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HOUSE BILL NO. 46

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee on March 13, 2010)

(Patron Prior to Substitute—Delegate Oder)

A BILL to amend the Code of Virginia by adding in Title 36 a chapter numbered 10.1, consisting of sections numbered 36-156.1 and 36-156.2, relating to Virginia Defective Drywall Correction and Restoration Assistance Fund.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 36 a chapter numbered 10.1, consisting of sections numbered 36-156.1 and 36-156.2, as follows:

CHAPTER 10.1.

VIRGINIA DEFECTIVE DRYWALL CORRECTION AND RESTORATION ASSISTANCE FUND.

§ 36-156.1. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authority" means the Virginia Resources Authority.

"Bona fide prospective purchaser" means a person who acquires ownership, or proposes to acquire ownership, of real property affected by defective drywall.

"Cost," as applied to any project financed under the provisions of this chapter, means the reasonable and necessary costs incurred for carrying out all works and undertakings necessary or incident to the correction or elimination of defective drywall. It includes, without limitation, all necessary developmental, planning, and feasibility studies, surveys, plans, and specifications; architectural, engineering, financial, legal, or other special services; site assessments, remediation, containment, and demolition or removal of existing structures or portions thereof; the discharge of any obligation of the seller of such land, buildings, or improvements; labor; materials, machinery, and equipment; the funding of accounts and reserves that the Authority may require; the reasonable costs of financing incurred by the local government in the course of the development of the project; carrying charges incurred prior to completion of the project; and the cost of other items that the Authority determines to be reasonable and necessary.

"Defective drywall" means drywall installed during new construction or renovation that occurred between 2001 and 2008, where there is visual evidence of the blackening of copper electrical wiring or air conditioning evaporator coils (or documentation of the replacement of evaporator coils due to blackened corrosion resulting in failure), and where two or more pieces of corroborating evidence are present in the form of defective conditions as demonstrated by testing procedures recommended by the Consumer Products Safety Commission, confirmed markings of the Chinese origin of the drywall, or strontium levels from drywall core samples from the property exceeding 1200 parts per million (ppm); elemental sulfur levels in samples of drywall core found in the home exceeding 10 ppm; elevated levels of hydrogen sulfide, carbonyl sulfide, or carbon disulfide emitted from samples of drywall from the home when placed in test chambers using ASTM Standard Test Method D5504-08 or similar chamber or headspace testing; or the corrosion of copper metal to form copper sulfide when copper is placed in test chambers with drywall samples taken from the property.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development.

"Fund" means the Virginia Defective Drywall Correction and Restoration Assistance Fund.

"Innocent land owner" means a person who holds any title, security interest, or any other interest in residential real property and who acquired that interest after the installation of defective drywall occurred.

"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision of the Commonwealth created by the General Assembly or otherwise created pursuant to the laws of the Commonwealth or any combination of the foregoing.

§ 36-156.2. Virginia Defective Drywall Correction and Restoration Assistance Fund established; uses.

A. There is hereby created and set apart a special, permanent, perpetual, and nonreverting fund to be known as the Virginia Defective Drywall Correction and Restoration Assistance Fund for the purposes of promoting the correction and restoration of residential property affected by the environmental problems attributable to defective drywall or overcoming obstacles to the remediation of such properties attributable to the real or presumed presence of defective drywall. The Fund shall consist of sums from all receipts by the Fund from loans made by it, 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 any federal grants, awards, or other forms of financial assistance received

HOUSE SUBSTITUTE

HB46H1

60 by the Commonwealth.

61 B. The Authority shall administer and manage the Fund and establish the interest rates and  
62 repayment terms for loans made to eligible entities or individuals in accordance with a memorandum of  
63 agreement with the Department of Housing and Community Development. The Department of Housing  
64 and Community Development shall direct the distribution of loans or grants from the Fund to particular  
65 recipients based upon guidelines developed for this purpose. With approval from the Department of  
66 Housing and Community Development, the Authority may disperse moneys from the Fund for the  
67 payment of reasonable and necessary costs and expenses incurred in the administration and  
68 management of the Fund. The Authority may establish and collect a reasonable fee on outstanding loans  
69 for its management services.

70 C. All money belonging to the Fund shall be deposited in an account or accounts in banks or trust  
71 companies organized under the laws of the Commonwealth or in national banking associations located  
72 in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth  
73 or the United States. The money in these accounts shall be paid by check and signed by the Executive  
74 Director of the Authority or other officers or employees designated by the Board of Directors of the  
75 Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined  
76 by the Authority to be prudent, and all banks, trust companies, and savings institutions are authorized to  
77 give security for the deposits. Money in the Fund shall not be commingled with other money of the  
78 Authority. Money in the Fund not needed for immediate use or disbursement may be invested or  
79 reinvested by the Authority in obligations or securities that are considered lawful investments for public  
80 funds under the laws of the Commonwealth. Expenditures and disbursements from the Fund shall be  
81 made by the Authority upon written request signed by the Executive Director of the Virginia Economic  
82 Development Partnership.

83 D. The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due  
84 to the Fund under any loan including, if appropriate, taking the action required by § 15.2-2659 to  
85 obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be  
86 instituted by the Authority in the name of the Fund in the appropriate circuit court.

87 E. The Department of Housing and Community Development may approve grants to local  
88 governments for the purposes of promoting the correction or restoration of residential real property and  
89 addressing real environmental problems or obstacles to the correction or restoration of such properties.  
90 The grants may be used to pay the reasonable and necessary costs associated with the remediation of a  
91 contaminated property to remove hazardous substances, hazardous wastes, or solid wastes or the  
92 stabilization or restoration of these structures or the demolition and removal of the existing structures or  
93 other work necessary to remediate or reuse the real property. The Department of Housing and  
94 Community Development may establish such terms and conditions as it deems appropriate and shall  
95 evaluate each grant request in accordance with the guidelines developed for this purpose. The Authority  
96 shall disburse grants from the Fund in accordance with a written request from the Department of  
97 Housing and Community Development.

98 F. The Authority may make loans to local governments, public authorities, corporations,  
99 partnerships, or individuals to finance or refinance the cost of any defective drywall restoration or  
100 remediation project for the purposes of promoting the restoration and redevelopment of residential real  
101 property and addressing real environmental problems or obstacles to reuse of these properties. The  
102 loans shall be used to pay the reasonable and necessary costs related to the restoration and  
103 redevelopment of residential real property for the remediation of a contaminated property to remove  
104 hazardous substances, hazardous wastes, or solid wastes; stabilization or restoration of the affected  
105 properties; demolition and removal of existing structures; or other work necessary to remediate or reuse  
106 the real property

107 The Department of Housing and Community Development shall designate in writing the recipient of  
108 each loan, the purposes of the loan, and the amount of each such loan. No loan from the Fund shall  
109 exceed the total cost of the project to be financed or the outstanding principal amount of the  
110 indebtedness to be refinanced plus reasonable financing expenses.

111 G. Except as otherwise provided in this chapter, the Authority shall determine the interest rate and  
112 terms and conditions of any loan from the Fund, which may vary between local governments. Each loan  
113 shall be evidenced by appropriate bonds or notes of the loan recipient payable to the Fund. The bonds  
114 or notes shall have been duly authorized by the local government and executed by its authorized legal  
115 representatives. The Authority is authorized to require in connection with any loan from the Fund such  
116 documents, instruments, certificates, legal opinions, and other information as it may deem necessary or  
117 convenient. In addition to any other terms or conditions that the Authority may establish, the Authority  
118 may require, as a condition to making any loan from the Fund, that the entity receiving the loan  
119 covenant and perform any of the following:

120 1. Establish and collect rents, rates, fees, taxes, and charges to produce revenue sufficient to pay all  
121 or a specified portion of (i) the costs of the project, (ii) any outstanding indebtedness incurred for the

122 purposes of the project, including the principal of, premium, if any, and interest on the loan from the  
123 Fund to the local government, and (iii) any amounts necessary to create and maintain any required  
124 reserve.

125 2. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government  
126 subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan  
127 from the Fund to the local government.

128 3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any,  
129 and interest on the loan from the Fund to the local government and any other amounts becoming due  
130 under any agreement entered into in connection with the loan, or the project or any portions thereof or  
131 other property of the local government, and deposit into any fund or funds amounts sufficient to make  
132 any payments on the loan as they become due and payable.

133 4. Create and maintain other special funds as required by the Authority.

