

INTERIM REPORT
OF THE
COMMISSION STUDYING VIRGINIA'S
INDUSTRIAL DEVELOPMENT AND REVENUE BOND ACT
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA



HOUSE DOCUMENT NO. 31

COMMONWEALTH OF VIRGINIA
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STAFF

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**Report of the
Commission Studying Virginia's
Industrial Development and Revenue Bond Act
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
December, 1982**

To: Honorable Charles S. Robb, Governor of Virginia
and
The General Assembly of Virginia

CONCLUSIONS

The federal government with passage of the "Tax Equity and Fiscal Responsibility Act of 1982" (TEFRA) has dramatically curbed what many people perceived to be abuses in the use of industrial development bonds. The enactment of the federal legislation followed the General Assembly's adoption of HJR 23 (copy attached). Your Commission considered, in view of the changes in federal law, whether there still existed a need to conduct the study and concluded that the need was still present because portions of the federal law will not become effective until December 31, 1986, thereby giving Congress sufficient time to amend or repeal its 1982 enactment. Also a state has the option of making its law even more restrictive than the federal law.

After public hearings and deliberations the Commission concludes that Virginia's Industrial Development and Revenue Bond Act in its public hearing and approval aspects and in its limitation on facilities that may be financed with industrial development bonds should be only nominally more restrictive than the new federal law (TEFRA).

RECOMMENDATIONS

1. That the General Assembly of Virginia enact the amendment shown as Exhibit A which excludes from Virginia's Freedom of Information Act financial statements not publicly available which are filed with applications to local development authorities for industrial development financings.

2. That the bill hereinafter set out as Exhibit B be passed to amend the Industrial Development and Revenue Bond Act to provide for public input into the use of such bonds. The bill requires a public hearing to be held by the authority. A reasonably detailed summary of the public hearing shall be prepared and forwarded together with the authority's recommendations to the local governing body. In addition to those uses prohibited by TEFRA, the bill also excludes the use of IRB's for facilities furnishing financial services when such facilities would be 25 percent or more of total facility cost. The Commission also considered including single and multi-family residential housing as an approved use of IRB's, but concluded against doing so because such housing has available to it alternative means of financing, such as the Housing Authorities Law (§§ 36.1 et seq.).

3. That the study by this Commission be continued for another year, Exhibit C, in order to examine specific federal regulations still to be issued, monitor the experience of Virginia localities with the new federal and state requirements and consider whether additional changes in Virginia's statutes, such as further restrictions on commercial and retail uses, will be needed.

DISCUSSION

A report prepared by the Division of Industrial Development at the time the 1966 Act was adopted indicated that the main thrust of the Act was to enhance Virginia's position in interstate competition for industrial development, with particular emphasis upon attracting larger, "blue chip" firms. Subsequent 1968 federal legislation, restricting IRB's either to certain purposes or to "small issue" bonds, shifted the focus away from corporate giants to smaller firms.

At the time of passage of Virginia's Industrial Development and Revenue Bond Act the generally

accepted idea of the public was that bonds issued pursuant to the act would be used to construct factories, with smokestacks belching various fumes and gaseous irritants into the sky but employing hundreds if not thousands of people. For people harboring such thought the act has proved to be a disappointment. By court interpretation it has financed dancing neon lights that hawk hamburgers, underwear, and automobiles. However, bonds have also been used to renovate aging buildings, thereby revitalizing many obsolete downtown areas and restoring the tax base.

The General Assembly from time to time has expanded the scope of Virginia's program by amending the Industrial Development and Revenue Bond Act. The first such change was in 1970 when medical facilities were added, to be followed in 1972 by pollution control facilities. In 1977, multistate regional or national headquarters or operations centers and facilities for the residence or care of the aged were added. Institutions of higher education were included in 1978 and finally, in 1980, parking facilities joined the list.

Probably the most controversial use of IRB's was sanctioned not by legislative amendment but by interpretation of the act by the Virginia Supreme Court as exemplified in two 1981 cases in which the court held that retail facilities (a department store in one case and a shopping center in the other—*Mayor v. Industrial Dev. Auth.*, 221 Va. 865 and *Farmer's Food v. Industrial Dev. Auth.* 221 Va. 880) were included under commercial enterprises in the purposes of the Act (§ 15.1-1375). An analysis done by the Division of Industrial Development at the request of the Commission indicates that roughly one-third of recent IRB issues in Virginia have been for "retail and service" facilities.

