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SENATE BILL NO. 195

Offered January 11, 2006

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A BILL to amend and reenact §§ 5.1-30.2 and 5.1-30.5 of the Code of Virginia, relating to the repayment of loans made from the Virginia Airports Revolving Fund.

Patron—Williams

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That §§ 5.1-30.2 and 5.1-30.5 of the Code of Virginia are amended and reenacted as follows:

§ 5.1-30.2. Creation and management of Virginia Airports Revolving Fund.

There shall be set apart as a permanent and perpetual fund, to be known as the "Virginia Airports Revolving Fund," sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it to local governments, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private, including without limitation any federal grants, awards or other forms of assistance received by the Commonwealth that are eligible for deposit therein under federal law. The Authority shall administer and manage the Fund, and establish the interest rates and repayment terms of such loans as provided in this chapter, in accordance with a memorandum of agreement with the Board.

However, terms under any loan agreement for the defeasance, redemption, prepayment, or refunding of a loan to a local government made under such loan agreement shall not require the payment of any fee, charge, payment, or penalty other than (i) amounts required to cause the defeasance in full of the principal of and redemption premium, if any, and interest on obligations issued by the Authority in connection with such loan; (ii) charges for the cost of verification reports and other expenses of the Authority that directly relate to the defeasance of such obligations; (iii) payment of overdue or then due principal, premium (if any), and interest on such loan to the local government; (iv) reasonable costs and expenses, including reasonable attorney fees, incurred by the Authority in connection with a default on such loan by the local government or in connection with any amendment or discretionary action undertaken by the Authority at the request of the local government under such loan agreement; or (v) interest to reimburse reserve funds (established for a loan from the Fund) for foregone investment earnings related to a withdrawal of such reserve funds.

The Board shall direct the distribution of loans from the Fund to particular local governments. Consistent with this chapter, the Board shall, after consultation with all interested parties, develop a guidance document governing project eligibility and project priority criteria. In order to carry out the administration and management of the Fund, the Authority, in consultation with the Board, is granted the power to employ officers, employees, agents, advisers and consultants, including, without limitation, 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. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund and a reasonable fee to be approved by the Board for its management services.

§ 5.1-30.5. Loans to local governments.

Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments to finance or refinance the cost of any project. The local governments to which loans are to be made, the purposes of the loan, and the amount of each such loan, shall be designated in writing by the Board to the Authority following consultation with the Authority. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

Except as otherwise provided in this chapter, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between local governments.

Terms under any loan agreement for the defeasance, redemption, prepayment, or refunding of a loan to a local government made under such loan agreement shall not require the payment of any fee, charge, payment, or penalty other than (i) amounts required to cause the defeasance in full of the principal of and redemption premium, if any, and interest on obligations issued by the Authority in connection with such loan; (ii) charges for the cost of verification reports and other expenses of the Authority that directly relate to the defeasance of such obligations; (iii) payment of overdue or then due principal, premium (if any), and interest on such loan to the local government; (iv) reasonable costs and

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59 *expenses, including reasonable attorney fees, incurred by the Authority in connection with a default on*
60 *such loan by the local government or in connection with any amendment or discretionary action*
61 *undertaken by the Authority at the request of the local government under such loan agreement; or (v)*
62 *interest to reimburse reserve funds (established for a loan from the Fund) for foregone investment*
63 *earnings related to a withdrawal of such reserve funds.*

64 Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the
65 Fund. The bonds or notes shall have been duly authorized by the local government and executed by its
66 authorized legal representatives. The Authority is authorized to require in connection with any loan from
67 the Fund such documents, instruments, certificates, legal opinions and other information as it may deem
68 necessary or convenient. In addition to any other terms or conditions which the Authority may establish,
69 the Authority may require, as a condition to making any loan from the Fund, that the local government
70 receiving the loan covenant perform any of the following:

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

78 2. Create and maintain a special fund or funds for the payment of the principal of, premium, if any,
79 and interest on the loan from the Fund to the local government and any other amounts becoming due
80 under any agreement entered into in connection with the loan, or for the operation, maintenance, repair,
81 or replacement of the project or any portions thereof or other property of the local government, and
82 deposit into any fund or funds amounts sufficient to make any payments on the loan as they become
83 due and payable.

84 3. Create and maintain other special funds as required by the Authority.

85 4. Perform other acts otherwise permitted by applicable law to secure payment of the principal of,
86 premium, if any, and interest on the loan from the Fund to the local government and to provide for the
87 remedies of the Fund in the event of any default by the local government in the payment of the loan,
88 including, without limitation, any of the following:

89 a. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security,
90 liquidity arrangements or credit supports for the loan from any source, public or private, and the
91 payment thereof of premiums, fees, or other charges;

92 b. The combination of one or more projects, or the combination of one or more projects with one or
93 more other undertakings, facilities, utilities, or systems, for the purpose of operations and financing, and
94 the pledging of the revenues from such combined projects, undertakings, facilities, utilities, and systems
95 to secure the loan from the Fund to the local government made in connection with such combination or
96 any part or parts thereof;

97 c. The maintenance, replacement, renewal, and repair of the project; and

98 d. The procurement of casualty and liability insurance.

99 5. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts
100 or his legally authorized representatives. The Authority may request additional reviews at any time
101 during the term of the loan. In addition, anyone receiving a report in accordance with § 5.1-30.9 may
102 request an additional review as set forth in this section.

103 All local governments borrowing money from the Fund are authorized to perform any acts, take any
104 action, adopt any proceedings and make and carry out any contracts that are contemplated by this
105 chapter. Such contracts need not be identical among all local governments, but may be structured as
106 determined by the Authority according to the needs of the contracting local governments and the Fund.

107 Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the
108 Authority may consent to and approve any modification in the terms of any loan to any local
109 government.

110 **2. That the provisions of this act shall be applicable to loans made from the Virginia Airports**
111 **Revolving Fund to a local government, as defined under § 5.1-30.1 of the Code of Virginia, on or**
112 **after July 1, 2006.**

113 **3. For any loan made to a local government from the Virginia Airports Revolving Fund that is**
114 **outstanding as of midnight on June 30, 2006, the Virginia Resources Authority shall not charge or**
115 **attempt to collect any fee, charge, payment, or penalty for the defeasance, redemption,**
116 **prepayment, or refunding of such loan by the local government except for the fees, charges,**
117 **payments, or penalties expressly allowed under the provisions of this act. This prohibition shall not**
118 **apply to any such fees, charges, payments, or penalties for the defeasance, redemption,**
119 **prepayment, or refunding of a loan that have been covenanted by the Authority to any holder of**
120 **an obligation issued by the Authority.**