

# **INDUSTRIAL FACILITIES FINANCING**

**Report of the Commission to Study  
Industrial Facilities Financing**

**To**

**The Governor**

**And**

**The General Assembly of Virginia**



**SENATE DOCUMENT NO. 24**

**COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supply**

**Richmond**

**1975**

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SECRETARY

**REPORT OF THE  
INDUSTRIAL FACILITIES FINANCING COMMISSION**

Richmond, Virginia  
December, 1974

**I. INTRODUCTION**

The Industrial Facilities Financing Study Commission was created by Senate Joint Resolution No. 69 of 1972 to ascertain the adequacy of industrial facilities financing within the Commonwealth. The Commission made its report to the Governor and the General Assembly of Virginia in 1973, recommending amendments to the Industrial Development and Revenue Bond Act and the continuation of the Commission to determine the need for the implementation of a mortgage guarantee program in the Commonwealth.

Senate Joint Resolution No. 5 of 1974 continued the Commission:

**SENATE JOINT RESOLUTION NO. 5**

Continuing the Industrial Facilities Financing Study Commission.

Whereas, the Industrial Facilities Financing Study Commission was created by the General Assembly in nineteen hundred and seventy-two to study the adequacy of industrial facilities financing programs in the Commonwealth; and

Whereas, the Commission has spent considerable time and effort in the study of all facets of industrial facilities financing and has recommended improvements in existing legislation; and

Whereas, the Commission determined through its extensive study that a mortgage guarantee program may have potential for supplementing existing programs in the Commonwealth, but that such a program should be studied further before recommending specific legislation; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That the Industrial Facilities Financing Commission be continued. The present members shall continue as the members of the Commission, provided that if any member be unwilling or unable to serve, or for any reason a vacancy occurs, his successor shall be appointed from the House of Delegates by the Speaker thereof or from the Senate by the Privileges and Election Committee thereof in turn as such vacancies occur. The Commission shall continue its overall study of industrial development financing in Virginia with particular emphasis on the Industrial Development and Revenue Bond Act and the need and feasibility of a guarantee program for

industrial financing, and with a review of the enabling legislation of the Virginia Industrial Development Corporation.

Members of the Commission shall receive no compensation for their services but shall be reimbursed for the actual expenses incurred in the performance of their duties.

All agencies, officers and employees of the Commonwealth and all of its political subdivisions shall cooperate with and assist the Commission in its work as required.

For the purpose of this study, there is hereby appropriated from the contingent fund of the General Assembly the sum of twenty-five thousand dollars.

The Commission shall complete its work and report to the Governor and General Assembly no later than September one, nineteen hundred seventy-four.

Pursuant to the directive contained in the resolution, the membership continued as follows: Delegate George E. Allen, Jr., Richmond; Dr. Ronald E. Carrier, Blacksburg; Delegate Alan A. Diamonstein, Newport News; Milton L. Drewer, Jr., Arlington; Delegate Raymond R. Guest, Jr., Front Royal; Senator Omer L. Hirst, Annandale; Senator William B. Hopkins, Roanoke; William C. Rigsby, Richmond; Dr. Martin Schnitzer, Blacksburg. Senator H. Dunlop Dawburn and Delegate John A. Melnick resigned from the Commission, Delegate James B. Murray, Earlsyville, being appointed to replace Mr. Melnick. Senator Hirst and Mr. Rigsby continued as Chairman and Vice-Chairman, respectively.

Consultation and advice from the banking community was provided by an Advisory Committee composed of John B. Bernhardt, Executive Vice President, Virginia National Bank; J. B. Bourne, Jr., President, Franklin Federal Savings and Loan Association of Richmond; Warner N. Dalhouse, Executive Vice President, First National Exchange Bank of Virginia; Shirley T. Holland, Chairman of the Board, Farmers Bank; C. Coleman McGehee, Chairman and Chief Executive Officer, First and Merchants National Bank; Herbert C. Moseley, Vice Chairman of the Board, Bank of Virginia-Central; James C. Wheat, Jr., Chairman of the Board, Wheat First Securities, Inc.; Richard W. Wiltshire, President, Home Beneficial Life Insurance Company.

Mr. Adolph T. Schmidt was appointed consultant to the Commission on September 18, 1974, his duties being to analyze industrial facilities financing programs in use by the various states and to make a comparison of such plans, to review the programs in use in the Commonwealth and analyze Virginia's competitive position, and to make recommendations to the Commission of the best alternative to fill any gap in Virginia's financing program. J. Frank Alspaugh, Director, Division of Industrial Development, served on the Commission as an ex officio member.

