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SENATE BILL NO. 774

Offered January 8, 2003

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A BILL to amend and reenact §§ 62.1-198, 62.1-203, 62.1-209, 62.1-216, and 62.1-216.1 of the Code of Virginia, relating to the Virginia Resources Authority; financing of airport projects and collection of local obligations to the Commonwealth.

Patrons—Lambert, Colgan, Hanger, Hawkins, Ruff, Stosch and Wampler

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-198, 62.1-203, 62.1-209, 62.1-216, and 62.1-216.1 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-198. Legislative findings and purposes.

The General Assembly finds that there exists in the Commonwealth a critical need for additional sources of funding to finance the present and future needs of the Commonwealth for water supply, wastewater treatment facilities, drainage facilities, solid waste treatment, disposal and management facilities, recycling facilities, resource recovery facilities, professional sports facilities, certain heavy rail transportation facilities, public safety facilities, *airport facilities*, and the remediation of brownfields and contaminated properties. This need can be alleviated in part through the creation of a resources authority. Its purpose is to encourage the investment of both public and private funds and to make loans, grants, and credit enhancements available to local governments to finance water and sewer projects, drainage projects, solid waste treatment, disposal and management projects, recycling projects, professional sports facilities, resource recovery projects, public safety facilities, *airport facilities*, and the remediation of brownfields and contaminated properties. The General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity of the people of the Commonwealth.

§ 62.1-203. Powers of Authority.

The Authority is granted all powers necessary or appropriate to carry out and to effectuate its purposes, including the following:

1. To have perpetual succession as a public body corporate and as a political subdivision of the Commonwealth;
2. To adopt, amend and repeal bylaws, and rules and regulations, not inconsistent with this chapter for the administration and regulation of its affairs and to carry into effect the powers and purposes of the Authority and the conduct of its business;
3. To sue and be sued in its own name;
4. To have an official seal and alter it at will although the failure to affix this seal shall not affect the validity of any instrument executed on behalf of the Authority;
5. To maintain an office at any place within the Commonwealth which it designates;
6. To make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;
7. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its properties and assets;
8. To employ officers, employees, agents, advisers and consultants, including without limitations, attorneys, financial advisers, engineers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality;
9. To procure insurance, in amounts and from insurers of its choice, or provide self-insurance, against any loss, cost, or expense in connection with its property, assets or activities, including insurance or self-insurance against liability for its acts or the acts of its directors, employees or agents and for the indemnification of the members of its Board of Directors and its employees and agents;
10. To procure credit enhancements from any public or private entities, including any department, agency or instrumentality of the United States of America or the Commonwealth, for the payment of any bonds issued by the Authority, including the power to pay premiums or fees on any such credit enhancements;
11. To receive and accept from any source aid, grants and contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this chapter subject to the conditions upon which the aid, grants or contributions are made;

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59 12. To enter into agreements with any department, agency or instrumentality of the United States of
60 America or, the Commonwealth, the District of Columbia or any adjoining state for the purpose of
61 planning, regulating and providing for the financing of any projects;

62 13. To collect, or to authorize the trustee under any trust indenture securing any bonds or any other
63 fiduciary to collect, amounts due under any local obligations owned or credit enhanced by the Authority,
64 including taking the action required by § 15.2-2659 or § ~~62.1-217~~ 62.1-216.1 to obtain payment of any
65 sums in default;

66 14. To enter into contracts or agreements for the servicing and processing of local obligations owned
67 by the Authority;

68 15. To invest or reinvest its funds as provided in this chapter or permitted by applicable law;

69 16. Unless restricted under any agreement with holders of bonds, to consent to any modification with
70 respect to the rate of interest, time and payment of any installment of principal or interest, or any other
71 term of any local obligations owned by the Authority;

72 17. To establish and revise, amend and repeal, and to charge and collect, fees and charges in
73 connection with any activities or services of the Authority;

74 18. To do any act necessary or convenient to the exercise of the powers granted or reasonably
75 implied by this chapter; and

76 19. To pledge as security for the payment of any or all bonds of the Authority, all or any part of the
77 Capital Reserve Fund transferred to a trustee for such purpose from the Water Facilities Revolving Fund
78 pursuant to § 62.1-231 or from the Water Supply Revolving Fund pursuant to § 62.1-240 or from the
79 Virginia Solid Waste or Recycling Revolving Fund pursuant to § 62.1-241.9 or from the Virginia
80 Airports Revolving Fund pursuant to § 5.1-30.6.

