CHAPTER 498

An Act to amend and reenact §§ 2.1-234.11 through 2.1-234.14, 2.1-234.16, 2.1-234.20, 2.1-234.21, 2.1-234.23, 2.1-234.25, 2.1-234.27, and 53.1-82.3 of the Code of Virginia, relating to the powers and duties of the Virginia Public Building Authority and the refunding of bonds issued by other issuers secured by a lease or other payment agreement with the Commonwealth.

[H 449]

Approved April 15, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-234.11 through 2.1-234.14, 2.1-234.16, 2.1-234.20, 2.1-234.21, 2.1-234.23, 2.1-234.25, 2.1-234.27, and 53.1-82.3 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-234.11. Definitions.

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

1. The term "Authority" shall mean the body politic and corporate created by this article.

2. The term "project" shall mean any structure, facility, personal property or undertaking which the Authority is authorized to finance, refinance, construct, improve, furnish, equip, maintain, acquire, or operate under the provisions of this article.

3. The term "board" shall mean the governing body of the Authority.

4. The term "person" shall mean and include natural persons, firms, associations, corporations, business trusts, partnerships, and public bodies.

5. The term "federal agency" shall mean and include the United States of America, the President of the United States of America, and any department of, or corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States of America.

6. The term "bonds" shall mean and include the notes, bonds, and other evidences of indebtedness or obligations which the Authority is authorized to issue pursuant to this article.

7. The term "construction" shall mean and include acquisition and construction, and the term "to construct" shall mean and include to acquire and to construct all in such manner as may be deemed desirable.

8. The term "improvement" shall mean and include extension, enlargement, improvement, and renovation and the term "to improve" shall mean and include to extend, to enlarge, to improve, and to renovate all in such manner as may be deemed desirable.

9. The terms "fixtures" and "furnishings" shall mean and include any fixtures, leasehold improvements, equipment, office furniture and furnishings whatsoever as may be deemed *necessary or* desirable ~~and required by the lessee of a project~~ for the use and occupancy of such project, and the terms "to furnish" and "furnishing" shall mean and include the installation of such fixtures, equipment and furnishings.

10. The term "cost" as applied to a project financed under the provisions of this article shall mean the sum total of all costs ~~incurred by the Authority~~ as are reasonable and necessary for carrying out all works and undertakings necessary or incident to accomplish a project, including, without limitation because of enumeration, the cost ~~incurred by the Authority~~ of all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the vendor of such land, buildings or improvements, site preparation and development including demolition or removal of existing structures, construction, and reconstruction, the reasonable cost of financing incurred ~~by the Authority~~ in the course of the development of a project, carrying charges during construction to the occupancy date, interest on bonds issued to finance a project to a date subsequent to the estimated date of completion of a project, necessary expenses incurred in connection with the initial occupancy of a project, the funding of such funds and accounts as the Authority determines to be reasonable and necessary ~~with regard to bonds of the Authority~~ and the cost of such other items as the Authority determines to be reasonable and necessary.

11. The ~~term~~ *terms "Commonwealth" or* "state" shall mean the Commonwealth of Virginia and any agency or department thereof.

12. The term "personal property" shall mean and include all items of equipment, fixtures, and furnishings, including items affixed to real property.

§ 2.1-234.12. Virginia Public Building Authority created; membership; terms; expenses; vacancies.

The State Treasurer or his designee, the State Comptroller, and five additional members appointed by the Governor, subject to confirmation by the General Assembly, if in session when such appointments are made, and if not in session, at its first session subsequent to such appointment, who shall serve at

the pleasure of the Governor, are hereby created a body corporate and politic, constituting a public corporation and governmental instrumentality by the name of the "Virginia Public Building Authority." Unconfirmed appointments shall expire thirty days after the convening of the General Assembly. Such members of the Authority shall be entitled to no compensation for their services as members, but shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members. The term of each member appointed by the Governor shall be five years; provided, however, that of the members first appointed, one shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year. Any vacancy happening among the appointed members of the Authority shall be filled by appointment by the Governor, subject to confirmation by the General Assembly. *The Governor shall designate one member of the Authority as chairman.* The Department of the Treasury shall serve as staff to the Authority.

§ 2.1-234.13. Purposes and general powers and duties of Authority.