The Division of Legislative Services made staff and facilities available, E. M. Miller, Jr. and Jill M. Pope serving as staff attorney

and research associate, respectively.

The Commission held numerous meetings and conducted a public hearing to obtain input from experts in the industrial facilities financing field.

## II. BACKGROUND

The Report of the Commission in 1973 emphasized the importance of industry to the Commonwealth and Virginia's many attractions for businesses.

Situated at the geographic economic center of the Eastern seaboard, Virginia has many favorable inducements for industrial facilities growth: natural harbor facilities, natural resource availability, extensive labor supply, competitive wage rates, pleasant economic and social climate, and a well-developed transportation network.

In 1973 it was determined that Virginia was one of the fifteen most rapidly growing states in the United States in population with its work force increasing by more than 40,000 persons annually. Industrial growth in the Commonwealth is essential in maintaining employment for its ever increasing work force, especially with a national unemployment rate of 6.5%.

Many factors are considered in each industrial location decision - land costs, labor characteristics, geographic and topographical considerations, state and local taxation policies and a variety of other factors. A well-balanced financing program is an important factor and can be the final element for a decision to locate in the Commonwealth.

Virginia's current financing program employs four distinctive financing plans. Federal plans include those of Small Business Administration loans and Economic Development Administration loans. The SBA was created for making loans, supplying information and aiding small business companies. The loans can be made for a variety of purposes and are normally secured by deeds of trust, other collateral and restrictions being optional. Local or state development corporations may obtain "502 section loans" for a specific concern with the SBA supplying 80% of the cost of a new facility and the development corporation supplying 20%. The SBA has also authorized the creation of Small Business Investment Companies. It was hoped that SBIC's would be organized on the local level to help capital-starved companies, making this an important tool in the overall financing plans of local groups. However, the minimum capitalization level was found to be too limited to make a significant impact at the local financing level. Thus, the SBIC's became public, with funding provided by the sale of stock, and sought applicants nationwide rather than at the local level.

The Area Redevelopment Administration was replaced in name by the Economic Development Administration. The Economic Development Administration, which has only been used twice in

Virginia, was created to aid distressed areas with high unemployment. A formula based on unemployment statistics is used to determine eligibility for the various types of assistance provided. In the area of industrial facilities aid, the Economic Development Administration lends funds in conjunction with other lenders such as banks, insurance companies, and local development corporations for the purpose of financing the construction of industrial plants and the purchase of equipment and machinery. The Agency will fund up to 80% of the cost with a first mortgage and up to 65% on a second mortgage.

The Small Business Administration loans and Economic Development Administration loans are both viable financing plans but require excessive amounts of paper work and always take a great length of time to obtain approval. These factors can be a deterrent to an industry as time is of the essence once a location has been selected. Also, some of the smaller firms would rather not become involved with federal government funding.

A third financing tool used in the Commonwealth is that of the Virginia Industrial Development Corporation. The Virginia Industrial Development Corporation was chartered by the General Assembly by a special act in 1960 as a privately capitalized and financed lending agency. Capital is provided through the sale of stocks purchased by Virginia chartered corporations, financial institutions and individuals. Members of the corporation-banks, insurance companies, savings and loan associations - provide loanable funds. Applications for loans are usually referred by local development corporations, banks or other conventional lenders. Loans are made only to those businesses unable to obtain financing from conventional lenders. Loans are made on buildings, machinery and land, never for working capital, refunding debt or purchasing an existing business or unimproved real estate (unless plans for future development are under contract).

The "Virginia Industrial Development and Revenue Bond Act" was enacted in 1966 to provide industrial revenue bond financing for facilities in the Commonwealth. This tool is considered Virginia's most important financing vehicle with its major purpose being to offer industry 100 percent financing at a lower interest cost. Limits of one and five million dollars are placed on the issuance of the bonds, pollution control facilities being excepted (Internal Revenue Code § 103(6)(D) and (F)). Local industrial revenue bond authorities can provide financing for one hundred percent of the combined cost of land, building, equipment and machinery. Small and medium size businesses with limited financial strength may need to look for alternative means of financing since it takes a company with a substantial amount of financial strength to market industrial revenue bonds. Market conditions dictate whether a facility can be financed by industrial revenue bonds. Such bonds are underwritten by investment bankers in the same manner as municipal bonds. The credit of the lessee is the basis for interest rates.

Business firms have been attracted to the industrial revenue bonds by the 100 percent financing and the cost reducing features.

