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HOUSE BILL NO. 1658

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A BILL to amend and reenact §§ 2.2-1149, 15.2-1800, 15.2-4905, 36-19 and 36-55.30 of the Code of Virginia, relating to purchases of real property by public bodies; survey of property required.

Patrons—Alexander and Nutter

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1149, 15.2-1800, 15.2-4905, 36-19 and 36-55.30 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-1149. Department to review proposed acquisitions of real property; approval by the Governor; exceptions.

Notwithstanding any provision of law to the contrary, no state department, agency or institution shall acquire real property by gift, lease, purchase or any other means without following the guidelines adopted by the Department and obtaining the prior approval of the Governor. *The guidelines adopted by the Department shall require that whenever a fee simple interest in real property is being acquired that a survey of the subject property be completed prior to the purchase.* The Department shall review every proposed acquisition of real property by gift, lease, purchase or any other means by any department, agency or institution of the Commonwealth and recommend either approval or disapproval of the transactions to the Governor based on cost, demonstrated need, and compliance with the Department's guidelines.

The provisions of this section shall not apply to the:

1. Acquisition of real property for open space preservations pursuant to the purposes of § 10.1-1800 and subdivision A 4 of § 10.1-2204, if it does not require as a condition of acceptance, an appropriation of any state funds for the continued maintenance of such property;

2. Acquisition of easements pursuant to the purposes of §§ 10.1-1020 and 10.1-1021 or §§ 10.1-1700, 10.1-1702, and 10.1-1702;

3. Acquisition through the temporary lease or donation of real property for a period of six months or less duration;

4. Acquisition of easements by public institutions of higher education provided that the particular institution meets the conditions prescribed in subsection B of § 23-38.88;

5. Entering into an operating/income lease or a capital lease by a public institution of higher education, for real property to be used for academic purposes, or for real property owned by the institution or a foundation related to the institution to be used for non-academic purposes, in accordance with the institution's land use plan pursuant to § 2.2-1153 provided that (i) the capital lease does not constitute tax-supported debt of the Commonwealth, (ii) the institution meets the conditions prescribed in subsection B of § 23-38.88, and (iii) for purposes of entering into a capital lease, the institution shall have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act. For the purposes of this subdivision, an operating/income lease or a capital lease shall be determined using generally accepted accounting principles; or

6. Acquisition of real property for the construction, improvement or maintenance of highways and transportation facilities and purposes incidental thereto by the Department of Transportation; however, acquisitions of real property by the Department of Transportation for office space, district offices, residencies, area headquarters, or correctional facilities shall be subject to the Department's review and the Governor's approval.

§ 15.2-1800. Purchase, sale, use, etc., of real property.

A. A locality may acquire by purchase, gift, devise, bequest, exchange, lease as lessee, or otherwise, title to, or any interests in, any real property, whether improved or unimproved, within its jurisdiction, for any public use. Acquisition of any interest in real property by condemnation is governed by Chapter 19 (§ 15.2-1900 et seq.). *When acquiring a fee simple interest in real property, the locality shall require that a survey of the subject property be completed prior to the purchase.* The acquisition of a leasehold or other interest in a telecommunications tower, owned by a nongovernmental source, for the operation of a locality's wireless radio communications systems shall be governed by this chapter.

B. Subject to any applicable requirements of Article VII, Section 9 of the Constitution, any locality may sell, at public or private sale, exchange, lease as lessor, mortgage, pledge, subordinate interest in or

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59 otherwise dispose of its real property, which includes the superjacent airspace (except airspace provided
60 for in § 15.2-2030) which may be subdivided and conveyed separate from the subjacent land surface,
61 provided that no such real property, whether improved or unimproved, shall be disposed of until the
62 governing body has held a public hearing concerning such disposal. However, the holding of a public
63 hearing shall not apply to (i) the leasing of real property to another public body, political subdivision or
64 authority of the Commonwealth or (ii) conveyance of site development easements across public property,
65 including, but not limited to, easements for ingress, egress, utilities, cable, telecommunications, storm
66 water management, and other similar conveyances, that are consistent with the local capital improvement
67 program, involving improvement of property owned by the locality. The provisions of this section shall
68 not apply to the vacation of public interests in real property under the provisions of Articles 6
69 (§ 15.2-2240 et seq.) and 7 (§ 15.2-2280 et seq.) of Chapter 22 of this title.

70 C. A city or town may also acquire real property for a public use outside its boundaries; a county
71 may acquire real property for a public use outside its boundaries when expressly authorized by law.

72 D. A locality may construct, insure, and equip buildings, structures and other improvements on real
73 property owned or leased by it.

74 E. A locality may operate, maintain, and regulate the use of its real property or may contract with
75 other persons to do so.