81 § 62.1-209. Provisions of resolution or trust indenture authorizing issuance of bonds.

82 A. Bonds may be secured by a trust indenture between the Authority and a corporate trustee, which
83 may be any bank having the power of a trust company or any trust company within or without the
84 Commonwealth. A trust indenture may contain provisions for protecting and enforcing the rights and
85 remedies of the bondholders that are reasonable and proper and not in violation of law, including
86 covenants setting forth the duties of the Authority in relation to the exercise of its powers and the
87 custody, safekeeping and application of all money. The Authority may provide by the trust indenture for
88 the payment of the proceeds of the bonds and all or any part of the revenues of the Authority to the
89 trustee under the trust indenture or to some other depository, and for the method of their disbursement
90 with whatever safeguards and restrictions as the Authority specifies. All expenses incurred in carrying
91 out the trust indenture may be treated as part of the operating expenses of the Authority.

92 B. Any resolution or trust indenture pursuant to which bonds are issued may contain provisions,
93 which shall be part of the contract or contracts with the holders of such bonds as to:

94 1. Pledging all or any part of the revenue of the Authority to secure the payment of the bonds,
95 subject to any agreements with bondholders that then exist;

96 2. Pledging all or any part of the assets of, or funds under control of the Authority, including local
97 obligations owned by the Authority, to secure the payment of the bonds, subject to any agreements with
98 bondholders that then exist;

99 3. The use and disposition of the gross income from, and payment of the principal of and premium,
100 if any, and interest on local obligations owned by the Authority;

101 4. The establishment of reserves, sinking funds and other funds and accounts and the regulation and
102 disposition thereof;

103 5. Limitations on the purposes to which the proceeds from the sale of the bonds may be applied, and
104 limitations pledging the proceeds to secure the payment of the bonds;

105 6. Limitations on the issuance of additional bonds, the terms on which additional bonds may be
106 issued and secured, and the refunding of outstanding or other bonds;

107 7. The procedure, if any, by which the terms of any contract with bondholders may be amended or
108 abrogated, the amount of bonds, if any, the holders of which must consent thereto, and the manner in
109 which any consent may be given;

110 8. Limitations on the amount of money to be expended by the Authority for operating expenses of
111 the Authority;

112 9. Vesting in a trustee or trustees any property, rights, powers and duties in trust that the Authority
113 may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limit the
114 rights, powers and duties of the trustees;

115 10. Defining the acts or omissions which shall constitute a default, the obligations or duties of the
116 Authority to the holders of the bonds, and the rights and remedies of the holders of the bonds in the
117 event of default, including as a matter of right the appointment of a receiver; these rights and remedies
118 may include the general laws of the Commonwealth and other provisions of this chapter;

119 11. Requiring the Authority or the trustees under the trust indenture to file a petition with the
120 Governor and to take any and all other actions required under § 15.2-2659 or § ~~62.1-217~~ 62.1-216.1 to

obtain payment of all sums necessary to cover any default as to any principal of and premium, if any, and interest on local obligations owned by the Authority or held by a trustee to which § 15.2-2659 or § 62.1-217 62.1-216.1 shall be applicable; and

12. Any other matter, of like or different character, relating to the terms of the bonds or the security or protection of the holders of the bonds.

§ 62.1-216. Purchase and credit enhancements of local obligations.

The Authority shall have the power and authority, with any funds of the Authority available for such a purpose, to purchase and acquire, on terms which the Authority determines, local obligations to finance or refinance the cost of any project. The Authority may pledge to the payment of any bonds all or any portion of the local obligations so purchased. The Authority may also, subject to any such pledge, sell any local obligations so purchased and apply the proceeds of such a sale to the purchase of other local obligations for financing or refinancing the cost of any project or for any other corporate purpose of the Authority.

The Authority shall also have the power and authority to issue credit enhancements, on terms which the Authority determines, to credit enhance local obligations issued to finance or refinance the cost of any project.