The Authority is created for the purpose of constructing, improving, furnishing, maintaining, acquiring, *financing, refinancing,* and operating public buildings for the use of the Commonwealth (heretofore or hereafter constructed), state arsenals, armories, and military reserves, state institutions of every kind and character (heretofore and hereafter constructed), additions and improvements to land grant colleges, state colleges, universities and medical colleges, and the purchase of lands for rehabilitation purposes in connection with state institutions and for use of state colleges, and museum facilities for a trust instrumentality of the United States, and the purchase of lands for the development of public buildings which may be authorized by the General Assembly in the future, the acquisition of items of personal property for the use of the Commonwealth, and the financing or refinancing of reimbursements to localities or regional jail authorities of all or any portion of the Commonwealth's share of the costs for jail projects made pursuant to §§ 53.1-80, 53.1-81, 53.1-82, or § 53.1-95.19*, and the refinancing of (i) bonds issued by other state and local authorities or political subdivisions of the Commonwealth where such bonds are secured by a lease or other payment agreement with the Commonwealth or (ii) the Commonwealth's obligations under such leases* (any and all of the foregoing being herein called "projects"), the purpose and intent of this article being to benefit the people of the Commonwealth by, among other things, increasing their commerce and prosperity. The Authority shall not undertake or finance or refinance any project or projects which are not specifically included in a bill or resolution passed by a majority of those elected to each house of the General Assembly, authorizing such project or projects or the reimbursement of all or any portion of the Commonwealth's share of the costs of such project or projects and, as to any project relating to a state institution of higher education, not specifically designated by the board of visitors of that institution as a project to be undertaken by the Authority. The Authority is hereby granted and shall have and may exercise all powers necessary or convenient for the carrying out of the aforesaid purposes, including, but without limiting the generality of the foregoing, the following rights and powers:

1. To have perpetual existence as a corporation.

2. To sue and be sued, implead and be impleaded, complain and defend in all courts.

3. To adopt, use, and alter at will a corporate seal.

4. To acquire, purchase, hold and use any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; without limitation of the foregoing, to lease as lessee, with the approval of the Governor, any property, real, personal or mixed, or any interest therein for a term not exceeding ninety-nine years at a nominal rental or at such annual rental as may be determined; with the approval of the Governor, to lease as lessor to the Commonwealth of Virginia and any city, county, town or other political subdivision, or any agency, department, or public body of the Commonwealth, or land grant college, any project at any time constructed by the Authority and any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed; with the approval of the Governor, to sell, transfer and convey to the Commonwealth of Virginia, any project at any time constructed by the Authority; and, with the approval of the Governor, to sell, transfer and convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority.

5. To acquire by purchase, lease, or otherwise, and to construct, improve, furnish, maintain, repair, and operate projects.

6. To make bylaws for the management and regulation of its affairs.

7. To fix, alter, charge, and collect rates, rentals, and other charges for the use of the facilities of, or for the services rendered by, the Authority, or projects thereof, at reasonable rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority, the construction, improvement, repair, furnishing, maintenance, and operation of its facilities and properties, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations.

8. To borrow money; make and issue negotiable notes, bonds, and other evidences of indebtedness or obligations (herein called "bonds") of the Authority and such bonds as the Authority may, from time to

time, determine to issue for the purpose of refunding bonds previously issued by the Authority; to secure the payment of all bonds, or any part thereof, by pledge or deed of trust of all or any of its revenues, rentals, and receipts; to 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, provided that the total principal amount of such bonds outstanding *excluding bonds issued to refinance bonds previously issued by the Authority and bonds issued to refinance (i) bonds issued by other state and local authorities or political subdivisions where such bonds are secured by a lease or other payment agreement with the Commonwealth or (ii) the Commonwealth's obligations under such leases or other payment agreements,* at any time shall not exceed ~~$1,386~~ *$1,140* million.

The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year containing, at a minimum, the 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.

9. To make contracts of every name and nature, and to execute all instruments necessary or convenient for the carrying on of its business.

10. Without limitation of the foregoing, to borrow money and accept grants from, and to enter into contracts, leases or other transactions with, any federal agency.

11. To have the power of eminent domain.

12. To 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.

13. To do all acts and things necessary or convenient to carry out the powers granted to it by this article or any other acts.

14. To acquire, by assignment from the Commonwealth or the Virginia Retirement System, all contracts, including those which are not completed, which involve constructing, improving, furnishing, maintaining, and operating the structures, facilities, or undertakings similar to those designated herein as projects.

15. To enter into contractual agreements with localities or regional jail authorities undertaking a jail project for which the financing or refinancing of reimbursements of all or any portion of the Commonwealth's share of the costs of such project will be made pursuant to subsection A 3 of § 53.1-82.2.

Except as otherwise provided by law, when projects are to be constructed, improved, furnished, maintained, repaired or operated for the use of any department of the Commonwealth, as hereinbefore listed in this section, no plans or specifications therefor shall be presented for quotations or bids until such plans and specifications shall have been submitted to and approved by the Department of General Services and any other department of the Commonwealth having any jurisdiction over the projects, so that the project will conform to standards established by such departments.