The cost of capital to an industry can be lowered by one to two percentage points. The facility is carried on the company's books for tax purposes as owned so all interest costs, depreciation, maintenance and taxes may be charged off (Internal Revenue Code, § 103(e)).

Other types of financing plans utilized by other states include direct state loans and mortgage guarantee programs—direct state loans not being constitutionally permissible in the Commonwealth.

### III. RECOMMENDATIONS

A. The Commission recommends the following changes in the Virginia Industrial Development and Revenue Bond Act:

1. To prohibit an authority from approving a facility to be located outside their jurisdiction without first obtaining the approval of the authority in the locality where the facility is to be located or if the locality has no authority, the local governing body of such locality;

2. To prohibit the financing of a facility primarily engaged in the distribution of goods at the retail level;

3. To permit the financing of regional or national headquarters or operations centers of companies, corporations or persons having parent or subsidiary offices or plants located in two or more states outside the Commonwealth;

4. To prohibit revenues from bond levies to be used for working capital by facilities utilizing revenue bonds.

B. That the General Assembly authorize the continuation of the Commission for an additional year to consider such industrial financing plans which may, under future economic conditions, be beneficial to the Commonwealth.

### IV. RATIONALE FOR RECOMMENDATIONS

Industrial revenue bonds have been used to finance industrial and nonindustrial facilities, but professionals in the industrial development field oppose the broadening of the use to cover some types of business activities. The reasoning for this position has been that the bonds were designed primarily for use in financing new plants and expansion of existing plants, not for financing intrajurisdictional activities serving a local narrow market. It was also felt that if the bonds were expanded to all areas of commercial activities, further federal controls or even outright elimination of the tax exempt status might occur. The Commission concluded that language clarifications of the Revenue Bond Act are needed to make the Act more effective and to eliminate possible areas of misuse.

The "within without" clause amendment was designed to prevent an authority in a locality from financing a facility in another municipality without the approval of such municipality's authority or its governing body. In the recent past problems had arisen under

the present language with authorities in one area financing facilities in another area which had previously turned down the facility. The Commission felt that this amendment would prevent any such problems from occurring in the future.

Other changes in the Industrial Development and Revenue Bond Act prohibit the financing of facilities which are primarily engaged in the distribution of goods at the retail level. The Commission was of the opinion that such an amendment was necessary since the legislative intent at the original time of passage of the Industrial Development and Revenue Bond Act was not to provide financing for retail facilities but for industrial, manufacturing and production facilities. The Commission further felt that if retail establishments were allowed to be financed by the Act, the tax exempt status of the bonds might be endangered.

The Commission favors the inclusion of regional or national multi-state headquarters or operations centers in the Act. Representatives of the Division of Industrial Development indicated that sufficient demand for such facilities existed; instances were cited where companies located in surrounding states rather than Virginia due to the lack of an applicable financing tool (Maryland Code 41 § 266-0, North Carolina Code § 123A-3, Pennsylvania Code 73 § 373).

Federal regulations allow for the financing of a portion of the working capital of a company by revenue bonds. The Commission feels that "working capital" (the capital of a business other than that invested in long-term assets) should not be included in the Act. The Commission feels that a company with enough financial strength to market revenue bonds would not need to have working capital provided through financing.

The Commission recommends the deletion of "enterprise" as a technical clarification of the language of the Act. The word "enterprise" is used only once in the Act and language from this definition was incorporated in the definition of "facilities".

The Commission has given much consideration to the desirability and feasibility of enacting legislation to establish another financing program in the Commonwealth - the mortgage guarantee plan.

In 1957 Maine enacted legislation establishing the first State Authority to guarantee payments on first mortgages for industrial facility financing. Presently, a total of fourteen states have enacted the mortgage guarantee plan.

Under this plan, generally, the New York and North Dakota plans excluded, a state guarantees the first mortgage to a maximum of 90% of the total cost of the project. Usually the remaining 10% is financed by a local nonprofit corporation which owns and leases the building for a term sufficient to amortize the first mortgage loan. The tenant may, customarily, make arrangements to purchase the building at a nominal cost at the end of the loan period. Within this broad plan, there are variations in the procedure. For instance, New

Hampshire supplemented their existing Industrial Park Authority with the guarantee plan and limits their guarantee to a maximum of 50% of the total project cost. Arkansas' guarantee is applied to revenue bonds with a maximum of \$500,000 being guaranteed.

