities the powers contained herein with respect to facilities for museums and
179 historical education, demonstration and interpretation, together with any and all buildings, structures or
180 other facilities necessary or desirable in connection with the foregoing, for use by nonprofit
181 organizations in order to promote tourism and the economic development of the Commonwealth, to
182 promote the knowledge of and appreciation by the citizens of the Commonwealth of the historical and

183 cultural development and heritage of the Commonwealth and the United States and to promoted thereby
184 their health, welfare, convenience and prosperity. It is not intended hereby that any such authority shall
185 itself be authorized to operate any such facility.

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

194 *It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to*
195 *industrial development authorities created by one or more municipalities whose housing authorities have*
196 *not been activated as provided by §§ 36-4 and 36-4.1, in addition to the powers previously or hereafter*
197 *granted in this chapter, the powers contained herein with respect to facilities used primarily for single*
198 *or multi-family residences in order to promote safe and affordable housing in the Commonwealth and to*
199 *benefit thereby the safety, health, welfare and prosperity of the inhabitants of the Commonwealth. It is*
200 *not intended hereby that any such authority shall itself be authorized to operate any such facility.*

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

204 § 15.1-1378. Powers of authority.

205 The authority shall have the following powers together with all powers incidental thereto or
206 necessary for the performance of those hereinafter stated:

207 1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having
208 jurisdiction of the subject matter and of the parties;

209 2. To adopt and use a corporate seal and to alter the same at pleasure;

210 3. To contract and be contracted with;

211 4. To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain,
212 equip and furnish one or more authority facilities including all real and personal properties which the
213 board of directors of the authority may deem necessary in connection therewith and regardless of
214 whether or not any such facilities shall then be in existence;

215 5. To lease to others any or all of its facilities and to charge and collect rent therefor and to
216 terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof;
217 and to include in any such lease, if desired, a provision that the lessee thereof shall have options to
218 renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the
219 indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with
220 or without consideration;

221 6. To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board
222 of directors shall find any such action to be in furtherance of the purposes for which the authority was
223 organized;

224 7. To issue its bonds for the purpose of carrying out any of its powers including specifically, but
225 without intending to limit any power conferred by this section or this chapter, the issuance of bonds to
226 provide long-term financing of any pollution control facility, whether any such facility was constructed
227 prior to or after the enactment hereof or the receipt of a commitment from an authority to undertake
228 financing pursuant hereto, unless the major part of the proceeds of such bonds will be used to redeem
229 any prior long-term financing of such facility other than financings pursuant to this chapter or any
230 similar law;

231 8. As security for the payment of the principal of and interest on any bonds so issued and any
232 agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part
233 or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or
234 from any part thereof or from any loans made by the authority;

235 9. To employ and pay compensation to such employees and agents, including attorneys, as the board
236 of directors shall deem necessary in carrying on the business of the authority;

237 10. To exercise all powers expressly given the authority by the governing body of the municipality
238 which established the authority and to establish bylaws and make all rules and regulations, not
239 inconsistent with the provisions of this chapter, deemed expedient for the management of the authority's
240 affairs;

241 11. To appoint an industrial advisory committee or similar committee or committees to advise the
242 authority, consisting of such number of persons as it may deem advisable. Such persons may be
243 compensated such amount per regular, special, or committee meeting as may be approved by the
244 appointing authority, not to exceed fifty dollars per meeting day, and may be reimbursed for necessary

traveling and other expenses incurred while on the business of the authority;

12. To borrow money and to accept contributions, grants and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, for the payment of principal of any bond of the authority, interest thereon, or other cost incident thereto, or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed; and

13. To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this chapter including for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the authority which have not been pledged or assigned for the payment of any of the authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefor. An authority may also be permitted to forgive loans or other obligations if it is deemed to further economic development. The word "revenues" as used in this subdivision includes contributions, grants and other financial assistance, as set out in subdivision 12.

The authority shall not have power to operate any facility as a business other than as lessor *and shall not have the power to operate any single or multi-family housing facilities*; provided, however, that the authority shall have the power to apply for, establish, operate and maintain a foreign-trade zone in accordance with the provisions of Chapter 14 (§ 62.1-159 et seq.) of Title 62.1. Any meeting held by the board of directors at which formal action is taken shall be open to the public.

If a county, city, or town has created an industrial development authority pursuant to this chapter or any other provision of law, no other such authority, not created by such county, city, or town, shall finance facilities, except pollution control facilities, within the boundaries of such county, city, or town, unless the governing body of such county, city, or town in which the facilities are located or are proposed to be located, concurs with the inducement resolution adopted by the authority, and shows such concurrence in a duly adopted resolution. Notwithstanding the foregoing, nothing contained herein shall be deemed to invalidate or otherwise impair any existing financing by an authority or the financing of any facilities for which application has been made to an authority prior to July 1, 1981.