

VIRGINIA ACTS OF ASSEMBLY -- 1999 SESSION

CHAPTER 897

An Act to amend and reenact §§ 62.1-199 and 62.1-203 of the Code of Virginia and to amend the Code of Virginia by adding in Title 5.1 a chapter numbered 2.1, consisting of sections numbered 5.1-30.1 through 5.1-30.10, relating to the Virginia Airports Revolving Fund.

[S 1203]

Approved March 29, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-199 and 62.1-203 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 5.1 a chapter numbered 2.1, consisting of sections numbered 5.1-30.1 through 5.1-30.10, as follows:

CHAPTER 2.1.

VIRGINIA AIRPORTS REVOLVING FUND.

§ 5.1-30.1. Definitions.

As used in this chapter, unless the context requires otherwise:

"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of Title 62.1.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, 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 sellers of such land, buildings or improvements; site preparation and development, including demolition or removal of existing structures; construction and reconstruction; labor; materials, machinery and equipment; the reasonable costs of financing incurred by the local government in the course of the development of the project; carrying charges incurred before placing the project in service; interest on funds borrowed to finance the project to a date subsequent to the estimated date the project is to be placed in service; necessary expenses incurred in connection with placing the project in service; the funding of accounts and reserves which the Authority may require; and the cost of other items which the Authority determines to be reasonable and necessary.

"Fund" means the Virginia Airports Revolving Fund created by this chapter.

"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 all or any part of an airport as defined in § 5.1-1 and may consist of or include any or all facilities related to the needs or convenience of passengers, shipping companies, and airlines, together with any or all buildings or other structures, improvements, additions, extensions, replacements, machinery or equipment, and any or all appurtenances, lands, rights in land, aviation rights, water rights, rights-of-way, franchises, furnishings, landscaping, utilities, approaches, roadways, or other facilities necessary or desirable in connection therewith or incidental thereto.

§ 5.1-30.2. Creation and management of Virginia Airports Revolving Fund.

There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Airports Revolving Fund," sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it to local governments, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private, including without limitation any federal grants, awards or other forms of assistance received by the Commonwealth that are eligible for deposit therein under federal law. The Authority shall administer and manage the Fund, and establish the interest rates and repayment terms of such loans as provided in this chapter, in accordance with a memorandum of agreement with the Board. The Board shall direct the distribution of loans from the Fund to particular local governments. Consistent with this chapter, the Board shall, after consultation with all interested parties, develop a guidance document governing project eligibility and project priority criteria. In order to carry out the administration and management of the Fund, the Authority, in consultation with the Board, is granted the power to employ officers, employees, agents, advisers and consultants, including, without limitation, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund and a reasonable fee to be

approved by the Board for its management services.

§ 5.1-30.3. Deposit of money; expenditures; investments.

All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities which are considered lawful investments for public funds under the laws of the Commonwealth.

§ 5.1-30.4. Collection of money due Fund.

The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan to a local government, including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

§ 5.1-30.5. Loans to local governments.

Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments to finance or refinance the cost of any project. The local governments to which loans are to be made, the purposes of the loan, and the amount of each such loan, shall be designated in writing by the Board to the Authority following consultation with the Authority. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

Except as otherwise provided in this chapter, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant perform any of the following:

1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund to the local government; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or in part, for future increases in rents, rates, fees, or charges.

2. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or for the operation, maintenance, repair, or replacement of the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable.

3. Create and maintain other special funds as required by the Authority.

4. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:

- a. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

- b. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities, or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities, and systems to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;

- c. The maintenance, replacement, renewal, and repair of the project; and

- d. The procurement of casualty and liability insurance.

5. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts or his legally authorized representatives. The Authority may request additional reviews at any time

during the term of the loan. In addition, anyone receiving a report in accordance with § 5.1-30.9 may request an additional review as set forth in this section.

All local governments borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Fund.

Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.

§ 5.1-30.6. Pledge of loans to secure bonds of Authority.

The Authority is empowered at any time and from time to time to pledge, assign or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned or transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned or transferred until no longer required for such purpose by the terms of the pledge, assignment or transfer.

§ 5.1-30.7. Sale of loans.

The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the Fund.

§ 5.1-30.8. Powers of the Authority.

The Authority is authorized to do any act necessary or convenient to the exercise of the powers granted in this chapter or reasonably implied thereby.

§ 5.1-30.9. Report to the General Assembly and Governor.

The Board, in conjunction with the Authority, shall report annually to the General Assembly and the Governor on all loans made for the Fund.

§ 5.1-30.10. Liberal construction of chapter.

The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special or local, the provisions of this chapter shall be controlling.

§ 62.1-199. Definitions.

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

"Authority" means the Virginia Resources Authority created by this chapter.

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

"Bonds" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, lease and sale-leaseback transactions or any other evidences of indebtedness of the Authority.