As indicated previously the larger, financially strong industries may obtain financing through the use of industrial revenue bonds, and the smaller, undercapitalized firms, through SBA loans, Economic Development Administration loans or Virginia Industrial Development Corporation loans. The medium size firms that do not qualify for revenue bonds and are unwilling to accept a federal program have the use of the Virginia Industrial Development Corporation for financing assistance.

Of the neighboring states of Kentucky, Maryland, North Carolina, Pennsylvania, Tennessee, and West Virginia, North Carolina is the only state not having a mortgage guarantee program, although the Tennessee legislation is currently being tested in court. This would seem to put Virginia in a competitive disadvantage as far as financing plans.

However, the Commission feels the enactment of a mortgage guarantee plan in the Commonwealth would be untimely. The Commission feels that no clearly determined need for the program exists at the present time.

In addition, the economic situation at present does not lend itself to the use of a mortgage guarantee plan. As of November 21, 1974, approximately 3,500 to 4,000 employees in the Commonwealth had been laid off. The home construction rate is approximately one-half of the 1973 rate. Several manufacturing plants have closed completely and delays have occurred in the opening and expanding of facilities. Industrial development activity is down from the 1973 rate, although it should be noted that 1973 was a record year in the Commonwealth for new and expanding manufacturing jobs. However, Virginia's economic strength has been indicated by other factors - in September, Virginia's unemployment rate was 4% compared to the national rate of 5.7%; estimated average manufacturing employment for 1974 is expected to be the same as for 1973; industrial developers are working with approximately the same number of manufacturing prospects as under normal economic conditions.

In light of the situation, the Commission recommends that the mortgage guarantee program and other financing plans should continue to be studied in order that the best financing plans may be utilized in the future as the changing economic conditions dictate.

## V. CONCLUSION

The Commission is extremely aware of the importance of an overall practical, viable industrial facilities financing plan for the Commonwealth. The Commission desires that serious consideration be given to its recommendations designed to clarify and enhance the existing industrial facilities financing program necessary for maintaining and attracting industry in the State.

Respectfully submitted,  
Omer L. Hirst, Chairman  
William C. Rigsby, Vice-Chairman  
George E. Allen, Jr.  
Ronald E. Carrier  
Alan A. Diamonstein  
Milton L. Drewer, Jr.  
Raymond R. Guest, Jr.  
William B. Hopkins  
James B. Murray  
Martin Schnitzer

A BILL to amend and reenact §§ 15.1-1374 and 15.1-1375, as amended, of the Code of Virginia, relating to the Industrial Development and Revenue Bond Act.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-1374 and 15.1-1375, as amended, 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” shall mean 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” shall mean 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” shall mean the board or body in which the general legislative powers of the municipality are vested.

(d) “Authority facilities” or “facilities” shall mean any or all medical (including, but not limited to, office and treatment facilities), pollution control and industrial facilities, ~~located within or without or partly within or without the municipality creating the authority,~~ now existing or hereafter acquired, constructed or installed by or for the authority for lease or sale by the authority pursuant to the terms of this chapter. *Such facilities may be located within or without or partly within or without the county, city, or town creating the authority, including facilities partly within and partly without the Commonwealth; provided, however, that no such facility shall be located entirely without such municipality unless approved by the authority created by the county, city or town in which such facility is to be located, and if there is none, by its governing body.*

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. *An industrial facility shall include any facility to be used principally for manufacturing, processing, assembling, storing of manufactured commodities, warehousing of goods and wares for distribution to multiple outlets and research and development or scientific laboratories, including, but not limited to, the practice of medicine and all other activities related thereto or for such other businesses as will be in the furtherance of the public purposes of this chapter. An*

*industrial facility shall also include any facility to be used exclusively as a regional or national headquarters or operations center; provided, however, that such facility may include such additional space as may be reasonably necessary for expansion. As used in this chapter (i) "regional" shall mean having parent or subsidiary offices or plants located in two or more states outside the Commonwealth; (ii) "operations center" shall mean the physical plant housing a computer, its peripherals, offices and space for other supporting functions; and (iii) "storing and warehousing" shall mean the safekeeping of goods to be delivered in the same condition as when received, where the safekeeping is the sole object of deposit and not the consumption or sale. A pollution control facility shall include any facility acquired, constructed or installed or any expenditure made, including the reconstruction, modernization or modification of any existing building, improvement, addition, extension, replacement, machinery or equipment, and which is designed to further the control or abatement of land, sewer, water, air, noise or general environmental pollution derived from the operation of any industrial or medical facility. Any facility may be constructed on or installed in or upon lands, structures, rights-of-way, easements, air rights, franchises or other property rights or interests whether owned by the authority or others.*

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

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

(g) "Revenues" shall mean any or all fees, rates, rentals and receipts collected by, payable to or otherwise derived by the authority from, and all other moneys and income of whatsoever kind or character collected by, payable to or otherwise derived by

the authority in connection with the ownership, leasing or sale of the authority facilities.