76 Notwithstanding any contrary provision of law, general or special, no locality providing access and
77 opportunity to use its real property, whether improved or unimproved, may deny equal access or a fair
78 opportunity to use such real property to, or otherwise discriminate against, the Boy Scouts of America
79 or the Girl Scouts of the USA. Nothing in this paragraph shall be construed to require any locality to
80 sponsor the Boy Scouts of America or the Girl Scouts of the USA, or to exempt any such groups from
81 local policies governing access to and use of a locality's real property. The provisions of this paragraph
82 applicable to a locality shall also apply equally to any local governmental entity, including a department,
83 agency, or authority.

84 F. This section shall not be construed to deprive the resident judge or judges of the right to control
85 the use of the courthouse.

86 G. "Public use" as used in this section shall have the same meaning as in § 15.2-1900.

87 § 15.2-4905. Powers of authority.

88 The authority shall have the following powers together with all powers incidental thereto or
89 necessary for the performance of those hereinafter stated:

90 1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having
91 jurisdiction of the subject matter and of the parties;

92 2. To adopt and use a corporate seal and to alter the same at pleasure;

93 3. To enter into contracts; however, any written contract of the authority shall contain provisions
94 addressing the issue of whether attorney's fees shall be recoverable by the prevailing party in the event
95 the contract is subject to litigation;

96 4. To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain,
97 equip and furnish one or more authority facilities including all real and personal properties which the
98 board of directors of the authority may deem necessary in connection therewith and regardless of
99 whether any such facilities shall then be in existence. *When acquiring a fee simple interest in real*
100 *property, the authority shall require that a survey of the subject property be completed prior to the*
101 *purchase;*

102 5. To lease to others any or all of its facilities and to charge and collect rent therefor and to
103 terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof;
104 and to include in any such lease, if desired, a provision that the lessee thereof shall have options to
105 renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the
106 indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with
107 or without consideration;

108 6. To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board
109 of directors shall find any such action to be in furtherance of the purposes for which the authority was
110 organized;

111 7. To issue its bonds for the purpose of carrying out any of its powers including specifically, but
112 without intending to limit any power conferred by this section or this chapter, the issuance of bonds to
113 provide long-term financing of any pollution control facility, whether any such facility was constructed
114 prior to or after the enactment hereof or the receipt of a commitment from an authority to undertake
115 financing pursuant hereto, unless the major part of the proceeds of such bonds will be used to redeem
116 any prior long-term financing of such facility other than financings pursuant to this chapter or any
117 similar law;

118 8. As security for the payment of the principal of and interest on any bonds so issued and any
119 agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part
120 or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or

from any part thereof or from any loans made by the authority;

9. To employ and pay compensation to such employees and agents, including attorneys, and real estate brokers whether engaged by the authority or otherwise, as the board of directors shall deem necessary in carrying on the business of the authority;

10. To exercise all powers expressly given the authority by the governing body of the locality which established the authority and to establish bylaws and make all rules and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the authority's affairs;

11. To appoint an industrial advisory committee or similar committee or committees to advise the authority, consisting of such number of persons as it may deem advisable. Such persons may be compensated such amount per regular, special, or committee meeting as may be approved by the appointing authority, not to exceed \$50 per meeting day, and may be reimbursed for necessary traveling and other expenses incurred while on the business of the authority;

12. To borrow money and to accept contributions, grants and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, for the payment of principal of any bond of the authority, interest thereon, or other cost incident thereto, or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed; and

13. To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this chapter including for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the authority which have not been pledged or assigned for the payment of any of the authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefor. An authority may also be permitted to forgive loans or other obligations if it is deemed to further economic development. The word "revenues" as used in this subdivision includes contributions, grants and other financial assistance, as set out in subdivision 12.

The authority shall not have power to operate any facility as a business other than as lessor and shall not have the power to operate any single or multi-family housing facilities. However, the authority shall have the power to apply for, establish, operate and maintain a foreign-trade zone in accordance with the provisions of Chapter 14 (§ 62.1-159 et seq.) of Title 62.1. Any meeting held by the board of directors at which formal action is taken shall be open to the public.

If a locality has created an industrial development authority pursuant to this chapter or any other provision of law, no other such authority, not created by such locality, shall finance facilities, except pollution control facilities, within the boundaries of such locality, unless the governing body of such locality in which the facilities are located or are proposed to be located, concurs with the inducement resolution adopted by the authority, and shows such concurrence in a duly adopted resolution. Notwithstanding the foregoing, nothing contained herein shall be deemed to invalidate or otherwise impair any existing financing by an authority or the financing of any facilities for which application has been made to an authority prior to July 1, 1981.

§ 36-19. Enumeration of powers.