"Capital Reserve Fund" means the reserve fund created and established by the Authority in accordance with § 62.1-215.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, 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 sellers of such land, buildings or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred by the local government in the course of the development of the project, including the cost of any credit enhancements, carrying charges incurred before placing the project in service, interest on local obligations issued to finance the project to a date subsequent to the estimated date the project is to be placed in service, necessary expenses incurred in connection with placing the project in service, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary. It also includes the amount of any contribution, grant or aid which a local government may make or

give to any adjoining state, the District of Columbia or any department, agency or instrumentality thereof to pay the costs incident and necessary to the accomplishment of any project, including, without limitation, the items set forth above.

"Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees and other forms of collateral or security.

"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 and laws of the Commonwealth or any combination of any two or more of the foregoing.

"Local obligations" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, leases or any other evidences of indebtedness of a local government.

"Minimum capital reserve fund requirement" means, as of any particular date of computation, the amount of money designated as the minimum capital reserve fund requirement which may be established in the resolution of the Authority authorizing the issuance of, or the trust indenture securing, any outstanding issue of bonds or credit enhancement.

"Project" means any water supply or wastewater treatment facility including a facility for receiving and stabilizing septage or a soil drainage management facility and any solid waste treatment, disposal, or management facility, recycling facility, or resource recovery facility located or to be located in the Commonwealth, the District of Columbia or any adjoining state, all or part of which facility serves or is to serve any local government. The term includes, without limitation, water supply and intake facilities; water treatment and filtration facilities; water storage facilities; water distribution facilities; sewage and wastewater (including surface and ground water) collection, treatment and disposal facilities; drainage facilities and projects; solid waste treatment, disposal or management facilities; recycling facilities; resource recovery facilities; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto. The term also means any heavy rail transportation facilities operated by a transportation district, created under the Transportation District Act of 1964 (§ 15.2-4500 et seq.), which operates heavy rail freight service, including rolling stock, barge loading facilities, and any related marine or rail equipment. *In addition, the term means any project as defined in § 5.1-30.1.*

§ 62.1-203. Powers of Authority.

The Authority is granted all powers necessary or appropriate to carry out and to effectuate its purposes, including the following:

1. To have perpetual succession as a public body corporate and as a political subdivision of the Commonwealth;
2. To adopt, amend and repeal bylaws, and rules and regulations, not inconsistent with this chapter for the administration and regulation of its affairs and to carry into effect the powers and purposes of the Authority and the conduct of its business;
3. To sue and be sued in its own name;
4. To have an official seal and alter it at will although the failure to affix this seal shall not affect the validity of any instrument executed on behalf of the Authority;
5. To maintain an office at any place within the Commonwealth which it designates;
6. To make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;
7. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its properties and assets;
8. To employ officers, employees, agents, advisers and consultants, including without limitations, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality;
9. To procure insurance, in amounts and from insurers of its choice, or provide self-insurance, against any loss, cost, or expense in connection with its property, assets or activities, including insurance or self-insurance against liability for its acts or the acts of its directors, employees or agents and for the indemnification of the members of its Board of Directors and its employees and agents;
10. To procure credit enhancements from any public or private entities, including any department, agency or instrumentality of the United States of America or the Commonwealth, for the payment of any bonds issued by the Authority, including the power to pay premiums or fees on any such credit enhancements;
11. To receive and accept from any source aid, grants and 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 to the conditions upon which the aid, grants or contributions are made;
12. To enter into agreements with any department, agency or instrumentality of the United States of America or, the Commonwealth, the District of Columbia or any adjoining state for the purpose of planning, regulating and providing for the financing of any projects;
13. To collect, or to authorize the trustee under any trust indenture securing any bonds or any other fiduciary to collect, amounts due under any local obligations owned or credit enhanced by the Authority, including taking the action required by § 15.2-2659 or § 62.1-217 to obtain payment of any sums in

default;

14. To enter into contracts or agreements for the servicing and processing of local obligations owned by the Authority;

15. To invest or reinvest its funds as provided in this chapter or permitted by applicable law;

16. Unless restricted under any agreement with holders of bonds, to consent to any modification with respect to the rate of interest, time and payment of any installment of principal or interest, or any other term of any local obligations owned by the Authority;

17. To establish and revise, amend and repeal, and to charge and collect, fees and charges in connection with any activities or services of the Authority;

18. To do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this chapter; and

19. To pledge as security for the payment of any or all bonds of the Authority, all or any part of the Capital Reserve Fund transferred to a trustee for such purpose from the Water Facilities Revolving Fund pursuant to § 62.1-231 or from the Water Supply Revolving Fund pursuant to § 62.1-240 or from the Virginia Solid Waste or Recycling Revolving Fund pursuant to § 62.1-241.9 *or from the Virginia Airports Revolving Fund pursuant to § 5.1-30.6.*