(h) "Commonwealth" shall mean the State of Virginia.

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

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

§ 15.1-1375. Purpose of chapter.—It is the intent of the legislature by the passage of this chapter to authorize the creation of industrial development authorities by the several municipalities in this Commonwealth so that such authorities may acquire, own, lease, and dispose of properties to the end that such authorities may be able to promote industry *and health* and develop trade by inducing manufacturing, industrial ; governmental and commercial enterprises medical facilities to locate in or remain in this Commonwealth and further the use of its agricultural products and natural resources, and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall in all respects be exercised for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such manufacturing, industrial or commercial enterprise.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to pollution control facilities to the end that such authorities may protect and promote the health of the inhabitants of the Commonwealth and the conservation, protection and improvement of its natural resources by exercising such powers for the control or abatement of land, sewer, water, air, noise and general environmental pollution derived from the operation of any industrial or medical facility and to vest such authorities with all powers that may be necessary to enable them to accomplish such purpose, which powers shall in all respects be exercised for the benefit of the inhabitants of the Commonwealth for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity.

This chapter shall be liberally construed in conformity with these intentions.

## **SENATE JOINT RESOLUTION NO.....**

**Continuing the Industrial Facilities Financing Study Commission.**

**WHEREAS, the Industrial Facilities Financing Study Commission was created by Senate Joint Resolution No. 69 in nineteen hundred seventy-two to study the adequacy of industrial facilities financing programs in the Commonwealth; and**

**WHEREAS, the Commission was continued in nineteen hundred seventy-four pursuant to the directive of Senate Joint Resolution No. 5 to examine the Industrial Development and Revenue Bond Act and to determine the need for a guarantee program for industrial financing; and**

**WHEREAS, after extensive study the Commission determined that there was no present need for the enactment of legislation establishing a mortgage guarantee loan program for industrial facilities financing but that in light of present economic conditions such a program and all other types of industrial financing programs should continue to be studied in order that the most efficient and effective financing plans may be utilized in the future as such changing economic conditions may dictate; now, therefore, be it**

**RESOLVED by the Senate, the House of Delegates concurring, That the Industrial Facilities Financing Study Commission be continued to study possible additional programs for industrial financing and alternatives to existing programs, in order that the Commonwealth may continue to be competitive with surrounding states in attracting desirable industry.**

**The present members shall continue as the members of the Commission, provided that if any member be unwilling or unable to serve, or for any reason a vacancy occurs, his successor shall be appointed as in the manner of the original appointment.**

**Members of the Commission shall be reimbursed for their actual expenses incurred in the performance of their duties.**

**The balance of the funds appropriated to the Commission from the contingent fund of the General Assembly are hereby reappropriated to be expended for the purposes of the Commission.**

**The Commission shall complete its work and report to the Governor and the General Assembly no later than November one, nineteen hundred seventy-five.**

## **ADDENDUM**

Subsequent to the conclusion of the study conducted by the Commission but prior to the printing of their final report, the decision in LaFrance Cleaners and Laundry Corporation vs. Industrial Development Authority of the City of Richmond, Virginia was rendered by Judge Alex H. Sands, Jr. in the Circuit Court of the City of Richmond. Because of the potential impact the case may have on the future of the Industrial Development and Revenue Bond Act, an emergency meeting of the General Assembly members serving on the Commission was held. It was decided that the legislation approved by the Commission for introduction in the 1975 Session of the General Assembly should be modified to eliminate the defects of the "purpose" clause enumerated in the LaFrance decision.

Basically, the decision states that the purpose of the Act is

for the benefit of the inhabitants of the Commonwealth (1) for the increase of their commerce, and (2) for the promotion of their safety, health, welfare, convenience and prosperity.

The Court found that, since the provisions of this section (§ 15.1-1375) were written in the conjunctive and not in the disjunctive, all six conditions must be complied with before an Authority can act favorably on any particular project.

The ad hoc General Assembly group concluded that such an interpretation was not what was originally intended when the Act was adopted by the General Assembly in 1966 and that such an interpretation would be fatal to the present program of financing industrial facilities through revenue bonds and disastrous to industrial development in the Commonwealth.