134 5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of,  
135 premium, if any, and interest on the loan from the Fund to the local government and to provide for the  
136 remedies of the Fund in the event of any default by the local government in the payment of the loan,  
137 including, without limitation, any of the following:

138 a. The conveyance of, or the granting of liens on or security interests in, real and personal property,  
139 together with all rights, title, and interest therein, to the Fund;

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

143 c. The combination of one or more projects, or the combination of one or more projects with one or  
144 more other undertakings, for the purpose of financing, and the pledging of the revenues from such  
145 combined projects and undertakings to secure the loan from the Fund to the local government made in  
146 connection with such combination or any part or parts thereof;

147 d. The maintenance, replacement, renewal, and repair of the project; and

148 e. The procurement of casualty and liability insurance.

149 6. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts  
150 or his legally authorized representatives. The Authority may request additional reviews at any time  
151 during the term of the loan.

152 7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to  
153 obtain payment of any amounts in default.

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

158 I. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the  
159 Authority may consent to and approve any modification in the terms of any loan to any local  
160 government.

161 J. The Department of Housing and Community Development, through its Director, shall have the  
162 authority to access and release moneys in the Fund for purposes of this section as long as the  
163 disbursement does not exceed the balance of the Fund. If the Department of Housing and Community  
164 Development, through its Director, requests a disbursement in an amount exceeding the current Fund  
165 balance, the disbursement shall require the written approval of the Governor. Disbursements from the  
166 Fund may be made for the purposes outlined in this section, including, but not limited to, personnel,  
167 administrative, and equipment costs and expenses directly incurred by the Partnership or the Authority,  
168 or by any other agency or political subdivision acting at the direction of the Department of Housing  
169 and Community Development.

170 The Authority is empowered at any time and from time to time to pledge, assign, or transfer from the  
171 Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be  
172 held in trust as security for the payment of the principal of, premium, if any, and interest on any or all  
173 of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any  
174 assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment, or  
175 transfer. To the extent funds are not available from other sources pledged for such purpose, any of the  
176 assets or payments of principal and interest received on the assets pledged, assigned, or transferred or  
177 held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any,  
178 and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for  
179 such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from  
180 the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority.  
181 Any assets of the Fund pledged, assigned, or transferred in trust as set forth above and any payments of  
182 principal, interest, or earnings received thereon shall remain part of the Fund but shall be subject to

183 *the pledge, assignment, or transfer to secure the bonds of the Authority and shall be held by the trustee*  
184 *to which they are pledged, assigned, or transferred until no longer required for such purpose by the*  
185 *terms of the pledge, assignment, or transfer.*

186 *K. The Authority is empowered at any time and from time to time to sell, upon such terms and*  
187 *conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this*  
188 *chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale*  
189 *shall be designated for deposit to, and become part of, the Fund.*

190 *L. The Authority may, with the approval of the Department of Housing and Community Development,*  
191 *pledge, assign, or transfer from the Fund to banks or trust companies designated by the Authority any*  
192 *or all of the assets of the Fund to be held in trust as security for the payment of the principal of,*  
193 *premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any*  
194 *project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the*  
195 *trustee under the pledge, assignment, or transfer. To the extent funds are not available from other*  
196 *sources pledged for such purpose, any of the assets or payments of principal and interest received on*  
197 *the assets pledged, assigned, or transferred or held in trust may be applied by the trustee thereof to the*  
198 *payment of the principal of, premium, if any, and interest on such bonds of the Authority secured*  
199 *thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or*  
200 *all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium,*  
201 *if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned, or*  
202 *transferred in trust as set forth above and any payments of principal, interest, or earnings received*  
203 *thereon shall remain part of the Fund but shall be subject to the pledge, assignment, or transfer to*  
204 *secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned,*  
205 *or transferred until no longer required for such purpose by the terms of the pledge, assignment, or*  
206 *transfer.*

207 *M. The Department of Housing and Community shall develop guidance governing the use of the*  
208 *Fund and including criteria for project eligibility that considers the extent to which a grant or loan will*  
209 *facilitate the use or reuse of the existing residential property, the extent to which a grant or loan will*  
210 *meet the needs of a recipient, the potential restoration of the property, the economic and environmental*  
211 *benefits to the surrounding community, and the extent of the perceived or real environmental*  
212 *contamination at the site. The guidelines shall include a requirement for a one-to-one match by the*  
213 *recipient of any grant made by or from the Fund.*