§ 2.1-234.14. Revenue bonds generally.

The Authority is hereby authorized*, by and with the consent of the Governor,* to provide for the issuance, at one time or from time to time, of revenue bonds of the Authority for the purpose of paying all or any part of the cost of any one or more projects or of any portion or portions thereof. The principal of and the interest on such bonds shall be payable solely from the funds provided in this article for such payment. Any bonds of the Authority issued pursuant to this article shall not constitute a debt of the Commonwealth, or any political subdivision thereof other than the Authority, and shall so state on their face. Neither the members of the Authority nor any person executing such bonds shall be liable personally thereon by reason of the issuance thereof. The bonds of each issue shall be dated, shall bear interest, 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, 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 and the manner of execution of the bonds, including any interest coupons to be attached thereto, 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. 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 such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. 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. 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 chapter.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the

projects for which such bonds shall have been issued, and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of such bonds or in the trust agreement 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 first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds, or may be applied to the payment of the cost of any additional project or projects.

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 than those proceedings, conditions or things which are specifically required by this article.

§ 2.1-234.16. Rents, fees and charges for financing or refinancing, services or use of facilities; use and disposition of revenues.

The Authority is hereby authorized to fix, revise, charge, and collect rates, fees, and other charges for *the financing or refinancing of,* the use of or for the services and facilities furnished by each project and the different parts thereof, and to contract with any agency, commission ~~or~~, political subdivision *or other entity* desiring the use of any part thereof, and to fix the terms, conditions, rents, and rates of charges for such use *or financing or refinancing*. Such rates, fees, and other charges shall be so fixed and adjusted so that revenues of the Authority, together with any other available funds, will be sufficient at all times to pay (i) the cost of maintaining, repairing and operating such project or projects and (ii) the principal of and the interest on such bonds as the same shall become due and payable, and to create reserves for such purposes. Such rates, fees, and other charges shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the Commonwealth. The revenues derived from the project or projects in connection with which the bonds shall have been issued, except such part thereof as may be necessary to pay such cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or such trust agreement in a sinking fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made, the revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

§ 2.1-234.20. Revenue refunding bonds; bonds for refunding and for cost of additional projects.

The Authority is hereby authorized to provide for the issuance of revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this article *or by other state and local authorities or political subdivisions of the Commonwealth where such bonds are secured by a lease or other payment agreement with the Commonwealth*, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions, or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued. The Authority is further authorized to provide by resolution for the issuance of its revenue bonds for the combined purpose of (i) refunding any bonds then outstanding which shall have been issued under the provisions of this article *or by other state and local authorities or political subdivisions of the Commonwealth where such bonds are secured by a lease or other payment agreement with the Commonwealth*, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (ii) paying all or any part of the cost of any additional project or projects or any portion or portions thereof. 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 article insofar as the same may be applicable.

§ 2.1-234.21. Contracts, leases and other arrangements.

A. In connection with the operation of a facility owned or controlled by the Authority, the Authority may enter into contracts, leases, and other arrangements with any person or persons (i) granting the privilege of using or improving the facility or any portion or facility thereof or space therein consistent with the purposes of this article; (ii) conferring the privilege of supplying goods, commodities, things, services, or facilities at the facility; ~~and~~ (iii) making available services to be furnished by the Authority or its agents at the facility*; and (iv) providing for the payment therefor*.

In each case the Authority may establish the terms and conditions and fix the charges, rentals, or fee for the privilege or service, which shall be reasonable and uniform for the same class of privilege or service at each facility and shall be established with due regard to the property and improvements used and the expenses of operation to the Authority.

B. Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by § 2.1-234.23, the Authority may by contract, lease, or other arrangements, upon a consideration fixed by it, grant to any qualified person, for a term not to exceed thirty years, the privilege of operating, as agent of the Authority or otherwise, any facility owned or controlled by the Authority; provided that no person shall be granted any authority to operate a facility other than as a public facility or to enter into any contracts, leases, or other arrangements in connection with the operation of the facility which the Authority might not have undertaken under subsection A of this section.

C. In connection with a project leased to *or financed or refinanced for* a trust instrumentality of the United States where ~~such trust instrumentality has agreed with the Authority to pay rent which together with~~ payments or contributions by the Commonwealth and any political subdivision*, together with amounts pursuant to an agreement with such trust instrumentality to pay rent or other amounts,* are sufficient to pay the principal of and interest on the Authority's bonds issued to finance *or refinance* such project, the Authority may agree that such trust instrumentality shall assume all responsibility for the acquisition, construction, operation, maintenance, and repair of the project and may further agree that when the principal of all such bonds of the Authority and the interest thereon have been paid in full or provision made therefor satisfactory to the Authority, the trust instrumentality may acquire the Authority's interest in such project without payment of additional consideration.