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
FOR HOUSE BILL NO. 1195**

**House Bill No. 1195**

A BILL to amend and reenact §§ 15.1-1374 and 15.1-1375, as amended, of the Code of Virginia, relating to the Industrial Development and Revenue Bond Act.

Be it enacted by the General Assembly of Virginia:

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(b) “Municipality” shall mean 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” shall mean the board or body in which the general legislative powers of the municipality are vested.

(d) “Authority facilities” or “facilities” shall mean any or all medical (including, but not limited to, office and treatment facilities), pollution control and industrial facilities, ~~located within or without or partly within or without the municipality creating the authority,~~ now existing or hereafter acquired, constructed or installed by or for the authority for lease or sale by the authority pursuant to the terms of this chapter. *Such facilities may be located within or without or partly within or without the county, city, or town creating the authority, including facilities partly within and partly without the Commonwealth; provided, however, that no such facility shall be located entirely without such municipality unless approved by the authority created by the county, city or town in which such facility is to be located, and if there is none, by its governing body.*

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. *An industrial facility shall include any facility intended to be used primarily for manufacturing, processing and assembling, including storage by manufacturers, processors, or assemblers, warehousing for distribution to multiple outlets, research and development, scientific laboratories, and other industrial purposes. An industrial facility shall also include any facility intended to be used exclusively as a national or multi-state headquarters or operations center; provided, however, that such facility may include such additional space as may be reasonably anticipated as necessary for expansion, whether or not such headquarters or operations center is related to other types of facilities permitted to be financed under this chapter. As used in this section, "operations center" shall mean the physical plant housing a computer, its peripherals, and offices and space for other supporting functions.* A pollution control facility shall include any facility acquired, constructed or installed or any expenditure made, including the reconstruction, modernization or modification of any existing building, improvement, addition, extension, replacement, machinery or equipment, and which is designed to further the control or abatement of land, sewer, water, air, noise or general environmental pollution derived from the operation of any industrial or medical facility. Any facility may be constructed on or installed in or upon lands, structures, rights-of-way, easements, air rights, franchises or other property rights or interests whether owned by the authority or others.

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

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

(g) "Revenues" shall mean any or all fees, rates, rentals and receipts collected by, payable to or otherwise derived by the authority from, and all other moneys and income of whatsoever kind or character collected by, payable to or otherwise derived by the authority in connection with the ownership, leasing or sale of the authority facilities.

(h) "Commonwealth" shall mean the State of Virginia.

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

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

§ 15.1-1375. Purpose of chapter.—It is the intent of the legislature by the passage of this chapter to authorize the creation of industrial development authorities by the several municipalities in this Commonwealth so that such authorities may acquire, own, lease, and dispose of properties to the end that such authorities may be able to promote industry and develop trade by inducing ~~manufacturing, industrial ; governmental and commercial enterprises to locate in or~~, remain in ~~or enlarge existing facilities in this Commonwealth and further the use of its agricultural products and natural resources, and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall in all respects be exercised for the benefit of the inhabitants of the Commonwealth, for either through the increase of their commerce, and for or through the promotion of their safety, health, welfare, convenience and or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such manufacturing, industrial or commercial enterprise.~~

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to pollution control facilities to the end that such authorities may protect and promote the health of the inhabitants of the Commonwealth and the conservation, protection and improvement of its natural resources by exercising such powers for the control or abatement of land, sewer, water, air, noise and general environmental pollution derived from the operation of any industrial or medical facility and to vest such authorities with all powers that may be necessary to enable them to accomplish such purpose, which powers shall in all respects be exercised for the benefit of the inhabitants of the Commonwealth ~~for either through the increase of their commerce, and for or through the promotion of their safety, health, welfare, convenience and or prosperity.~~

*It is the further intent of the legislature and shall be the policy of the Commonwealth*

*to grant to industrial development authorities the powers contained herein with respect to medical facilities to the end that such authorities may protect and promote the health of the inhabitants of the Commonwealth by assisting in the establishment, expansion and improvement of medical facilities, including, but not limited to, office and treatment facilities, in order to provide modern and efficient medical services to the inhabitants of the Commonwealth at the lowest possible cost and to vest such authorities with all powers that may be necessary to enable them to accomplish such purpose, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce or through the promotion of their safety, health, welfare, convenience or prosperity.*

*No authority shall itself be authorized to operate any industrial or medical enterprise.*

**This chapter shall be liberally construed in conformity with these intentions.**

**2. That an emergency exists and this act is in force from its passage.**

