

THE POWERS OF ECONOMIC DEVELOPMENT AUTHORITIES

FOR VIRGINIA PORT AUTHORITY

JULY 30, 2013

**Sandi McNinch
Virginia Economic
Development Partnership
smcninch@yesvirginia.org**

VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP



TOPICS TO BE COVERED

- **Legal Underpinnings**
- **Common Activities and Incentives**
 - Development of “Product”
 - Administration of Grants
 - Bond Financing
- **Less Common Activities**
 - Local Loan Programs

LEGAL UNDERPINNINGS



LEGAL UNDERPINNINGS

- **Virginia Constitution**
 - Credit Clause
 - Public Purpose Clause
 - Uniformity of Taxation Clause
- **Dillon Rule: Local Governments and Authorities have Only the Powers Expressly Granted to Them and Those Necessarily or Fairly Implied in or Incident to the Powers Expressly Granted**

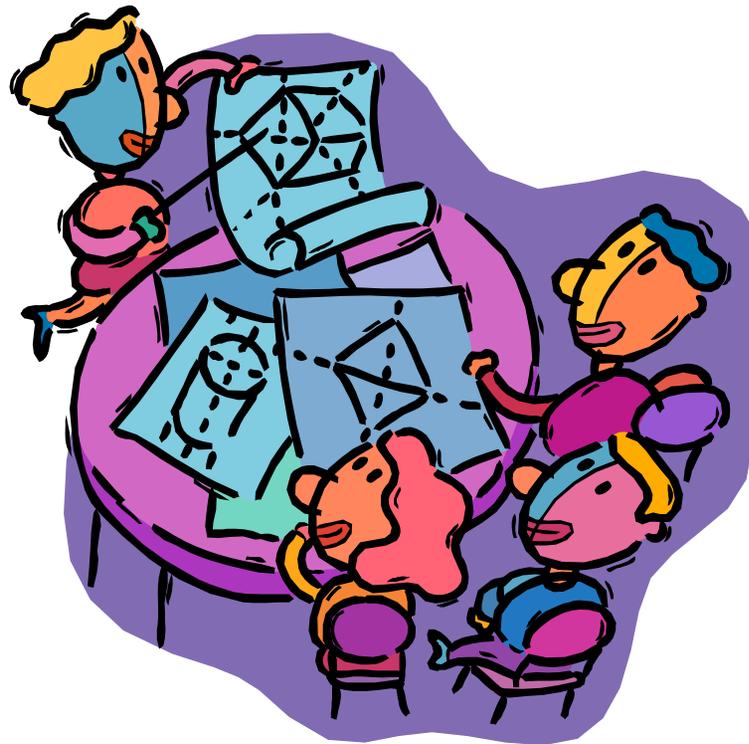
SOURCE OF POWERS

- **For EDAs, Broad Powers under Industrial Development and Revenue Bond Act**
- **Always Mindful of Animating Public Purpose**
“...to promote industry and develop trade by inducing manufacturing, industrial, governmental, nonprofit and commercial enterprises and institutions of higher education to locate in or remain in the Commonwealth and further the use of its agricultural products and natural resources”
- **OK that a Private Entity will Benefit**
- **State-Wide Powers**
- **Power to Act Jointly with Other Authorities**

POWERS, CONT.

- **Includes Powers Not Specifically Granted to Locality that Created the EDA:**
 - Make Grants to Private Businesses
 - Sell, Lease or Give Properties to Private Entities without Holding a Public Hearing
 - Sell and Lease Properties At, Above or Below FMV
 - Issue Bonds for the Benefit of Private Entities
 - Make Loans to Private Entities and, if Appropriate, Forgive Repayment of those Loans
- **EDAs have No Power to Operate a Facility, Except a Foreign Trade Zone**

COMMON ACTIVITIES



COMMON ACTIVITIES

- **ED Cheerleaders and Ambassadors**
- **Keeper of all Knowledge / Introductions to Other Businesses as Vendors and Customers**
- **Own / Market Industrial or Commercial Parks, Shell Buildings and Other Properties**
- **Administer Grant and ED Incentive Programs**
 - Unrestricted Cash Grants
 - Cash Grants Tied to Certain Behaviors: Façade Improvement, Signs, Cooperative Advertising
- **Issue Bonds for Private Entities and Localities**

“PRODUCT” DEVELOPMENT

- **Product: Shovel-Ready Land**
 - Graded
 - Appropriate Utilities
 - Appropriate Roads and Infrastructure
 - Proper Zoning
- **Product: Shell Building**
- **Product: Workforce**
 - Know Capabilities of Current Workforce
 - Know What Skills Local Businesses Need – Now and Later
 - Work with K-12
 - Work with Community Colleges and 4-Year Institutions

