

THE INDUSTRIAL DEVELOPMENT AND REVENUE BOND ACT

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 19

**COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
RICHMOND
1979**

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INDUSTRIAL DEVELOPMENT AND REVENUE BOND ACT

Report of the

Virginia Advisory Legislative Council

To

The Governor and the General Assembly of Virginia

Richmond, Virginia

January, 1979

To: Honorable John N. Dalton, Governor of Virginia

and

The General Assembly of Virginia

In 1977, the General Assembly requested the Virginia Advisory Legislative Council to study the Industrial Development and Revenue Bond Act and other revenue bond acts in the Commonwealth to determine whether such acts are fulfilling the purposes for which they were created, the need to combine such acts, the desirability of closer monitoring by the Commonwealth, of the issuance of securities under such acts, and the demand, if any, for new revenue bond acts.

SENATE JOINT RESOLUTION NO. 130

Requesting the Virginia Advisory legislative Council to conduct a study in regard to the Industrial Development and Revenue Bond Act and other revenue bond acts in the Commonwealth.

WHEREAS, the demands placed upon government, federal, State and local, for services require larger and larger amounts of governmental revenues that are raised by tax levies, license fees and similar charges; and

WHEREAS, the Commonwealth of Virginia has provided its localities, through various revenue bond acts, the ability to raise funds for various public uses in place of the more traditional sources of governmental revenue raised by taxes, license fees and similar charges; and

WHEREAS, the various acts are being amended each session of the General Assembly to expand the purposes for which such bonds may be issued; and

WHEREAS, such bonds normally do not carry the full faith and credit of the issuer and default on any such bonds would have a detrimental effect upon the securities of the Commonwealth and its political subdivisions; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the Virginia Advisory Legislative Council is requested to study the Industrial Development and Revenue Bond Act and other revenue bond acts presently enacted as law to determine whether such acts are fulfilling the purposes for which they were created, the need to combine such acts, the desirability of closer monitoring by the Commonwealth, of the issuance of securities under such acts and the demand, if any, for new revenue bond acts.

The Council shall conclude its study and make its report to the Governor and the General Assembly no later than October one, nineteen hundred seventy-eight.

The Council appointed Senator Peter K. Babalas of Norfolk, chairman, and Delegate Robert E. Washington of Norfolk was elected vice chairman of the committee that was to conduct the study. The following persons were appointed as members of the committee: John Bisessi of Norfolk; P. H. Cox, Jr. of Chesapeake (Chesapeake Industrial Development Authority); Senator James T. Edmunds of Kenbridge; Fred Glaize, III of Winchester (Industrial Development Authority of Frederick County); Delegate Jerry H. Geisler of Hillsville; Cecilia H. Herbert of Richmond (Assistant Vice President, Bank of Virginia); Robert L. Huffines, III of Richmond (Scott & Stringfellow, Inc.); Delegate Johnny S. Joannou of Portsmouth; Montgomery Knight, Jr. of Norfolk; Vincent J. Mastracco, Jr. of Norfolk (Canoies, Mastracco, Martone, Barr and Russell); C. Arthur Middleton, Jr. of Lynchburg (Executive Director, Greater Lynchburg Chamber of Commerce); Delegate Theodore V. Morrison, Jr. of Newport News; Delegate James B. Murray of Earlysville; John N. Parker of Virginia Beach (Attorney at Law); Charles W. Rector of Manassas (President, Rector Constuction); Charles R. Saul of Roanoke (Area Development Consultant, Appalachian Power Company); William F. Seymour of Richmond (Staff Supervisor, C & P Telephone Company); Hubert S. Taylor, Jr. of Richmond (Davenport & Co. of Virginia, Inc.); Frederick J. Wimble of Richmond (Financial Consultant). Alfred L. Shilling, Attorney at Law of McGuire, Woods and Battle, served as bond counsel to the committee.

At the first meeting, due to the size of the committee, it was decided that a subcommittee would conduct a preliminary study to facilitate the task of the full committee. Delegate Johnny S. Joannou was appointed chairman of this subcommittee with Mr. Cox, Ms. Herbert, Mr. Huffines, Mr. Mastracco and Mr. Parker appointed as members.

