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## HOUSE BILL NO. 745

Offered January 22, 1996

*A BILL to amend and reenact §§ 15.1-1374 and 15.1-1379 of the Code of Virginia, relating to industrial development authorities.*

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Patron—Howell

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Referred to Committee on Counties, Cities and Towns

**Be it enacted by the General Assembly of Virginia:**

- 1. That §§ 15.1-1374 and 15.1-1379 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) roadways which promote access to commercial, industrial or recreational facilities, and which may be financed by the authority pursuant to a contract or contracts with any person or municipality, which contract may provide that the roadway shall be owned and maintained by the Department of Transportation or by a municipality.* 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 or installed

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60 or any expenditure made, including the reconstruction, modernization or modification of any existing  
61 building, improvement, addition, extension, replacement, machinery or equipment, and which is designed  
62 to further the control or abatement of land, sewer, water, air, noise or general environmental pollution  
63 derived from the operation of any industrial or medical facility. Any facility may be constructed on or  
64 installed in or upon lands, structures, rights-of-way, easements, air rights, franchises or other property  
65 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 ( 1 ) "Taxable authority facilities" means any private or commercial golf course, country club,  
103 massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet  
104 sports facility, suntan facility, race track, single or multi-family residence, or a facility the primary  
105 purpose of which is one of the following: (1) retail food and beverage services (excluding grocery  
106 stores), (2) automobile sales and service, (3) the provision of recreation or entertainment, or (4) banks,  
107 savings and loan institutions or mortgage loan companies.

108 § 15.1-1379. Issuance of bonds, notes and other obligations of authority.

109 A. The authority shall have the power to issue bonds from time to time in its discretion, for any of  
110 its purposes, including the payment of all or any part of the cost of authority facilities and including the  
111 payment or retirement of bonds previously issued by it. All bonds issued by the authority shall be  
112 payable solely from the revenues and receipts derived from the leasing or sale by the authority of its  
113 facilities or any part thereof or from payments received by the authority in connection with its loans *or*  
114 *contracts*, and the authority may issue such types of bonds as it may determine, including (without  
115 limiting the generality of the foregoing) bonds payable, both as to principal and interest: (i) from its  
116 revenues and receipts generally; (ii) exclusively from the revenues and receipts of a particular facility,  
117 *contract* or loan; or (iii) exclusively from the revenues and receipts of certain designated facilities or  
118 loans whether or not they are financed in whole or in part from the proceeds of such bonds. Unless  
119 otherwise provided in the proceeding authorizing the issuance of the bonds, or in the trust indenture  
120 securing the same, all bonds shall be payable solely and exclusively from the revenues and receipts of a  
121 particular facility, *contract* or loan. Bonds may be executed and delivered by the authority at any time

and from time to time, may be in such form and denominations and of such terms and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding forty years from the date thereof, may be payable at such place or places whether within or without the Commonwealth, may bear interest at such rate or rates, may be payable at such time or times and at such place or places, may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided and specified by the board of directors in authorizing each particular bond issue. If deemed advisable by the board of directors, there may be retained in the proceedings under which any bonds of the authority are authorized to be issued an option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds of the authority may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors of the authority to be most advantageous, and the authority may pay all costs, premiums and commissions which its board of directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facility or any other facility, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the authority at any time outstanding may from time to time be refunded by the authority by the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding an amount sufficient to refund the principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, premiums or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby, with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether or not the bonds proposed to be refunded shall be payable on the same date or on different dates or shall be due serially or otherwise.

B. All bonds shall be signed by the chairman or vice-chairman of the authority or shall bear his facsimile signature, and the corporate seal of the authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) or the assistant secretary (or assistant secretary-treasurer) of the authority or shall bear his facsimile signature, and any coupons attached thereto shall bear the facsimile signature of said chairman. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be an officer before 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. When the signatures of both the chairman or the vice-chairman and the secretary (or the secretary-treasurer) or the assistant secretary (or the assistant secretary-treasurer) are facsimiles, the bonds must be authenticated by a corporate trustee or other authenticating agent approved by the authority.

C. If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, shall be less than the cost of the authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit and, unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture 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 of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements or enlargements of the authority facilities for which such bonds shall have been issued.

D. 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 other than those proceedings, conditions or things which are specifically required by this chapter; provided, however, that nothing contained in this chapter shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

**183** E. All bonds issued under the provisions of this chapter shall have and are hereby declared to have  
**184** all the qualities and incidents of and shall be and are hereby made negotiable instruments under the  
**185** Uniform Commercial Code of Virginia (§ 8.1-101 et seq.), subject only to provisions respecting  
**186** registration of the bonds.

**187** F. In addition to all other powers granted to the authority by this chapter, the authority is authorized  
**188** to provide for the issuance, from time to time of notes or other obligations of the authority for any of  
**189** its authorized purposes. All of the provisions of this chapter which relate to bonds or revenue bonds  
**190** shall apply to such notes or other obligations insofar as such provisions may be appropriate.