The extent to which such retail and service activities are consistent with the purpose and intent of the Virginia act, and, indeed, whether they should be permitted at all, clearly was one of the major factors which led to the creation of this study. This point repeatedly arose during the hearings and deliberations of the Commission. There also were expressions of concern in other areas, including 1) whether projects are being financed through IRB's for firms which would have no difficulty in obtaining private financing, and 2) whether IRB financing at lower interest rates gives an unfair advantage to one firm over its competitors in the open market place.

The Commission recognized these concerns and shared the belief that there has developed a tendency to some extent to fund projects indiscriminately through the issuance of IRB's, particularly in the retail and service area. At the same time, testimony before the Commission was persuasive that a hard and fast prohibition against any funding of retail and service activities is too drastic and would not be in the public interest.

Many of Virginia's older cities, for example, are not in a position to pursue industrial growth. However, reversal of the physical decay of and a return to the productive tax rolls of their physical plants, revitalization of their retail and commercial districts, and the provision of service-oriented employment may be equally as beneficial to the economic development of these cities as is industrial growth to other areas of the Commonwealth. The Commission is not prepared to say that the cities should be precluded in all cases from using IRB financing for these commercial and retail purposes. Likewise, a project which seems inappropriate for an economically healthy and growing area may well make sense in an economically depressed or stagnant rural county. A medical office building in a low income area serves a useful public purpose while the same facility financed in an affluent area is possibly a misuse of the act.

The Commission is aware that the economy of the United States has been evolving from a manufacturing based one to a service based economy thereby necessitating a re-examination of the basis for the act. Commission members heard one authority official say that a motel room meant as much to the economy of his county as a machine tool does to the economy of a city. What is the bottom line? Your Commission believes it to be jobs, not any type of job, but employment that provides decent wages and adequate benefits for the citizens of Virginia.

The Commission does not believe that statutory language should be placed in the Code of Virginia which would specify each situation in which IRB financing of a facility would or would not be in the public interest.

The Commission did consider this alternative but concluded that it would be exceedingly difficult to cover every eventuality, that the federal government has anticipated many of our concerns in its new law, and that localities by and large have been responsible in their use of the system.

In the final analysis, the proper decision does rest in the wisdom and good judgment of the local development authorities and, under the new federal law, local governing bodies which must approve the project. It should be noted that the Commission's proposed bill will require the governing body itself to give final approval to the issuance of IRB's. The provisions of TEFRA would have allowed a popularly elected chief executive or other elected official to give final approval. The Commission does believe that the 1982 action by Congress in eliminating the tax exemption for the more controversial types of facilities hereinafter listed will be beneficial. Likewise, the new requirements for a public hearing and for final approval by the governing body should enhance a thorough consideration of the public benefit to be realized through proposed IRB projects. More complete and continuous monitoring of IRB activity also will be possible if, as recommended herein, the local authority files with the Division of Industrial Development a copy of the quarterly report it must file with the Internal Revenue Service.

To restate its conclusions, your Commission found that:

1. Federal law, if not subsequently amended, will halt the more flagrant abuses of the use of industrial development bonds;

2. Reliance upon the good judgment of local development authorities should continue, guided by their understanding of the Assembly's intent but unfettered by specific state directives and constrictions.

A thumbnail outline of the federal act provisions of most concern to the general public is set out below. The reader should be aware that the outline does not contain all features of the law pertaining to industrial development bonds and such simplification can be misleading to the non-expert.

Federal Tax Equity and Final Responsibility Act of 1982 (TEFRA) as affecting IRB's .

After Jan. 1, 1983

1. Public hearing required , followed by formal approval of bonds by governmental unit involved or voter referendum. Authority could hold hearing and elected body approve.

2. Bonds in registered form as to both principal and interest, with some exceptions, are required on and after July 1 , 1983 unless the time is further extended. Penalty for non-compliance is loss of favorable tax treatment.