FINDINGS

The Industrial Development and Revenue Bond Act was enacted in 1966 when it was determined that Virginia was at a competitive disadvantage with its sister states in financing programs available for attracting industry into the state. A large number of Southern states had enacted industrial bonding acts and the General Assembly reacted hurriedly by enacting a statute, modeled after the statute then currently effective in Tennessee. Because of the hurried conditions surrounding the drafting of the proposal, the then non-existent staff review procedures and the ease of its passage through the legislative process, since the statute received the support of all segments of Virginia's economic community, the bill emerged with serious legal contradictions and questions. Since the act has not been critically reviewed in a legal context since its enactment, many of these legal problems have remained unsettled and have been left to bond counsel and the courts to deal with on an individual basis.

The major issues the Committee examined during its preliminary study of the Industrial Development & Revenue Bond Act surrounded the confusion which exists in interpreting the present act as drawn. The area most controversial involved the scope of facilities which may or may not be financed under present laws. Evidence was presented to the Committee that most bond counsel had different interpretations of the scope of the specific facilities which could be legally financed thereunder. An examination of the usage by various localities showed distinct activities involving the act. Some localities used the act only for heavy industrial enterprises while other localities permitted bonding for light industrial and commercial purposes. Since the ultimate decision on the scope of such bonds is necessitated by their interest income being exempted from the federal income tax, Section 103 of Internal Revenue Code became a focal point in the discussion of this issue.

Section 103 essentially defines those bonds (governmental, industrial development and others) which bear tax-exempt interest. Several specific exceptions are set forth in Section 103 as having no monetary limitation with regard to the specific size of the bond issue. (For a further discussion of Section 103, see Appendix 1). They are as follows:

- (A) residential real property for family units,
- (B) sports facilities,
- (C) convention or trade show facilities,

(D) airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly related to any of the foregoing,

(E) sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy or gas,

(F) air or water pollution control facilities, or

(G) facilities for the furnishing of water, if available on reasonable demand to members of the general public.

Some members considered the inclusion into the current Virginia Statute of all the activities listed above would be too broad and would take control of the act out of the hands of the State. Another argument raised was that any expansion of projects using Industrial Revenue Bonds would result in their wider use thereby driving up the cost of state and local borrowing. It was also argued that a wider use of these bonds would cost the State anticipated tax revenue since the interest on such bonds is also exempt from the State income tax.

It was found, however, that many of the projects enumerated in Section 103 have been financed through industrial revenue bonds under present interpretations of the Virginia statute and through bonding powers granted elsewhere in the Virginia Code. It is admittedly impossible to determine what repercussions the additional use of industrial bonds would have on the municipal bond market; however, it was clearly shown that the greater percentage of use in industrial bond financing occur for pollution control purposes. Since pollution control facilities are exempt activities and not subject to the \$10,000,000 limitation and the use of those funds by law cannot increase the capacity of productivity of the plant for which the proceeds are expended, it is felt that any reduction in bond useage should be targeted toward this area since no increase in commerce results directly through the large issues let for pollution purposes.

RECOMMENDATIONS

I. Inasmuch as the definition section of the Industrial Development and Revenue Bond Act defines the term "enterprise", but never uses the term within the body of the statute, the Council recommends that the term be restated as "commercial enterprise." In a like manner "commercial enterprise" should be inserted within those facilities enumerated in the definition of "authority facilities." It is clear from both the purpose clause of the act, bond counsel interpretation and court validation cases, that certain commercial enterprises may be financed under the present language of the act. As a matter of precaution and because of the clumsiness of the present language existing in the statute, bond counsel has often insisted on court validation proceedings to insure that a particular facility will withstand a court test of its applicability to the statute. This, of course, results in additional costs which decreases the utility of this valuable financing tool.

II. The Council further recommends that the specific exempt facilities set forth in Section 103 of the Internal Revenue Code, be incorporated by reference within the present framework of the Virginia act. This move would conform Virginia's act to include those facilities which under federal law have no monetary limitation as to the size of the issue. Conformity in this case would expand the base of the present structure to allow for additional uses of the act and would also have the additional advantage of automatically tracking federal activity and changes in the industrial development bond area.

III. Other suggested changes to the act are of a technical nature and are suggested primarily to clarify language without dramatically disturbing substantive content. The first of such changes separates industrial and commercial activities by defining the term "industry" or "industrial" apart from the term "commercial enterprise."