- **At the Intersection of Dillon’s Rule, the Credit Clause and the Uniformity of Taxation Clause**
- **Other States Can, and Do, Provide Direct Tax Abatements**
- **Virginia Localities Can Get to the Same Place by Offering, through the EDA, a Grant Equal to % of Taxes Paid**

RETURN ON INVESTMENT

- **From the Commonwealth's Point of View:**
 - Individual income taxes of employees
 - Sales taxes on capital investment
- **From the Locality's Point of View:**
 - Real property taxes
 - Personal property and machinery & tools taxes
 - Other local taxes, fees and charges
- **From VPA's Point of View:**
 - Increased TEU's/Tonnage

It's Not Always About the Money, but ROI Should form the Basis for Decisions on Discretionary Incentives

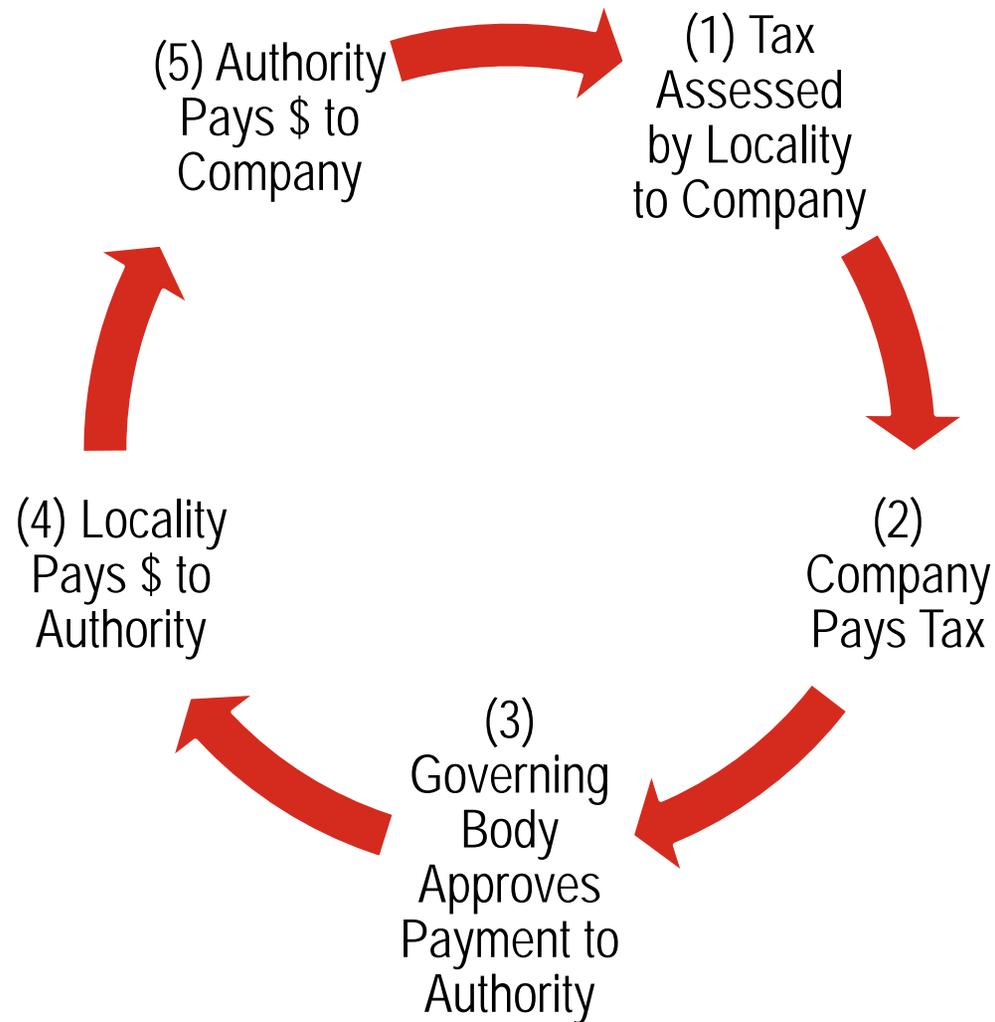
UP-FRONT GRANTS

- **An Up-Front Cash Grant is Every Prospect’s Favorite Incentive**
- **May or May Not be Tied to Particular Assets**
- **Should be Structured with a “Clawback” if Targets are not Achieved**
- **Could be Structured as a “Forgivable” Loan**

ONGOING GRANTS

- **Often Tied to Taxes Paid – a “Rebate” of Incremental Taxes Earned by the Locality**
 - Tax “Abatements” and Direct “Rebates” are not Permitted
- **Especially Important to Have a Clear Performance Agreement**
- **Especially Important to Document Ongoing Public Purpose**