3. Reporting of bond history and payments to IRS quarterly. Penalty for non-compliance is loss of tax-exempt status for bonds.

4. Bond maturity date cannot exceed estimated economic life by more than 20%. Penalty is loss of tax-exemption.

5. Depreciation limited on IDB financed assets to straight-line method over the 3-5-10-15 year accelerated cost recovery system with certain exceptions.

6. Small issues may not be used :

a. at all for golf courses; country clubs; massage parlors; tennis clubs; skating facilities; racquet sport, hot tub and suntan facilities and race tracks; or

b. where 25% or more of the IDB proceeds will be used for facilities for auto sales or services, recreation or entertainment or retailing of food or beverage, excluding grocery stores.

7. Small issue exemption ends 12/31/86 ; however, Congress might reconsider.

The Commission does recommend that its study be continued for another year to examine specific federal regulations and interpretations of TEFRA which are not yet available. Continuation of the study will allow a year during which to view the changes in operation. The Commission is

hopeful that they will be as salutary as anticipated. If not, further changes can be recommended.

Respectfully submitted,

Richard M. Bagley, Chairman
William F. Parkerson, Jr., Vice Chairman
Raymond R. Guest, Jr.
Joseph A. Johnson
Alson H. Smith, Jr.
William T. Wilson
Wiley F. Mitchell, Jr.
William T. Parker
Charles R. Chandler
Preston T. Holmes
Vincent A. Mastracco, Jr.

I am in general agreement with the Commission's report and fully support its suggested amendments to the Industrial Development and Revenue Bond Act. I do not agree with the Commission's recommendation concerning amendments to the Freedom of Information Act. Much of the value of the public hearing mandated by the Commission's bill will be obviated if the applicant's financial statement is to be cloaked in secrecy. An applicant who seeks public support in the form of Industrial Development Bonds should expect—and receive—full public scrutiny.

Wiley F. Mitchell

HOUSE JOINT RESOLUTION NO. 23

Establishing the Industrial Development and Revenue Bond Act Study Commission

WHEREAS, in 1966 the General Assembly enacted the Industrial Development and Revenue Bond Act because the Commonwealth was falling behind several surrounding states in the development of its industrial economic base; and

WHEREAS, it was determined that such a financial incentive was necessary for the Commonwealth to remain competitive in inducing industry to locate in Virginia; and

WHEREAS, since 1966 the Industrial Development and Revenue Bond Act has been expanded to include under its provisions such facilities as medical facilities for the residence and care of the aged, regional and national headquarter offices and operation centers, certain private schools, and certain parking facilities; and

WHEREAS, this approach to financing through the sale of tax exempt bonds has been under close scrutiny and criticism by the Department of the Treasury, other agencies of the federal government, the Congress and the President, because of the resultant loss of anticipated federal income tax revenues; and

WHEREAS, much concern has arisen at the state and local levels of government that the proliferation of Industrial Development Revenue Bonds has caused increases in interest rates and the cost of borrowing by local and state governments; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That there is hereby created the Industrial Development and Revenue Bond Act Study Commission. The Commission shall be composed of eleven members: five shall be members of the House of Delegates, to be appointed by the Speaker of the House of Delegates; three shall be members of the Senate, to be appointed by the Committee on Privileges and Elections of the Senate; and three shall be appointed by the Governor from the State at large.

The study shall analyze the present provisions of the Industrial Development and Revenue Bond Act and examine legal precedents that have evolved since its enactment to determine:

1. Whether the Act has had a favorable impact on industrial and economic growth in this State;
2. Whether the Act is serving the purposes for which it was originally intended and whether the original intent has been explicitly expanded by subsequent General Assemblies;
3. Whether the Act has adversely impacted or will in the future adversely impact the cost of borrowing for local and state governments;
4. Whether the Act has resulted in inequitable competitive advantages for certain private business;
5. Whether the facilities being financed under the Act promote industry and develop trade so as to be of economic benefit to citizens of the Commonwealth, while not adversely affecting their safety, health, welfare, convenience or prosperity; and
6. Whether more stringent restrictions should be placed by the State on the type of facilities financed under the Act.