Included in this definition are facilities for the manufacture, processing, assembling, fabricating, storing or warehousing of products of agriculture, industry or mining. Also included are facilities for feeding, processing and storing livestock and marine products, for example, feed lots or fish canneries. A catchall definition is also included so that industrial facilities not otherwise specifically mentioned in the act may be financed if such activity involves the giving of new shapes, qualities or combinations to matter by the application of skill and labor. These changes are necessitated by

Virginia's broad range of industrial activities.

Another change permits directors and officers of authorities to continue in office after the expiration of their terms until their successors are appointed and qualified or elected. This would permit authorities to continue to operate during periods when the terms of their directors or officers may have otherwise lapsed. The amendment would also require each director to be a resident of the municipality with respect to which the authority is organized. An exception is made, however, to permit counties to appoint as directors of a county authority, any person residing within a city or town lying wholly within the boundaries of the county. In the event a director ceases to be a resident of the municipality, his office shall be vacated. These amendments codify, in part, an Attorney General's opinion which stated that directors of an authority must be residents of the municipality appointing them to the authority. The exception for county appointed directors follows a similar provision applicable to county officials.

It is further recommended that the requirement that bond proceeds be invested and secured as public funds be eliminated. This amendment would legislatively overrule an opinion of the Attorney General dated September 19, 1974 to the effect that proceeds of industrial development revenue bonds are public funds and subject to the limitations on investments and security requirements applicable to public funds. Bond proceeds essentially belong to the company or person being financed, and such company or person receives the gain or suffers the loss on investment of these funds.

Lastly, it is recommended that rents, fees and charges be established at levels sufficient to pay the costs of maintaining, repairing and operating a project financed with industrial development bonds. In practice, the owner or lessee of a project usually agrees to pay the costs of operation, maintenance and repair, and this amendment would grant specific authorization for such agreements rather than requiring the payment of such costs through the establishment of specific funds.

Respectfully submitted,

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APPENDIX I

OVER-VIEW OF SECTION 103 OF THE INTERNAL REVENUE CODE

Section 103(a) (1) of the Internal Revenue Code states in part that “gross income does not include interest on the obligations of a state, a territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia.” Prior rulings held that industrial bonds fell under this section, however, this ruling changed on May 1, 1968. The theory was that such bonds do not constitute “obligations of a state...or any political subdivision” within the meaning of § 103 since the primary obligator was not a state or political subdivision. Presently, obligations falling within the definition of an “industrial development bond” in § 103(c) (2) will not be treated as obligations described in subsection (a) (1) unless they qualify within one of the exemptions provided in §§ 103(c) (4), (5), (6), or 103(e). In other words, all industrial development bonds are taxable unless specifically exempted by these subsections.

The term “industrial development bond” means any obligation (1) which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person (a governmental unit or an organization described in § 2701 and exempt from tax, but only with respect to a trade or business carried on by organization which is not an unrelated trade or business) and (2) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part (i) secured by any interest in property used or to be used in a trade or business or in payments in respect of such property, or (ii) to be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

Let me illustrate by the use of an example:

Example I - State C issues its general obligation bonds to purchase land and construct a hotel for use by the general public (i.e., tourists, visitors, travelers on business, etc.). The bond indenture provides (1) that C will own and operate the project for the period required to redeem the bonds and (2) that the project itself and the revenue derived therefrom are the security for the bonds. The bonds are not industrial development bonds since (1) the proceeds are to be used by an exempt person, and (2) a major portion of such proceeds is not to be used, directly or indirectly, in a trade or business carried on by a nonexempt person. Use of the hotel by hotel guests who are travelling in connection with trades or businesses, or nonexempt persons, is not an indirect use of the hotel by such nonexempt persons for purposes of § 103(c).

Example II - The facts are the same as in Example I except that corporation Y enters into a long term agreement with C that Y will rent more than one-fourth of the rooms on an annual basis for a period approximately equal to one-half of the term of the bonds. The bonds are industrial development bonds because (1) a major portion of the proceeds used to construct the hotel is to be used in the trade or business of corporation Y (a nonexempt person) and (2) a major portion of the principal and interest on such issue will be derived from payments in respect of the property used in the trade or business of Y.

As can be seen from the examples, there are two tests which must be satisfied in order for an obligation to be classified as an industrial development bond; the trade or business test and the security interest test. The trade or business test is met by any obligation which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an “exempt” person. The term “obligation which is part of an issue” includes a single note issued in connection with a bank loan. The security interest test is met by any obligation the payment of the principal or interest on which (under the terms of the obligation or any underlying arrangements) is in whole or in major part (1) secured by any interest in property used or to be used in a trade or business or in payments in respect of such property or (2) to be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

Now lets go for a moment to the exemptions. Under § 103(c) (4), if substantially all of the proceeds of a bond issue are used for certain designated projects: i.e.

- (1) residential real property for family units;

(2) sports facilities;

(3) convention or trade show facilities;

(4) airports, docks, wharves, mass commuting facilities, parking facilities, or storage or training facilities directly relating to any of the foregoing;

(5) sewage or solid waste disposal facilities or facilities for the local furnishing of electric energy or gas;

(6) air or water pollution control facilities or;

(7) facilities for the furnishing of water, if available on reasonable demand to members of the general public (this was added by the Revenue Act of 1971); the debt obligation will be treated as an obligation which is described in § 103(a) (1) despite the fact that it would otherwise be an industrial development bond. Paragraph (6) of Regs. § 1.103-8 illustrates that the term "substantially all" probably means that at least 90% of the proceeds of the issue must be used for the exempt facility. However, it should be noted that the 90% test is not stated in specific language as a fixed rule, but is stated in an illustration as a "safe haven" rule.

Note that in addition to the seven above exemptions mentioned, an additional exemption is granted for obligations which are issued for acquisition or development of land as the site for an industrial park. The term "development of land" includes provision for water, sewage, drainage or similar facilities, or of transportation, power or communication facilities, which are incidental to use of the site as an industrial park, but except with respect to such facilities, the term does not include the provision of structures and buildings.

Another exemption set forth in Section 103 is the so-called small issue exemption. In addition to providing the specific exceptions as previously described, Congress provided an exemption in § 103(c) (6) for certain "exempt small issues." An "exempt small issue" is defined as an issue of \$1 million or less, where substantially all of the proceeds are used for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance for depreciation under § 167, of the Internal Revenue Code. An exempt small issue also includes an issue whose proceeds are to be used to redeem part or all of a prior exempt small issue or to redeem part or all of a prior refunding issue. Such an issue will be treated as an obligation described in § 103(a) (1), that is, bearing tax free interest, despite the fact that it otherwise meets the definition of an industrial development bond in § 103(c).

In addition to the \$1 million exemption in § 103(c) (6) (A), after October 24, 1968, a governmental unit may elect to issue an aggregate authorized face amount of \$5 million or less under § 103(c) (6) (D). The \$5 million limitation was increased to \$10 million by the Revenue Act of 1978.

The \$1 million exempt issue is not as complicated. In the case of industrial bonds issued after April 30, 1968, having an aggregate face amount of \$1 million or less, the interest thereon is tax exempt if the proceeds are used for the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the allowance of depreciation under § 167. Thus, the exemption would not apply if more than an insubstantial amount of the proceeds were to be used for working capital or to finance the purchase of inventory.

"Substantially all" is again illustrated in the regulations via a safe haven example. Example (6) of Treas. Regs. § 1.103-10(f) suggests that \$95,000 out of a \$1 million issue would be insubstantial. Why the regulations did not adhere to the 90% safe haven rule in defining substantial under this section, as they did under § 103(c) (4) & (5) is unknown.

There is no limit as to the number of exempt small issues that may qualify, so long as the proceeds will be used with respect to facilities which are located in different incorporated municipalities or counties, or in unincorporated areas. For example, bonds issued for use by a chainstore operating in a state with 100 counties could qualify up to \$100 million by the issuance of 100 different \$1 million industrial development bonds for use with respect to 100 facilities located in the different counties. Furthermore, the proceeds of a \$1 million exempt small issue can be combined with other proceeds to construct facilities costing more than \$1 million. For example, City

A could issue bonds aggregating \$1 million. The proceeds therefrom would go to Corporation X which simultaneously issues its own bonds for \$9 million. The \$1 million issue would not be disqualified if Corporation X utilized the \$9 million from other sources in constructing facilities costing \$10 million. The bonds, however, must be issued as separate issues.

The statute and the regulations permit the outstanding total indebtedness to remain at the \$1 million level. Thus, if a governmental unit previously issued an exempt small issue of \$1 million and the principal user has reduced the debt to \$500,000, new bonds aggregating \$1 million or less could be issued to (a) redeem the outstanding \$500,000 and (b) provide the principal user with another \$500,000. Another method would be for the principal user to have the governmental unit issue in its favor a new exempt small issue of \$500,000 which would bring the total dollar amount outstanding to the \$1 million limit.