The Authority may require, as a condition to the purchase or credit enhancement of any local obligations, that the local government issuing the local obligations covenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and premium, if any, and interest on the local obligations; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. To the extent permitted by law, establish procedures for a local government to consider and make appropriations of ad valorem or other taxes or funds of the local government in amounts sufficient to pay all or a specified portion of the amounts set forth in subsection A or to make deposits into the special fund or funds provided for in subsections C and D and to pledge and apply the amounts so appropriated for such purposes;

C. Create and maintain a special fund or funds for the payment of the principal of and premium, if any, and interest on the local obligations and any other amounts becoming due under any agreement entered into in connection with the local obligations, or for the operation, maintenance, repair or replacement of the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments as they become due and payable;

ED. Create and maintain other special funds as required by the Authority; and

DE. Perform other acts, including the conveyance of real and personal property together with all right, title and interest therein to the Authority, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal of and premium, if any, and interest on the local obligations or obligations to the Authority with respect to any credit enhancement and to provide for the remedies of the Authority or other holder of the local obligations in the event of any default by the local government in the payment, including, without limitation, any of the following:

1. The procurement of credit enhancements or liquidity arrangements for local obligations from any source, public or private, and the payment therefor of premiums, fees or other charges.

2. The payment of the allocable shares of the local governments, as determined by the Authority, of any costs, fees, charges or expenses attributable to liquidity arrangements incurred in connection with the issuance of bonds by the Authority to acquire local obligations of one or more local governments. The determination of such allocable shares may be made by the Authority on any reasonable basis.

3. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure local obligations issued in connection with such combination or any part or parts thereof.

4. The payment of the allocable shares of the local governments, as determined by the Authority on any reasonable basis, of rate stabilization funds established or required by the Authority in connection with the issuance of bonds by the Authority to acquire or provide credit enhancement for local obligations of two or more local governments.

All local governments issuing and selling local obligations to the Authority or to be credit enhanced by the Authority are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts with the Authority that are contemplated by this chapter. Such contracts need not be identical among all participants in financings of the Authority, but may be structured as determined by the Authority according to the needs of the contracting local governments and the

182 Authority.

183 § 62.1-216.1. Investigation by Governor of alleged defaults; withholding state funds from defaulting
184 locality; payment of funds withheld; receipts, reports, etc.

185 Whenever it appears to the Governor from an affidavit filed with him by ~~or on behalf of~~ the
186 Authority as the *purchaser*, holder, or credit enhancer of local obligations (regardless of the security
187 therefor) issued by any county, city or town that the county, city or town has defaulted in its payment
188 of the principal of or premium, if any, or interest on any of its outstanding local obligations *purchased*,
189 held, or credit enhanced by the Authority, the Governor shall immediately make a summary
190 investigation into the facts set forth in the affidavit. The Authority may, but shall not be required to, file
191 such an affidavit unless the Authority has otherwise contracted to make such filing for the benefit of the
192 holders of any of its bonds or the local obligations credit enhanced by it. *The affidavit described in this*
193 *section may be filed by a trustee to which the Authority has assigned the local obligations as security*
194 *for bonds of the Authority under a resolution or trust indenture or otherwise.*

195 If it is established to the satisfaction of the Governor that the county, city or town is in default in the
196 payment of such local obligations or the interest on them, the Governor shall immediately make an
197 order directing the Comptroller to withhold all further payment to the county, city or town of all funds,
198 or of any part of them, appropriated and payable by the Commonwealth to the county, city or town for
199 any and all purposes, until the default is cured. The Governor shall, while the default continues, direct in
200 writing the payment of all sums withheld by the Comptroller, or as much of them as is necessary, to the
201 Authority, so as to cure, or cure insofar as possible, the default as to the local obligations or interest on
202 them.

203 The Governor shall, as soon as practicable, give notice of the default and of the availability of funds
204 with the Comptroller in writing to the Authority. Any payment so made by the Comptroller to the
205 Authority shall be credited as if made directly by the county, city or town and shall be charged by the
206 Comptroller against the first appropriations otherwise payable to the county, city or town as if paid to
207 the county, city or town. The Authority, at the time of payment or at the time of each payment shall
208 receipt for the payment and deliver to the Comptroller all local obligations or other instruments or
209 documents, in a form satisfactory to the Comptroller, evidencing the Authority's right to receive the
210 amounts satisfied by the payment. The Comptroller shall report each payment made to the governing
211 body of the defaulting county, city or town and deliver or send by registered mail to the governing body
212 all local obligations, or other instruments or documents received by the Comptroller under the provisions
213 of this section.

214 Nothing in this section shall be construed to create any obligation on the part of the Comptroller or
215 the Commonwealth to make any payment on behalf of the defaulting county, city or town other than
216 from funds appropriated and payable to the defaulting county, city or town.