

## INDUSTRIAL DEVELOPMENT AUTHORITIES

Industrial Development Authorities ("IDAs") are one of the oldest, most well-established vehicles for providing economic development incentives. Originally conceived to permit tax-exempt financing for certain private enterprises, their role has evolved in response to federal tax law changes that restricted the availability of tax-exempt financing. IDAs are used to finance infrastructure, to serve as a conduit to pay incentives, and to acquire, build and lease or sell shell buildings and industrial parks. IDAs have increasingly been used to facilitate development of non-profit and governmental facilities and housing.

### 1. Statutory Authority

Industrial Development and Revenue Bond Act, Sections 15.2-4900 et seq.

### 2. Procedure to Create

An IDA is created by ordinance of the governing body of the locality. There is no public hearing requirement other than the public hearing applicable to the adoption of ordinances by a county (Section 15.2-1427). The county ordinance requirement requires publication of notice once a week for two consecutive weeks with the second publication not sooner than one calendar week after the first publication. The statute was recently amended (pending Governor's signature) to allow an authority created under this Act to be called "Economic Development Authority."

### 3. Powers

**Issuance of Bonds.** An IDA is authorized to issue bonds for any of its purposes including payment of the cost of "authority facilities." Authority facilities are defined as:

- Medical facilities (including, but not limited to, office and treatment facilities);
- Pollution control facilities;
- Industrial facilities;
- Facilities for the residence or care of the aged;
- Multi-state regional or national headquarters offices or operations centers;
- Facilities for private, accredited and nonprofit institutions of collegiate, elementary, or secondary education whose primary purpose is not to provide religious training or theological education;
- Parking facilities;
- Facilities for use as office space by nonprofit, nonreligious or nonsectarian organizations;
- Facilities for museums and historical education, demonstration and interpretation, for use by nonprofit organizations;
- Facilities for use by an organization (other than an organization organized and operated exclusively for religious purposes) which is exempt from federal income taxation under §501(c)(3) of the Internal Revenue Code of 1986, as amended;
- Facilities for use by a locality, the Commonwealth and its agencies, or other governmental organizations;

- Facilities devoted to the staging of equine events and activities (other than racing events) owned and operated by a governmental or nonprofit, nonreligious or nonsectarian organization;
- Facilities for commercial enterprises;
- Commercial enterprises consisting of the following must be financed on a taxable basis: private or commercial golf course; country club; massage parlor; tennis club; skating facility; racquet sports facility; suntan facility; racetrack; any facility the primary purpose of which is one of the following: retail food and beverage service (excluding grocery stores); automobile sales and service; recreation or entertainment; or banks, savings and loan institutions or mortgage loan companies;
- Enterprise zone facilities; and
- Facilities used primarily for single or multi-family residences (but only if the locality creating the IDA has not activated its housing authority pursuant to Sections 36-4 and 36-4.1).

An IDA is authorized to issue bonds in furtherance of its purposes, which may be construed as broader than the list of "authority facilities" described above. **Note that the Internal Revenue Code only permits tax-exempt bonds to be issued for certain limited types of facilities mentioned above.** Section 15.2-4901 provides that an IDA may exercise its powers with respect to various authority facilities as are specifically named in such section in order to promote the "health, welfare, convenience and prosperity of the inhabitants of the Commonwealth."

**Serve as Conduit for Incentives/Provide Shell Buildings or Industrial Parks.** An IDA is authorized to acquire by purchase, exchange, gift, lease or otherwise and to improve, maintain, equip and furnish authority facilities, including real and personal property and to lease, sell, exchange, donate and convey it facilities or properties (Section 15.2-4905, paragraphs 4, 5 and 6). Paragraphs 12 and 13 of Section 15.2-4905 authorize IDAs to borrow money and accept contributions, grants and other financial assistance from federal and Commonwealth governmental entities for or in aid of authority facilities or in order to make loans in furtherance of the purposes of the Act and to make loans or grants in furtherance of the purposes of the Act, including for the purposes of promoting economic development. An IDA is also expressly authorized to forgive loans if it is deemed to further economic development. Section 15.2-4917 authorizes a locality to acquire, but not by condemnation, a facility site and transfer it to an IDA. This section provides that the locality may transfer the site without regard to the requirements, restrictions, limitations or other provisions contained in any other general, special or local law, presumably dispensing with the requirement of a public hearing before a locality may convey its property.

Section 15.2-953 expressly authorizes a locality to make gifts, donations and appropriations of money to an IDA for the purposes of promoting economic development. Section 15.2-1205 authorizes the governing body of a county to give, lend or advance funds or other county property to any authority created by it. The foregoing seems to provide ample authority for a locality to use its IDA to provide funds or other property as an incentive for economic development. In the Short Pump Town Center financing in Henrico County, the County proposed to make incentive payments to its Economic Development Authority, which would then make the payments to the developer. These incentive payments were challenged, along with the proposed community development authority financing. Judge Randall G. Johnson, sitting as Judge Designate for the Circuit Court of Henrico County, ruled against the community development authority financing, but specifically upheld the county's ability to make incentive payments through its EDA (*Short Pump Town Center v. Taxpayers*, 54 Va. Cir. 501 (City of Richmond 2001)). On appeal to the Virginia Supreme Court, the lower court ruling was vacated on grounds that did not address the question of the EDA incentives (*Short Pump Town Center v. Hahn*, 262 Va. 733, 554 S.E.2d 441 (2001)).

#### 4. **Limitations on Powers**

**No Power to Operate Facilities.** An IDA does not have the power to operate any facility as a business other than as lessor, except that an IDA may operate an industrial park and may establish, operate and maintain a foreign trade zone (Sections 15.2-4901, 15.2-4905).

**No Power to Tax.** An IDA does not have the power to generate revenues other than from rents and charges it may impose in connection with the sale or lease of authority facilities. Sections 15.2-4911 appears to give IDAs authority to charge fees for "any other services furnished or provided by the authority." An IDA does not have the power to impose or to request the locality to impose taxes or assessments.

**No Eminent Domain.** An IDA does not have the power of eminent domain and Section 15.2-4917 prohibits a locality from using condemnation to acquire a site for conveyance to an IDA.

**No Power to Joint Venture.** IDAs do not have the power to become a member of a corporation, partnership, joint venture or other entity.

Michael W. Graff, Jr.  
(703) 712-5110