The Commission shall also examine any other issues pertinent to the Act as it deems necessary.

Members of the Commission shall receive compensation as provided in § 14.1-18 of the Code of Virginia and their actual expenses incurred in the performance of their duties.

There is hereby allocated to the Commission from funds appropriated to the General Assembly the sum of \$8,000 for performing this study.

The Commission shall complete its work in time to submit recommendations to the 1983 Session of the General Assembly.

EXHIBIT A

A BILL to amend and reenact § 2.1-342 of the Code of Virginia, relating to certain official records open for public inspection.

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-342 of the Code of Virginia is amended and reenacted as follows:

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter. (a) Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of this Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to any such citizen of this Commonwealth, nor to representatives of newspapers and magazines with circulation in this Commonwealth, and representatives of radio and television stations broadcasting in or into this Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within fourteen calendar days from the receipt of the request by the public body. Such citizen request shall designate the requested records with reasonable specificity. If the requested records or public body is excluded from the provisions of this chapter, the public body to which the request is directed shall within fourteen calendar days from the receipt of the request tender a written explanation as to why the records are not available to the requestor. Such explanation shall make specific reference to the applicable provisions of this chapter or other Code sections which make the requested records unavailable. In the event a determination of the availability of the requested records may not be made within the fourteen-calendar-day period, the public body to which the request is directed shall inform the requestor as such, and shall have an additional ten calendar days in which to make a determination of availability. A specific reference to this chapter by the requesting citizen in his records request shall not be necessary to invoke the time limits for response by the public body. The public body may make reasonable charges for the copying and search time expended in the supplying of such records; however, in no event shall such charges exceed the actual cost to the public body in supplying such records. Such charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

(b) The following records are excluded from the provisions of this chapter:

(1) Memoranda, correspondence, evidence and complaints related to criminal investigations, reports submitted to the state and local police and the campus police departments of public institutions of higher education as established by Chapter 17 of Title 23 (§ 23-232 et seq.) of the Code of Virginia in confidence, and all records of persons imprisoned in a penal institution in this Commonwealth provided such records relate to the said imprisonment. Information in the custody of law-enforcement officials relative to the identity of any individual other than a juvenile who is arrested and charged, and the status of the charge of arrest, shall not be excluded from the provisions of this chapter.

(2) Confidential records of all investigations of applications for licenses and all licensees made by or submitted to the Alcoholic Beverage Control Commission.

(3) State income tax returns, scholastic records and personnel records, except that such access shall not be denied to the person who is the subject thereof, and medical and mental records, except that such records can be personally reviewed by the subject person or a physician of the subject person's choice; however, the subject person's mental records may not be personally reviewed by such person when the subject person's treating physician has made a part of such person's records a written statement that in his opinion a review of such records by the subject person would be injurious to the subject person's physical or mental health or well-being. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his parent or guardian, except in instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education.

(4) Memoranda, working papers and correspondence held or requested by members of the

General Assembly or by the office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institutions of higher education.

(4a) Written opinions of the city and county attorneys of the cities, counties and towns in the Commonwealth and any other writing protected by the attorney-client privilege.

(5) Memoranda, working papers and records compiled specifically for use in litigation or as a part of an active administrative investigation concerning a matter which is properly the subject of an executive or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

(6) Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

(7) Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

(8) Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, (iii) qualifications for any license or certificate issued by any public body.

As used in this subsection (8), "test or examination" shall include (i) any scoring key for any such test or examination, and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subsection (8) shall prohibit the release of test scores or results as provided by law, or limit access to individual records as is provided by law. However, the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, such test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

(9) Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Regulatory Boards or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requestor's expense, by the individual who is subject thereof, in the offices of the Department of Health Regulatory Boards or in the offices of any health regulatory board, whichever may possess the material.

(10) Records of active investigations being conducted by the Department of Health Regulatory Boards or by any health regulatory board in the Commonwealth.

(11) Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for executive or closed meetings lawfully held pursuant to § 2.1-344.

(12) Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.

(13) Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-134.1 or § 62.1-132.4.