\$10 Million or Less, Exempt Small Issue

The language scheme used in § 103(c) (6) (D) makes the exempt small issue appear to be more complex than it actually is. After the original statute concerning industrial development bonds was enacted, Congress determined that the \$1 million amount used in §103(c) (6) (A) was too small to be practical. In determining a new figure (\$5 million, increased to \$10 in 1978), it was decided that the higher amount should be structured in such a way that the exemption would continue to be of value only on a small scale. At the same time, an effort was made to make sure that if the original statute was beneficial, it should continue to be. Thus, the amendment grants the issuer an option to limit itself to the \$1 million amount or to elect the higher \$5 (increased to \$10 in 1978) million amount.

After October 24, 1968, if the issuer so elects, principal users may receive the proceeds of a \$5 (increased to \$10 in 1978) million industrial development bond issue (bearing tax exempt interest as long as the proceeds are used for the acquisition, construction, or improvement of land or property of a character subject to the allowance for depreciation under § 167.

APPENDIX II

SUGGESTED LEGISLATION

A BILL to amend and reenact §§ 15.1-1374, 15.1-1375, 15.1-1377, 15.1-1378, 15.1-1379, 15.1-1381 and 15.1-1382 of the Code of Virginia, relating to industrial development and revenue bonds.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-1374, 15.1-1375, 15.1-1377, 15.1-1378, 15.1-1379, 15.1-1381 and 15.1-1382 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 (i) medical facilities (including, but not limited to, office and treatment facilities), (ii) pollution control facilities, (iii) industrial facilities; (iv) commercial enterprises, (v) any facility in which all or part of the activities of such facility involves the supplying or sale of services, (vi) facilities for the residence or care of the aged; (vii) multi-state regional or national headquarters offices or operations centers; (viii) facilities for private, accredited and nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate 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 campus other than chapels and their like, and (ix) other facilities in which substantially all of the activities of such facilities qualify as exempt activities pursuant to Section 103 of Title 26 of the United States Code (Internal Revenue Code of 1954), as amended from time to time; located within or without or partly within or without the municipality creating the authority (provided, however, no authority shall finance any facilities, except pollution control facilities, located without the municipality creating the authority unless the prior consent of the governing body of the municipality in which such facilities are to be located has been given), now existing or hereafter acquired, constructed, ~~or~~ installed or financed by or for the authority ~~for lease or sale by the authority~~ pursuant to the terms of this chapter. 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 or financed by or on behalf of the authority. 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 *acquisition, construction, installation or financing* 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 *acquisition, construction, installation or financing* 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, *payments* 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 or financing* 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) "*Commercial enterprise*" shall mean any ~~industry facility 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.

(k) "*Industry*" or "*industrial*" shall mean any facility for the *manufacture, processing, assembling, fabricating, storing or warehousing of any products of agriculture, industry or mining, or any facility for the feeding, processing, storing or warehousing of livestock, fish, shellfish or other marine life even though the products thereof may require further treatment, manufacture, processing, assembly, fabrication, storage or warehousing prior to delivery to the ultimate consumer, or any facility which is engaged in the giving of new shapes, new qualities or new combinations to matter by the application of skill and labor thereto through the use of equipment or otherwise.*

§ 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, *sell, lease, and finance or dispose of* properties to the end that such authorities may be able to promote *industry and commerce* and develop trade by inducing manufacturing, industrial, governmental and commercial enterprises and institutions of higher education 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 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. It is not intended hereby that any such authority shall itself be authorized to operate any such manufacturing, industrial or commercial enterprise or any facility of an institution of higher education.

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 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.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant industrial development authorities the powers contained herein with respect to all facilities which may be financed for the furtherance of the public's safety, health, welfare, convenience or prosperity pursuant to this chapter.

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 and facilities for the residence or care of the aged to the end that such authorities may protect and promote the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement and improvement of medical facilities and facilities for the residence or care of the aged in order to provide modern and efficient medical services to the inhabitants of the Commonwealth and care of the aged of the Commonwealth in accordance with their special needs and also by assisting in the refinancing of medical facilities and facilities for the residence or care of the aged owned and operated by organizations which are exempt from taxation pursuant to Section 501(c)(3) of Title 26 of the United States Code (Internal Revenue Code of 1954) in order to reduce the costs to residents of the Commonwealth of utilizing such facilities and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health and welfare. It is not intended hereby that any such authority shall itself be authorized to operate any such medical facility or facility for the residence or care of the aged.