PATH FOR GRANT PAYMENT



PRIVATE BOND FINANCING

- **Revenue Bonds for Private Entities**
 - Manufacturing Facilities
 - Exempt Facilities (Docks and Wharves, Sewage, Solid Waste, Etc.)
 - Charitable Facilities
- **Remember State-Wide Powers**
- **Authority Has no Payment Responsibility, but Merely Acts as a Conduit**
- **Pass-along the Benefit of Tax Exemption**
- **Often, EDA Collects an Annual Fee**

IDBS FOR MANUFACTURING FACILITIES

- **EDAs Can Issue Industrial Development Bonds (IDBs) to Finance the New Construction or Renovation and Equipping of Manufacturing Facilities**
- **Maximum IDB Size is \$10 Million**
- **Maximum Cost of the Facility is \$20 Million**
- **Maximum of \$40 Million Nationwide per Company**
- **Limits on Term of IDBs**

MANUFACTURING IDBS CONT.



- **Subject to a Statewide Annual Volume Cap**
 - In VA for 2013: \$194 Million for Manufacturing and Exempt Facility IDBs
 - Administered by the Virginia Small Business Financing Authority
- **TEFRA Process:**
 - Public Notice
 - Public Hearing
 - Public Approval

TYPICAL PROCESS

- **Usually, Borrower Will be Before You Twice**
 - Early On – Inducement Resolution
 - Later On – Final Resolution to Approve Form of Documents
- **In the Interim, Borrower will be Negotiating the Terms of the Financing with Lenders and Others**
- **Most EDAs Hold the Public Hearing at the Time of the Inducement Resolution**
- **You'll Need to Coordinate Public Approval with the Governor's Office**

IDBS FOR EXEMPT FACILITIES

- **Special Class of IDBs:**
 - Airports, Docks and Wharves
 - Solid Waste Disposal:
 - Can Include Portions of Plants
 - Recycling Facilities
 - Hazardous Waste Disposal
 - Sewage Facilities
 - Mass Commuting Facilities
- **Subject to Volume Cap (Mostly)**
- **No Dollar Limits on Size of Facility**
- **TEFRA Process**

IDBS FOR CHARITABLE FACILITIES



- **IDBs may be Issued for the Benefit of 501(c)(3) Charitable Organizations – Private Schools and Colleges, Non-Profit Hospitals, YMCAs, Goodwill**
- **No Dollar Limits on Bond Size, but \$150 Million Nationwide Limit on Non-Hospital Bonds**
- **Management Contract Rules Often Come Into Play**
- **TEFRA Process**

COMPLICATIONS

- **You are Being Pulled into a Hornets' Nest**
- **In 2003, Powers of VSBFA Expanded to Allow for Financing of 501(c)(3)s**
- **As a State Issuer, No Need to Go to Various / Numerous Localities for Public Hearings And Approvals – Cheaper and Faster**
- **VSBFA Charges Lower Fees Than Local EDAs**
- **In 2011/2012, VSBFA Forced to Share Revenues with Localities**
- **You Will be Asked to Curb Your Powers or Share Your Fees**

FINANCING FOR PUBLIC ASSETS

- **May Issue Bonds to Finance Public Facilities**
- **Often Used to Finance Facilities for Which a County does not Wish to Hold a Referendum or a City does not Wish to Count Against its Debt Limit**
- **Often Used in Advance of a Later Planned Bond Issue**
- **Authority Has no Payment Responsibility, but Merely Acts as a Conduit**
- **No Dollar Limits**
- **No TEFRA Process**

LESS COMMON ACTIVITIES



LESS COMMON ACTIVITIES

- **Own and Operate Business Incubators**
- **Develop Local Infrastructure**
- **Run the Locality's Economic Development Function**
 - Greater flexibility in operations
 - More flexible spending rules
- **New in 2011: Assist with Financing for Tourism Projects in Tourism Zones**
- **Administer Loan Programs for Local Businesses**

LOCAL LOAN PROGRAMS

- **Scores of Local and Regional Programs**
- **Can be Tailored to Meet Perceived Need**
- **May be Industry-Specific**
- **Often the 1st \$ in and the Last \$ out of a Deal**
 - **Gap Financing**
- **Requires Staffing to Administer Correctly**

RESOURCE INFORMATION



- **VEDP Main Marketing Site:**
 - www.yesvirginia.org
- **VEDP Resource Site for Allies:**
 - www.virginiaallies.org
- **Virginia Department of Business Assistance:**
 - www.dba.virginia.gov
- **Virginia Economic Developers Association:**
 - www.goveda.org
- **Council of Development Finance Agencies:**
 - www.cdfa.net