(14) Contract cost estimates prepared for the confidential use of the Department of Highways and Transportation in awarding contracts for construction or the purchase of goods or services.

(15) Vendor proprietary information software which may be in the official records of a public body. For the purpose of this section, "vendor proprietary software" means computer programs

acquired from a vendor for purposes of processing data for agencies or political subdivisions of this Commonwealth.

(16) Data, records or information of a proprietary nature, other than financial or administrative, produced or collected by or for faculty or staff of state institutions of higher learning in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such data, records or information have not been publicly released, published, copyrighted or patented.

(17) Financial statements not publicly available filed with applications for industrial development financings.

(c) Neither any provision of this chapter nor any provision of this chapter (§ 2.1-377 et seq.) of this title shall be construed as denying public access to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of state, local or regional government in this Commonwealth whatsoever. The provisions of this subsection, however shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

EXHIBIT B

A BILL to amend and reenact §§ 15.1-1374, 15.1-1375, 15.1-1377 and 15.1-1379 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.1-1378.1, the amended and added sections relating to definitions used in the Industrial Development and Revenue Bond Act, purpose of act, authority directors, issuance of bonds and public hearings and notice.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.1-1374, 15.1-1375, 15.1-1377 and 15.1-1379 of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding a section numbered 15.1-1378.1 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 (including, but not limited to, office and treatment facilities), pollution control, industrial facilities; (ii) facilities for the residence or care of the aged; (iii) multi-state regional or national headquarters offices or operations centers; (iv) facilities for private, accredited and nonprofit institutions of collegiate 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 (v) parking facilities, including parking structures ; and (vi) facilities for enterprises or commercial enterprises (as hereinafter defined in this section); all of such facilities [(i) through (vi)] may be 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. Any facility may consist of or include any or all buildings, improvements, additions, extensions, replacements, machinery or equipment, and may also include appurtenances, lands, rights in land, water rights, franchises, furnishings, landscaping, utilities, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto, acquired, constructed, or installed by or on behalf of the authority. A pollution control facility shall include any facility acquired, constructed or installed 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" or "commercial enterprise" shall mean any industry for the manufacturing, processing, assembling, storing, warehousing, distributing, or selling of any products of agriculture, mining, or industry ~~and~~ ; for research and development ~~or~~ ; for 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.

"Enterprise" or "commercial enterprise" shall include the renovation of buildings where the local authority finds that such renovation will contribute to revitalization, or increase tax revenues, or provide for additional employment, but, except for facilities for the residence or care of the aged, shall exclude buildings used primarily as single or multi-family residences.

"Enterprise" or "commercial enterprise" shall not include any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating) racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility, or racetrack. In addition to the above the terms shall not include a facility which has the primary purpose (25% or more of the proceeds of the issue) of providing (i) a facility furnishing retail food and beverage services (excluding grocery stores), or (ii) a facility furnishing financial services, or (iii) a facility for automobile sales or service, or (iv) other nonspecifically excluded entertainment and recreation facilities.

§ 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~~ . The authorities may acquire, own, lease, and dispose of ~~properties to the end that such authorities may be able to facilities~~ so as to promote industry and develop trade by inducing manufacturing, industrial, governmental and commercial enterprises ~~and~~ , in addition to encouraging 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 and provide employment for its citizens. Such~~ authorities shall be vested 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 for the increase of their commerce, or through for 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. authority facility as defined in 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 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 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; compensation and 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. All terms of office shall be deemed to commence upon the date of the initial appointment to the authority, and thereafter, in accordance with the provisions of the immediately preceding sentence. 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, upon appointment or reappointment, 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; however, any person residing within any municipality adjoining the boundaries of the municipality or municipalities with respect to which the authority is organized shall be deemed a resident of such municipality for the purposes of this chapter. When a director ceases to be a resident of the municipality or any adjoining 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 the directors may be compensated such amount per meeting as may be approved by the appointing authority, not to exceed fifty dollars per meeting, and 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 its financial transactions and, unless exempted by § 2.1-164, it 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.

Two mechanically reproduced copies of the report concerning issuance of bonds required to be filed with the United States Internal Revenue Service shall be certified as true and correct copies by the secretary of the authority. One copy shall be furnished to the governing body of the municipality and the other copy mailed to the Division of Industrial Development, Richmond, Virginia.