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 facilities for private, accredited and nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education to the end that such authorities may protect and promote the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, and improvement of facilities of aforesaid institutions in order to provide improved educational facilities for the use of the inhabitants of the Commonwealth and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such educational facility.

This chapter shall be liberally construed in conformity with these intentions. The amendments to this code section adopted by the 1975 session of the General Assembly shall not be construed to affect any litigation pending in any court prior to the effective date of said amendments.

§ 15.1-1377. Directors; qualifications; terms; vacancies; expenses; quorum; records.—The authority shall be governed by a board of directors in which all powers of the authority shall be vested and which board shall be composed of seven directors, appointed by the governing body of the municipality. The seven directors shall be appointed initially for terms of one, two, three and four years; two being appointed for one year terms; two being appointed for two year terms; two being appointed for three year terms and one being appointed for a four year term; subsequent appointments shall be for terms of four years, except appointments to fill vacancies which shall be for the unexpired terms. *If at the end of any term of office of any director a successor thereto shall not have been appointed, then the director whose term of office shall have expired shall continue to hold office until his successor shall be appointed and qualified.* Each director shall, before entering upon his duties take and subscribe the oath prescribed by § 49-1 of the Code of Virginia. No director shall be an officer or employee of the municipality. *Every director shall, at the time of his appointment and thereafter, reside in the municipality or municipalities with respect to which the authority is organized; provided, however, where an authority is organized by the*

governing body of a county, a director residing within any incorporated town or city lying wholly within the boundaries of such county shall be deemed a resident of such county for the purposes of this act. When a director ceases to be a resident of the municipality with respect to which the authority upon which he serves is organized, such director's office shall be vacant and a new director may be appointed for the remainder of the term so vacated. The directors shall elect from their membership a chairman, a vice-chairman, and from their membership or not, as they desire, a secretary and a treasurer, or a secretary-treasurer, *who shall continue to hold such office until their respective successors shall be elected.* The directors shall receive no salary but shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties. Four members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the authority shall be leased or disposed of in any manner without a majority vote of the members of the board of directors. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of all its financial transactions and shall arrange to have the same audited annually. Copies of each such audit shall be furnished to the governing body of the municipality and shall be open to public inspection.

§ 15.1-1378. Powers of authority.—The authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated: (a) to sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties; (b) to adopt and use a corporate seal and to alter the same at pleasure; (c) to contract and be contracted with; (d) to acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish one or more authority facilities including all real and personal properties which the board of directors of the authority may deem necessary in connection therewith and regardless of whether or not any such facilities shall then be in existence; (e) to lease to others any or all of its facilities and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have options to renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with or without consideration; (f) to sell, exchange, donate, and convey any or all of its facilities or properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized; *(f1) to make secured or unsecured loans for the purpose of financing or refinancing the acquisition, construction, improvement or equipping of facilities, and to charge and collect interest on such loans and pledge the proceeds of loan agreements as security for the payment of the principal and interest of any bonds, or designated issues of bonds, issued by the authority, and any agreements made in connection therewith, whenever the authority finds such loans to be in furtherance of the purposes of this chapter or in the public interest; (f2) to acquire and hold obligations of any kind to carry out any of its purposes;* (g) to issue its bonds for the purpose of carrying out any of its powers including specifically, but without intending to limit any power conferred by this section or this chapter, the issuance of bonds to provide long-term financing of any pollution control facility, whether any such facility was constructed prior to or after the enactment hereof or the receipt of a commitment from an authority to undertake financing pursuant hereto, unless the major part of the proceeds of such bonds will be used to redeem any prior long-term financing of such facility other than financings pursuant to this chapter or any similar law; (h) as security for the payment of the principal and interest on any bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or from any part thereof; (i) to employ and pay compensation to such employees and agents, including attorneys, as the board of directors shall deem necessary in carrying on the business of the authority; (j) to exercise all powers expressly given the authority by the governing body of the municipality which established the authority and to establish bylaws and make all rules and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the authority's affairs; (k) to appoint an industrial advisory committee to advise the authority, consisting of such number of persons as it may deem advisable; however, such persons shall not receive any compensation for their services, but may be reimbursed for necessary traveling and other expenses incurred while on the business of the authority; and (l) to borrow money and to accept contributions, grants and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth,

for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities or for the payment of principal of any bond of the authority, interest thereon, or other cost incident thereto, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed. The authority shall not have power to operate any facility as a business other than as lessor; provided, however, that the authority shall have the power to apply for, establish, operate and maintain a foreign-trade zone in accordance with the provisions of chapter 14 (§ 62.1-159 et seq.) of Title 62.1. Any meeting held by the board of directors at which formal action is taken shall be open to the public.

