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SENATE BILL NO. 1185

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact § 54.1-2113 of the Code of Virginia, relating to Real Estate Board; Real Estate Transaction Recovery Fund.

Patron—Locke

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:**1. That § 54.1-2113 of the Code of Virginia is amended and reenacted as follows:**

§ 54.1-2113. Establishment and maintenance of fund, duty of Director, assessments of regulants.

A. Each initial regulant at the time of licensure shall be assessed twenty dollars, which shall be specifically assigned to the fund. Initial payments may be incorporated in any application fee payment and transferred to the fund by the Director within thirty days.

B. All assessments, except initial assessments, for the fund shall be deposited, within three work days after their receipt by the Director, in one or more federally insured banks, savings and loan associations or savings banks located in the Commonwealth. Funds deposited in banks, savings and loan associations or savings banks, to the extent in excess of insurance afforded by the Federal Deposit Insurance Corporation or other federal insurance agency, shall be secured under the Security for Public Deposits Act (§ 2.2-4400 et seq.). The deposit of these funds in federally insured banks, savings institutions or savings banks located in the Commonwealth shall not be considered investment of such funds for purposes of this section. Funds maintained by the Director may be invested in securities that are legal investments for fiduciaries under the provisions of § 26-40.01. The Director shall maintain in his office an accurate record of all transactions involving the fund, which records shall be open for inspection and copying by the public during the normal business hours of the Director.

C. The minimum balance of the fund shall be \$400,000. Whenever the Director determines that the balance of the fund is or will be less than such minimum balance, the Director shall immediately inform the Board. At the same time, the Director may recommend that the Board transfer a fixed amount of interest earnings to the fund to bring the balance of the fund to the amount required by this subsection. Such transfer of interest shall be considered by the Board within thirty days of the notification of the Director.

D. If available interest earnings are insufficient to bring the balance of the fund to the minimum amount required by this section, or if a transfer of available interest earnings to the fund has not occurred, the Board shall assess each regulant within thirty days of notification by the Director, a sum sufficient to bring the balance of the fund to the required minimum amount. The Board may order an assessment of regulants at any time in addition to any required assessment. No regulant shall be assessed a total amount of more than twenty dollars during any biennial license period or part thereof, the biennial period expiring on June 30 of each even-numbered year. Assessments of regulants made pursuant to this subsection may be issued by the Board (i) after a determination made by it or (ii) at the time of license renewal.

E. At the close of each fiscal year, whenever the balance of the fund exceeds \$2,000,000, the amount in excess of \$2,000,000 shall be transferred to the Virginia Housing Partnership Fund. Except for transfers pursuant to this subsection, there shall be no transfers out of the fund, including transfers to the general fund, regardless of the balance of the fund.

F. If the Board determines that all regulants will be assessed concurrently, notice to the regulants of such assessments shall be by first-class mail, and payment of such assessments shall be made by first-class mail to the Director within forty-five days after the mailing to regulants of such notice.

If the Board determines that all regulants will be assessed in conjunction with license renewal, notice to the regulants may be included with the license renewal notice issued by the Board. The assessment shall be due with the payment of the license renewal fees. No license shall be renewed or reinstated until any outstanding assessments are paid.

G. If any regulant fails to remit the required payment mailed in accordance with subsection F within forty-five days of the mailing, the Director shall notify the regulant by first-class mail at the latest address of record filed with the Board. If no payment has been received by the Director within thirty days after mailing the second notice, the license shall be automatically suspended. The license shall be restored only upon the actual receipt by the Director of the delinquent assessment.

H. The costs of administering the act shall be paid out of interest earned on deposits constituting the

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59 fund. The remainder of the interest, at the discretion of the Board, may be used for providing research
60 and education on subjects of benefit to real estate regulants *or members of the public*, or may accrue to
61 the fund in accordance with subsection C.