An authority shall constitute a political subdivision of the Commonwealth with public and corporate powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

1. To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make, amend and repeal bylaws, rules and regulations, not inconsistent with law, to carry into effect the powers and purposes of the authority.

2. Within its area of operation, to prepare, carry out, acquire, lease and operate housing projects and residential buildings, and to provide for the construction, reconstruction, improvement, alteration or repair of any housing project, residential building, or any part thereof, and to construct, remodel or renovate any public building or other facility used for public purposes provided the authority is requested to do so by the governing body of the political subdivision wherein the public building or facility is located. *Whenever acquiring a fee simple interest in real property, the authority shall require that a survey of the subject property be completed prior to the purchase.*

3. To arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works, or facilities for, or in connection with, a housing project or the occupants thereof; and (notwithstanding anything to the contrary contained in this chapter or in any other provision of law) to include in any contract let in connection with a project, any provisions required to comply with any

conditions which the federal government may have attached to its financial aid of the project.

4. In connection with any housing project: to lease or rent any dwelling, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and (subject to the limitations contained in this chapter) to establish and revise the rents or charges therefor; to own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any real or personal property or any interest therein; to acquire by the exercise of the power of eminent domain any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards, to procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof issued by an authority, including the power to pay premiums on any such insurance.

5. To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or security in which savings banks may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled.

6. Within its area of operation, to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where blighted or slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing of blighted or slum areas, and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the locality, the Commonwealth or any other political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

7. To make loans or grants for the prevention and elimination of blighted or slum areas and for assistance in housing construction or rehabilitation by private sponsors of any and all funds received through federal programs and any and all funds received from other sources, public or private including but not limited to, rehabilitation loans received pursuant to the provisions of § 312 of the Federal Housing Act of 1964, as amended and the Housing and Community Development Act of 1974.

8. Within its area of operation, to act as agent for a political subdivision or agency of the Commonwealth or for a federal agency in making construction or rehabilitation loans to persons of low or moderate income in accordance with the rules and regulations of the political subdivision or agency.

9. Within its area of operation to make grants, loans or refinance loans made by others for assistance in planning, development, acquisition, construction, repair, rehabilitation, equipping or maintenance of commercial, residential or other buildings; provided that prior approval of any such loan by the local governing body shall be required if the building is not located within a housing, redevelopment or conservation area, or rehabilitation area and provided further that any rehabilitation funded by any such grant or loan is in compliance with property maintenance standards contained in duly adopted redevelopment or conservation plans in effect in such area of operation.

10. To borrow money and issue evidence of indebtedness in the name of and for the use of the authority, to issue bonds and other obligations, and give security therefor, subject to such limitations as may be imposed by law.

11. To conduct examinations and investigations, and to make available to appropriate agencies (including those charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its area of operation) its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare.

12. With the approval of the local governing body or its designee, to form corporations, partnerships, joint ventures, trusts, or any other legal entity or combination thereof, on its own behalf or with any person or public or private entity.

13. To exercise all or any part or combination of powers herein granted.

No provisions of law with respect to the acquisition, operation or disposition of property by other political subdivisions or public bodies shall be applicable to an authority unless the legislature shall specifically state.

§ 36-55.30. Powers of HDA generally.

The HDA is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following:

1. Sue and be sued in its own name;
2. Have an official seal and to alter the same at pleasure;
3. Have perpetual succession;
4. Maintain an office at such place or places within this Commonwealth as it may designate;
5. Adopt and from time to time amend and repeal bylaws, not inconsistent with this chapter, to carry into effect the powers and purposes of HDA and the conduct of its business;

6. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;

7. Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment, transfer, foreclosure, lease or otherwise, including rights or easements; to hold, manage, operate, or improve real or personal property; to sell, assign, lease, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or deed of trust or mortgage lien interest owned by it or under its control, custody or in its possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it and to do any of the foregoing by public or private sale, with or without public bidding, notwithstanding the provisions of any other law. *Whenever acquiring a fee simple interest in real property, the HDA shall require that a survey of the subject property be completed prior to the purchase;*

8. To lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities to effectuate the purposes of this chapter;

9. To enter into agreements or other transactions with the federal government, the Commonwealth of Virginia or any governmental agency thereof or any municipality in furtherance of the purposes of this chapter, including but not limited to the development, maintenance, operation and financing of any housing development or residential housing, or land improvement; to enter into agreements with the federal government or other parties for the provision by the HDA, or any entity or fund owned or sponsored by or related to the HDA, of services and assistance in the restructuring or modification of debt or subsidy, or in the improvement of the financial or physical condition, of any housing development or residential housing, including without limitation any housing development or residential housing owned, financed or assisted by the federal government or financed by a mortgage loan insured by the federal government, which agreements may provide for the indemnification by the HDA of the federal government or other parties against liabilities and costs in connection with the provision of such services and assistance if such indemnification is determined by the executive director to be in furtherance of the public purposes of this chapter, provided that (i) such indemnification shall be payable solely from the funds of the HDA, excluding any funds appropriated by the Commonwealth which shall be held by the HDA in a separate fund while such indemnification is in effect, (ii) such indemnification shall not constitute a debt or obligation of the Commonwealth and the Commonwealth shall not be liable therefor, and (iii) any such agreement limits the HDA's total liability for the indemnification thereunder to a stated dollar amount and notifies the federal government or other parties that the full faith and credit of the Commonwealth are not pledged or committed to payment of the HDA's obligation to indemnify the federal government or other parties under such agreement; to operate and administer loan programs of the federal government, the Commonwealth of Virginia, or any governmental agency thereof or any municipality involving land development, the planning, development, construction or rehabilitation of housing developments and residential housing, the acquisition, preservation, improvement or financing of existing residential housing or other forms of housing assistance for persons and families of low and moderate income, however funded; and to operate and administer any program of housing assistance for persons and families of low and moderate income, however funded;

10. To receive and accept aid, grants, contributions and cooperation of any kind from any source for the purposes of this chapter subject to such conditions, acceptable to HDA, upon which such aid, grants, contributions and cooperation may be made, including, but not limited to, rent supplement payments made on behalf of eligible persons or families or for the payment in whole or in part of the interest expense for a housing development or for any other purpose consistent with this chapter;

11. To provide, contract or arrange for consolidated processing of any aspect of a housing development in order to avoid duplication thereof by either undertaking the processing in whole or in part for any department, agency, or instrumentality of the United States or of this Commonwealth, or, in the alternative, to delegate the processing in whole or in part to any such department, agency or instrumentality;

12. To provide advice and technical information, including technical assistance at the state and local levels in the use of both public and private resources to increase low-income housing resources for the disabled;

13. To employ architects, engineers, attorneys, accountants, housing, construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation;

14. To procure insurance against any loss in connection with its property and other assets, including mortgages and mortgage loans, in such amounts and from such insurers as it deems desirable;

15. To insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing, or refinancing housing developments for persons and families of low and moderate income upon such terms and conditions as HDA may prescribe and to create insurance

305 funds and form corporations for the purpose of providing mortgage guaranty insurance on mortgage
306 loans made or financed by HDA pursuant to this chapter;

307 16. To invest its funds as provided in this chapter or permitted by applicable law;

308 17. To borrow money and issue bonds and notes or other evidences of indebtedness thereof as
309 hereinafter provided;

310 18. Subject to the requirements of any agreements with bondholders or noteholders, to consent to any
311 modification with respect to rate of interest, time and payment of any installment of principal or interest,
312 security or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment,
313 contract or agreement of any kind to which HDA is a party;

314 19. Subject to the requirements of any agreements with bondholders or noteholders, to enter into
315 contracts with any mortgagor containing provisions enabling such mortgagor to reduce the rental or
316 carrying charges to persons unable to pay the regular schedule of charges where, by reason of other
317 income or payment from any department, agency or instrumentality of the United States or this
318 Commonwealth, such reductions can be made without jeopardizing the economic stability of housing
319 being financed;

320 20. To procure or agree to the procurement of insurance or guarantees from the federal government
321 of the payment of any bonds or notes or any other evidences of indebtedness thereof issued by HDA or
322 an authority, including the power to pay premiums on any such insurance;

323 21. To make and enter into all contracts and agreements with mortgage lenders for the servicing and
324 processing of mortgage loans pursuant to this chapter;

325 22. To establish, and revise from time to time and charge and collect fees and charges in connection
326 with any agreements made by HDA under this chapter;

327 23. To do any act necessary or convenient to the exercise of the powers herein granted or reasonably
328 implied;

329 24. To invest in, purchase or make commitments to purchase securities or other obligations secured
330 by or payable from mortgage loans on, or issued for the purpose of financing or otherwise assisting land
331 development or residential housing for persons or families of low or moderate income;

332 25. To acquire, develop and own multifamily residential housing as hereinafter provided;

333 26. To enter into agreements with owners of housing developments eligible for federal low-income
334 housing credits as hereinafter provided in this chapter; and

335 27. To exercise any of the powers granted by this chapter for the purpose of financing an
336 economically mixed project and, if such project is within a revitalization area designated in or pursuant
337 to § 36-55.30:2, any nonhousing buildings that are incidental to such project or are determined by such
338 governing body to be necessary or appropriate for the revitalization of such area or for the industrial,
339 commercial, or other economic development of such area; provided that a capital reserve fund shall not
340 be created for any such financing pursuant to § 36-55.41.