§ 15.1-1378.1. Public hearing and approval.—Whenever federal law requires public hearings and public approval as a prerequisite to obtaining federal tax exemption for the interest paid on industrial development bonds, the procedure, unless otherwise specified by federal law, shall be

A. For a public hearing by the authority-

1. To publish notice of the hearing once a week for two successive weeks in a newspaper published or having general circulation in the municipality in which the facility to be financed is to be located of intention to provide financing for a named individual or business entity. The applicant shall pay the cost of publication. The notice shall specify the time and place of hearing at which persons resident in such municipality may appear and present their views. The hearing shall be held not less than six days nor more than twenty-one days after the second advertisement shall appear in such newspaper.

The notice shall contain: (i) the name and address of the authority; (ii) the name and address (principal place of business, if any) of the party seeking financing; (iii) the maximum dollar amount of financing sought; (iv) the type business and purpose and specific location, if known, of the facility to be financed.

2. After the hearing has been held a reasonably detailed summary of the comments expressed at the hearing shall be conveyed forthwith to the municipality's governing body together with the recommendation of the authority.

B. For public approval-

1. The governing body of the municipality shall within thirty calendar days from the public hearing held by the authority either approve or disapprove financing of the facility.

2. Action of the governing body shall be by a majority of a quorum set out in a resolution. Such vote shall be recorded and disclose how each member voted.

3. In case of a joint authority the approval required by the governing body of the municipality shall be that governing body of the area where the facility will be located, if permitted by federal law.

§ 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 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 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 *or vice-chairman* of the authority or shall bear his facsimile signature, and the corporate seal of the authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) of the authority *or shall bear his facsimile signature*, and any coupons attached thereto shall bear the facsimile signature of said chairman. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be an officer before delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. *When the signatures of both the chairman or vice-chairman and the secretary (or the secretary-treasurer) are facsimiles, the bonds must be registered by a registrar or authenticated by a corporate trustee or other authenticating agent approved by the authority.*

(c) If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, shall be less than the cost of the authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficit, and unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any

additions, improvements or enlargements of the authority facilities for which such bonds shall have been issued.

(d) Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The authority may also provide for the replacement of any bonds which shall become mutilated or shall be destroyed or lost. Bonds may be issued under the provisions of this chapter without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things other than those proceedings, conditions or things which are specifically required by this chapter; provided, however, that nothing contained in this chapter shall be construed as affecting the powers and duties now conferred by law upon the State Corporation Commission.

(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.

EXHIBIT C

HOUSE JOINT RESOLUTION NO.....

Continuing the Industrial Development and Revenue Bond Act Study Commission.

WHEREAS, House Joint Resolution No. 23 of the 1982 General Assembly established the Industrial Development and Revenue Bond Act Study Commission; and

WHEREAS, such Commission is directed to submit its recommendations to the 1983 General Assembly; and

WHEREAS, following establishment of the study by the 1982 General Assembly, the U.S. Congress passed the Tax Equity and Fiscal Responsibility Act of 1982, which made substantial changes in the tax treatment of interest paid on industrial development bonds; and

WHEREAS, many regulations implementing the federal act remain to be issued; and

WHEREAS, the Commission may find it necessary to consider further restrictions on the commercial and retail uses of Industrial Revenue Bonds; and

WHEREAS, the Commission should have the opportunity to study the federal regulations when issued and recommend changes in Virginia law if required; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Industrial Development and Revenue Bond Act Study Commission is authorized to continue its study of industrial development financing in Virginia.

The unspent balance of the funds appropriated to the Commission by the 1982 House Joint Resolution No. 23 shall be transferred to the Commission under this resolution.

There is hereby allocated to the Commission from funds appropriated to the General Assembly the sum of \$5,000 to continue the study which sum is in addition to the unspent balance appropriated under 1982 House Joint Resolution No. 23.

Membership of the Commission may be retained as originally appointed under the 1982 resolution.

The Commission shall complete its work and make its recommendations to the 1984 Session of the General Assembly.

