

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 649

An Act to amend and reenact §§ 56-575.1, 62.1-198, and 62.1-199 of the Code of Virginia, relating to the Virginia Public-Private Education Facilities and Infrastructure Act and the Virginia Resources Authority; provision of wireless broadband services.

[H 2381]

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-575.1, 62.1-198, and 62.1-199 of the Code of Virginia are amended and reenacted as follows:

§ 56-575.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 56-575.9.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

"Lease payment" means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

"Material default" means any default by the private entity in the performance of its duties under subsection E of § 56-575.8 that jeopardizes adequate service to the public from a qualifying project.

"Operate" means to finance, maintain, improve, equip, modify, repair, or operate.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity, or other business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

"Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; ~~or~~ (vii) *any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas;* or (viii) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

"Responsible public entity" means a public entity that has the power to develop or operate the applicable qualifying project.

"Revenues" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service contract" means a contract entered into between a public entity and the private entity pursuant to § 56-575.5.

"Service payments" means payments to the private entity of a qualifying project pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"User fees" mean the rates, fees or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to § 56-575.9.

§ 62.1-198. Legislative findings and purposes.

The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for water supply; wastewater treatment facilities; drainage facilities; solid waste treatment, disposal and management facilities; recycling facilities; resource recovery facilities; professional sports facilities; certain heavy rail transportation facilities; public safety facilities; airport facilities; the remediation of brownfields and contaminated properties; the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail; and the location or retention of federal facilities in the Commonwealth and the support of the transition of former federal facilities from use by the federal government to other uses. This need can be alleviated in part through the creation of a resources authority. Its purpose is to encourage the investment of both public and private funds and to make loans, grants, and credit enhancements available to local governments to finance water and sewer projects, drainage projects, solid waste treatment, disposal and management projects, recycling projects, professional sports facilities, resource recovery projects, public safety facilities, airport facilities, the remediation of brownfields and contaminated properties, the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail, *technology and infrastructure for wireless broadband services*, and federal facilities or former federal facilities. The General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity of the people of the Commonwealth.

§ 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.

"Federal facility" means any building or infrastructure used or to be used by the federal government, including any building or infrastructure located on lands owned by the federal government.

"Federal government" means the United States of America, or any department, agency or instrumentality, corporate or otherwise, of the United States of America.

"Former federal facility" means any federal facility formerly used by the federal government or in transition from use by the federal government to a facility all or part of which is to serve any local government.

"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 (i) 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, federal facility or former federal 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; and (ii) any federal facility located or to be located in the Commonwealth, provided that both the Board of Directors of the Authority and the governing body of the local government receiving the benefit of the loan, grant, or credit enhancement from the Authority make a determination or finding to be embodied in a resolution or ordinance that the undertaking and financing of such facility is necessary for the location or retention of such facility and the related use by the federal government in the Commonwealth. 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. The term also means, without limitation, the design and construction of roads, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail. In addition, the term means any project as defined in § 5.1-30.1 and any professional sports facility, including a major league baseball stadium as defined in § 15.2-5800, provided that the specific professional sports facility projects have been designated by the General Assembly as eligible for assistance from the Authority. *The term also means any equipment, facilities, and technology infrastructure designed to provide wireless broadband service.* The term also means facilities supporting, related to, or otherwise used for public safety including, but not limited to, law-enforcement training facilities and emergency response, fire, rescue and police stations. The term also means the remediation, redevelopment and rehabilitation of property contaminated by the release of hazardous substances, hazardous wastes, solid wastes or petroleum where such remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department of Environmental Quality, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived.