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SENATE BILL NO. 364

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 27.1, consisting of sections numbered 15.2-2710 through 15.2-2722, relating to the creation of the Virginia School Construction Revolving Fund for financing of elementary, secondary, or vocational education school projects.

Patrons—Barker and Blevins; Delegate: Rust

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 27.1, consisting of sections numbered 15.2-2710 through 15.2-2722, as follows:

CHAPTER 27.1.

VIRGINIA SCHOOL CONSTRUCTION REVOLVING FUND.

§ 15.2-2710. 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 elementary, secondary, or vocational education school acquisition, expansion, construction, equipment, renovation, rehabilitation, and related supporting infrastructure and equipment facilities. This need can be alleviated in part through the creation of a school construction revolving fund. 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 elementary, secondary, or vocational education school projects. The General Assembly determines that the creation of a revolving fund 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.

§ 15.2-2711. Definitions.

"Act" means the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.).

"Advisory Board" means the Virginia School Construction Revolving Fund Advisory Board created by this chapter.

"Authority" means the Industrial Development Authority of the County of Stafford and the City of Staunton created by such local governments pursuant to the Act.

"Board" means the Board of Directors of the Authority.

"Bonds" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, lease and sale-leaseback transactions, or any other evidences of indebtedness of the Authority.

"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 incidental to the accomplishment of any Project. It includes, without limitation, all necessary developmental, planning, and feasibility studies, surveys, plans, and specifications; architectural, engineering, financial, legal, or other special services; site preparation and development, including the demolition or removal of existing structures; the costs of acquisition of land and any buildings and improvements thereon, including 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, including the cost of any credit enhancements; carrying charges incurred prior to completion of the Project; interest on local obligations issued to finance the Project to a date subsequent to the estimated date the Project is to be placed in service; necessary expenses incurred in connection with placing the Project in service; and the cost of other items that the Authority determines to be reasonable and necessary.

"Credit enhancements" means surety bonds, insurance policies, letters of credit, guarantees, and other forms of collateral or security.

"Fund" means the Virginia School Construction Revolving Fund created by this chapter.

"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.

"Local obligations" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation notes, leases, or any other evidences of indebtedness of a local government.

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59 "Project" means all or any part of a facility related to, in support of, used, determined, or to be used  
60 or determined to be for or for the benefit of elementary, secondary, or vocational education located or  
61 to be located in the Commonwealth and may consist of or include any or all facilities related to the  
62 needs or convenience of such interests, together with any or all buildings or other structures,  
63 improvements, additions, extensions, replacements, machinery, or equipment and any or all  
64 appurtenances, lands, rights in land, rights-of-way, franchises, furnishings, landscaping, utilities,  
65 approaches, roadways, or other facilities necessary or desirable in connection therewith or incidental  
66 thereto, all or part of which facility serves or is to serve any local government.

67 § 15.2-2712. Virginia School Construction Revolving Fund Advisory Board; purpose; membership;  
68 terms; compensation.

69 A. The Virginia School Construction Revolving Fund Advisory Board shall be comprised of an  
70 advisory committee to the Authority, to be established by the Authority pursuant to § 15.2-4905,  
71 consisting of 11 members, two of whom shall be appointed by the Speaker of the House of Delegates  
72 from the membership of the House of Delegates, two of whom shall be appointed by the Senate  
73 Committee on Rules from the membership of the Senate, and one of whom shall be appointed by the  
74 Board of Education. The remaining six members shall be selected from a list provided by the Virginia  
75 Municipal League and the Virginia Association of Counties as follows: three members recommended by  
76 the Virginia Association of Counties and three members recommended by the Virginia Municipal  
77 League. The term of each member shall be four years. The purpose of the Advisory Board shall be to  
78 assist and advise the Authority in the management of the Fund and the determination and distribution of  
79 loans and grants from the Fund.

80 B. The members of the Advisory Board shall elect a chairman and vice-chairman annually. A  
81 majority of the members of the Advisory Board shall constitute a quorum. The bylaws governing the  
82 Advisory Board shall be adopted on or before December 31, 2010.

83 § 15.2-2713. Creation and management of Virginia School Construction Revolving Fund.

84 A. There is hereby created and set apart a permanent, perpetual, and nonreverting fund to be known  
85 as the Virginia School Construction Revolving Fund for the purposes of elementary, secondary, or  
86 vocational education school acquisition, expansion, construction, equipment, renovation, rehabilitation,  
87 and related supporting infrastructure and equipment facilities. The Fund shall consist of sums  
88 appropriated to the Fund by the General Assembly; all receipts by the Fund, including, but not limited  
89 to, from loans made by it; all income from the investment of moneys held in the Fund; and any other  
90 sums designated for deposit to the Fund from any source, public or private, including, but not limited  
91 to, any federal grants, awards, or other forms of financial assistance received, designated, or  
92 appropriated by the Commonwealth. The Fund shall be established on the books of the Authority.

93 B. The Authority shall administer and manage the Fund. Consistent with this chapter, the Advisory  
94 Board shall develop a guidance document governing Project eligibility and Project priority criteria,  
95 direct the distribution of loans and grants from the Fund to particular local governments, and establish  
96 the interest rates and repayment terms of such loans as provided in this chapter. The Authority may  
97 disburse from the Fund its reasonable costs and expenses incurred in the administration and  
98 management of the Fund and may establish and collect a reasonable fee for its management services,  
99 provided that any annual fee shall not exceed .08 percent on the outstanding balance of any loan.

100 § 15.2-2714. Deposit of money; expenditures; investments.

101 All money belonging to the Fund shall be deposited in an account or accounts in banks or trust  
102 companies organized under the laws of the Commonwealth or in national banking associations located  
103 in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth  
104 or the United States. The money in these accounts shall be paid by check and signed by such officers or  
105 employees designated by the Board of Directors of the Authority. All deposits of money shall, if required  
106 by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust  
107 companies, and savings institutions are authorized to give security for the deposits. Money in the Fund  
108 shall not be commingled with other money of the Authority. Money in the Fund not needed for  
109 immediate use or disbursement may be invested or reinvested by the Authority in obligations or  
110 securities that are considered lawful investments for public funds under the laws of the Commonwealth.

111 § 15.2-2715. Collection of money due Fund.

112 The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to  
113 the Fund under any loan to obtain payment of any amounts in default or unpaid. Proceedings to recover  
114 amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate  
115 circuit court.

116 § 15.2-2716. Grants to local governments.

117 Subject to any restrictions that may apply to the use of money in the Fund, the Advisory Board in its  
118 discretion may approve the use of money in the Fund to make and disburse grants or appropriations to  
119 local governments to pay the cost of any Project. The Advisory Board may establish such terms and  
120 conditions on any grant as it deems appropriate and shall evaluate each grant request in accordance

121 with the guidelines developed for this purpose.

122 § 15.2-2717. Loans to local governments.

123 Subject to the Advisory Board's direction, the Authority may make loans from the Fund to local  
124 governments to finance or refinance the cost of any Project. The local governments to which loans are  
125 to be made, the purposes of each such loan, and the amount of each such loan shall be designated in  
126 writing to the Authority by the Advisory Board. No loan from the Fund shall exceed the total cost of the  
127 Project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus  
128 reasonable financing expenses.

129 The Advisory Board shall determine the interest rate and terms and conditions of any loan from the  
130 Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds  
131 or notes of the local government payable to the Fund. The bonds or notes shall have been duly  
132 authorized by the local government and executed by its authorized legal representatives. The Authority is  
133 authorized to require in connection with any loan from the Fund such documents, instruments,  
134 certificates, legal opinions, and other information as it may deem necessary or convenient. The Authority  
135 may require an acceptable opinion of bond counsel, obtained by the governing body of the local  
136 government, as to the validity of the local obligation or the tax-exempt status of such obligation. In  
137 addition to any other terms or conditions that the Authority may establish, the Authority may require, as  
138 a condition to making any loan from the Fund, that the local government receiving the loan covenant to  
139 perform any of the following:

140 1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a  
141 specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the  
142 Project; (ii) any outstanding indebtedness incurred for the purposes of the Project, including the  
143 principal of, premium, if any, and interest on the loan from the Fund to the local government; and (iii)  
144 any amounts necessary to create and maintain any required reserve.

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

148 3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any,  
149 and interest on the loan from the Fund to the local government and any other amounts becoming due  
150 under any agreement entered into in connection with the loan, or for the operation, maintenance, repair,  
151 or replacement of the Project or any portions thereof or other property of the local government, and  
152 deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due  
153 and payable.

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

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

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

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

164 c. The combination of one or more Projects or the combination of one or more Projects with one or  
165 more other undertakings or facilities for the purpose of operations and financing, and the pledging of  
166 the revenues from such combined projects, undertakings, or facilities to secure the loan from the Fund  
167 to the local government made in connection with such combination or any part or parts thereof;

168 d. The maintenance, replacement, renewal, and repair of the Project; and

169 e. The procurement of casualty and liability insurance.

170 6. Obtain a review of the accounting and the internal controls from any auditor of the local  
171 government. The Authority may request additional reviews at any time during the term of the loan. In  
172 addition, anyone receiving a report in accordance with § 15.2-2721 may request an additional review as  
173 set forth in this section.

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

178 Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the  
179 Authority may consent to and approve any modification in the terms of any loan to any local  
180 government.

181 § 15.2-2718. Pledge of loans to secure bonds of Authority.

182 *The Authority is empowered at any time and from time to time to pledge, assign, or transfer from the*  
183 *Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be*  
184 *held in trust as security for the payment of the principal of, premium, if any, and interest on any or all*  
185 *of the bonds, as defined in § 15.2-2711, issued to finance any project. The interests of the Fund in any*  
186 *assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment, or*  
187 *transfer. To the extent funds are not available from other sources pledged for such purpose, any of the*  
188 *assets or payments of principal and interest received on the assets pledged, assigned, or transferred or*  
189 *held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any,*  
190 *and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for*  
191 *such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from*  
192 *the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority.*  
193 *Any assets of the Fund pledged, assigned, or transferred in trust as set forth above and any payments of*  
194 *principal, interest, or earnings received thereon shall remain part of the Fund but shall be subject to*  
195 *the pledge, assignment, or transfer to secure the bonds of the Authority and shall be held by the trustee*  
196 *to which they are pledged, assigned, or transferred until no longer required for such purpose by the*  
197 *terms of the pledge, assignment, or transfer.*

198 *§ 15.2-2719. Sale of loans.*

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

203 *§ 15.2-2720. Powers of the Authority.*

204 *In addition to the powers granted in the Act, the Authority is granted all powers necessary or*  
205 *appropriate to carry out and to effectuate its purposes, including the following:*

206 *1. To procure insurance, in amounts and from insurers of its choice, or provide self-insurance,*  
207 *against any loss, cost, or expense in connection with its property, assets, or activities, including*  
208 *insurance or self-insurance against liability for its acts or the acts of its directors, employees, or agents*  
209 *and for the indemnification of the members of its Board of Directors and its employees and agents;*

210 *2. To procure credit enhancements from any public or private entities, including any department,*  
211 *agency, or instrumentality of the United States of America or the Commonwealth, for the payment of*  
212 *any bonds issued by the Authority, including the power to pay premiums or fees on any such credit*  
213 *enhancements;*

214 *3. To enter into contracts or agreements for the servicing and processing of local obligations owned*  
215 *by the Authority;*

216 *4. To invest or reinvest its funds as provided in this chapter or permitted by applicable law;*

217 *5. To do any act necessary or convenient to the exercise of the powers granted or reasonably*  
218 *implied by this chapter; and*

219 *6. To pledge as security for the payment of any or all bonds of the Authority all or any part of a*  
220 *reserve fund or account transferred to a trustee for such purpose from the Virginia School Construction*  
221 *Revolving Fund pursuant to § 15.2-2718.*

222 *§ 15.2-2721. Report to the General Assembly and Governor.*

223 *The Authority shall report annually to the General Assembly and the Governor on all grants and*  
224 *loans made from the Fund.*

225 *§ 15.2-2722. Liberal construction of chapter.*

226 *The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may*  
227 *be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other*  
228 *law, general, special or local, the provisions of this chapter shall be controlling.*