§ 2.1-234.23. 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, *including proceeds of the Authority's bonds,* made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this article. 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.

§ 2.1-234.25. Governing body of Authority.

The powers of the Authority shall be exercised by a governing body consisting of the members of the Authority acting as a board. The board shall elect ~~in each odd-numbered year~~ from their number ~~a chairman,~~ a vice-chairman, a treasurer and a secretary. In the absence of the chairman, the vice-chairman shall exercise the powers and duties thereof. The offices of secretary and treasurer may be combined. The board may elect such other officers from its own membership or from without as it deems appropriate.

Four members shall constitute a quorum of the board for the purpose of organizing the Authority and conducting the business thereof and for all other purposes, and all actions shall be taken by vote of a majority of the members of the Authority, unless in any case the bylaws shall require a larger number.

The board shall have full authority to manage the properties and business of the Authority, and to prescribe, amend, and repeal bylaws, rules, and regulations governing the manner in which the business of the Authority may be conducted, and the powers granted to it may be exercised and embodied. The board may assign to the Treasury Board or the State Treasurer such powers and duties as it may deem proper.

§ 2.1-234.27. Competition in award of contracts; contractors to give surety; terms of contracts.

If any project or any portion thereof or any improvement thereof shall be constructed, or furnished pursuant to a contract and the estimated cost thereof exceeds $10,000, such contract *with the Authority* shall be awarded to the lowest responsible bidder after advertisement for bids. The Authority may make rules and regulations for the submission of bids and the construction, furnishing, or improvement of any project or portion thereof *to be owned by the Authority, the Commonwealth or any agency, institution, or department thereof*. No contract shall be entered into *by the Authority* for construction, furnishing, or improvement of any project, or portion thereof, or for the purchase of materials, unless the contractor shall give an undertaking with a sufficient surety or sureties approved by the Authority, and in an amount fixed by the Authority in accordance with § 11-58, for the faithful performance of the contract; and such contract shall be accompanied by an additional bond for the protection of those who furnish labor and material or rental equipment for such amount and subject to the same terms and conditions as

established by the Authority in accordance with § 11-58. All construction contracts shall provide, among other things, that the person or corporation entering into such contract with the Authority will pay for all materials furnished, rental equipment used and services rendered for the performance of the contract, and that any person or corporation furnishing such materials, rental equipment or rendering such services may maintain an action to recover for the same against the obligor in the undertaking as though such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued. The additional bond shall be conditioned upon the prompt payment of actual equipment rentals and shall not be conditioned upon or guarantee payment of equipment rentals, all or any part of which, directly or indirectly, apply on the purchase price of such equipment under the terms of a bailment lease or conditional sales contract or by any other arrangement by which title to the equipment will be transferred to the contractor and the rentals form any part of the consideration.

Subject to the aforesaid, the Authority may, but without intending by this provision to limit any powers of such Authority, enter into and carry out such contracts, or establish or comply with such rules and regulations concerning labor and materials to rental equipment and other related matters in connection with any project, or portion thereof, as the Authority may deem desirable.

§ 53.1-82.3. Budgeting schedule for jail projects.

A. Any city or county or any combination of cities or counties requesting state financial assistance pursuant to §§ 53.1-80, 53.1-81 or § 53.1-82 shall, on or before March 1 biennially in the odd-numbered years, submit to the Governor, in a format prescribed by the Department of Corrections for such purpose, community corrections plans and specifications, including detailed cost estimates of any facility construction. On or before July 1 in the odd-numbered years, such localities shall also submit to the Governor, in a format prescribed for such purpose by the ~~Treasury~~ ~~Board~~ *Department of the Treasury*, the expected financing costs for any such facility construction in accordance with § 53.1-82.2. The Governor shall submit his recommendations for funding such projects as part of the budget bill on or before December 20 of the year immediately prior to the beginning of each regular session held in an even-numbered year of the General Assembly. Requests for appropriations of such funds shall be considered by the General Assembly only in even-numbered years.

B. In the event that the state share of reimbursable costs of the jail facility is estimated to be less than or equal to $1,000,000, such localities shall be exempt from submitting to the Governor, in a format prescribed for such purpose by the ~~Treasury~~ ~~Board~~ *Department of the Treasury*, the expected financing costs for any such facility construction in accordance with subsection A above, unless such localities seek reimbursement of financial costs associated with such facility construction.