§ 15.1-1379. Issuance of bonds, notes and other obligations of authority.—(a) The authority shall have the power to issue bonds from time to time in its discretion, for any of its purposes, including the payment of all or any part of the cost of authority facilities and including the payment or retirement of bonds previously issued by it. All bonds issued by the authority shall be payable solely from the revenues and receipts derived from the leasing or sale or financing by the authority of its facilities or any part thereof and the authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds payable, both as to principal and interest: (i) from its revenues and receipts generally; (ii) exclusively from the revenues and receipts of a particular facility; or (iii) exclusively from the revenues and receipts of certain designated facilities whether or not they are financed in whole or in part from the proceeds of such bonds. Unless otherwise provided in the proceeding authorizing the issuance of the bonds, or in the trust indenture securing the same, all bonds shall be payable solely and exclusively from the revenues and receipts of a particular facility. 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 (40) 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 *whenever it deems the same expedient and in the public interest* 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 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 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) of the authority, 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.

(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.

(e) All bonds issued under the provisions of this chapter shall have and are hereby declared to have all the qualities and incidents of and shall be and are hereby made negotiable instruments under the Uniform Commercial Code of Virginia, subject only to provisions respecting registration of the bonds.

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

§ 15.1-1381. Security for payment of bonds; default.—The principal of and interest on any bonds issued by the authority shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable, and may be secured by a trust indenture covering all or any part of the authority facilities from which revenues or receipts so pledged may be derived, including any enlargements of and additions to any such projects thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable not in conflict with the provisions hereof. *Without limiting the generality of the foregoing, such resolution and any such trust indenture may contain such agreements and provisions concerning the investment or deposit of revenues, proceeds of bonds and other funds and assets held pursuant to such resolution or trust indenture, and such requirements, if any, for securing such investments or deposits, as the board of directors shall deem advisable and not in conflict with the provisions hereof, without regard to the requirements of Chapter 18 of Title 2.1 of the Code of Virginia or other general laws relating to the investment or deposit of public funds.* Each pledge, agreement and trust indenture made for the benefit or security of any of the bonds of the authority shall continue effective until the principal of and interest on the bonds for the benefit of which the same were made shall have been fully paid. In the event of default in such payment or in any agreements of the authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any trust indenture executed as security therefor, may be enforced by mandamus, suit, action or proceeding at law or in equity to compel the authority and the directors, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any

trust indenture of the authority, the appointment of a receiver in equity or by foreclosure of any such trust indenture or any one or more of said remedies.

§ 15.1-1382. Rents, fees and other charges.—The authority shall fix and revise from time to time the rents, *payments*, fees and other charges to be paid to it in connection with the lease ~~or~~, sale or *financing* of various authority facilities and for any other services furnished or provided by the authority. Such rents, *payments*, fees and charges shall be fixed so as to provide at least sufficient funds to pay the cost of maintaining, repairing and operating such projects, *unless the lessee or purchaser of such project shall agree to pay such costs*, and the principal and interest of any bonds issued by the authority or other debts contracted as the same shall become due and payable. The authority and the political subdivision in which all or any part of a particular authority facility is located may agree on payment by the authority on account of governmental services to be rendered by the political subdivision in such amounts as the authority may find to be consistent with the purposes of this chapter. A reserve may be accumulated and maintained out of the revenues and receipts of the authority for extraordinary repairs and expenses and for such other purposes as may be provided in any resolution authorizing a bond issue or in any trust indenture securing the authority's bonds. Subject to such provisions and restrictions as may be set forth in the resolution or in the trust indenture authorizing or securing any of the bonds or other obligations hereunder, the authority shall have exclusive control of the revenues and receipts derived from the lease ~~or~~, sale or *financing* of any authority facility and the right to use the revenues and receipts in the exercise of its powers and duties set forth in this chapter.