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HOUSE BILL NO. 1919

Offered January 12, 2011

Prefiled January 11, 2011

A BILL to amend and reenact §§ 36-156.2 and 58.1-2508 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 4 of Title 38.2 a section numbered 38.2-416, relating to an assessment on insurance companies to fund the Virginia Defective Drywall Correction and Restoration Assistance Fund.

Patron—Abbott

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-156.2 and 58.1-2508 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 4 of Title 38.2 a section numbered 38.2-416 as follows:

§ 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 such sums that may be appropriated to the Fund by the General Assembly, *sums deposited to the Fund from the assessment made by the State Corporation Commission pursuant to § 38.2-416*, sums from all receipts by the Fund from loans made by it, *all interest and other 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 by the Commonwealth. *The State Corporation Commission shall be reimbursed from the Fund for all necessary expenses incurred by it in the administration of § 38.2-416. The Fund shall be subject to audit by the Auditor of Public Accounts.*

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

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

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

E. The Department of Housing and Community Development may approve grants to local governments for the purposes of promoting the correction or restoration of residential real property and addressing environmental problems or obstacles to the correction or restoration of such properties. The

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59 grants may be used to pay the reasonable and necessary costs associated with the remediation of a
60 contaminated property to remove hazardous substances, hazardous wastes, or solid wastes or the
61 stabilization or restoration of these structures or the demolition and removal of the existing structures or
62 other work necessary to remediate or reuse the real property. The Department of Housing and
63 Community Development may establish such terms and conditions as it deems appropriate and shall
64 evaluate each grant request in accordance with the guidelines developed for this purpose. The Authority
65 shall disburse grants from the Fund in accordance with a written request from the Department of
66 Housing and Community Development.

67 F. The Authority may make loans to local governments, public authorities, corporations, partnerships,
68 or innocent landowners to finance or refinance the cost of any defective drywall restoration or
69 remediation project for the purposes of promoting the restoration and redevelopment of residential real
70 property and addressing real environmental problems or obstacles to reuse of these properties. The loans
71 shall be used to pay the reasonable and necessary costs related to the restoration and redevelopment of
72 residential real property for the remediation of a contaminated property to remove hazardous substances,
73 hazardous wastes, or solid wastes; stabilization or restoration of the affected properties; demolition and
74 removal of existing structures; or other work necessary to remediate or reuse the real property.

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

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

88 1. Establish and collect rents, rates, fees, taxes, and charges to produce revenue sufficient to pay all
89 or a specified portion of (i) the costs of the project, (ii) any outstanding indebtedness incurred for the
90 purposes of the project, including the principal of, premium, if any, and interest on the loan from the
91 Fund to the local government, and (iii) any amounts necessary to create and maintain any required
92 reserve.

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

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

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

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

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

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

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

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

116 e. The procurement of casualty and liability insurance.

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

120 7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to

obtain payment of any amounts in default.

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

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

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

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

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

M. The Department of Housing and Community shall develop guidelines governing the use of the Fund and including criteria for project eligibility that considers the extent to which a grant or loan will facilitate the use or reuse of the existing residential property, the extent to which a grant or loan will meet the needs of a recipient, the potential restoration of the property, the economic and environmental benefits to the surrounding community, and the extent of the perceived or real environmental contamination at the site.

§ 38.2-416. Assessment to fund the Virginia Defective Drywall Correction and Restoration Assistance Fund.

A. Each licensed insurer doing business in the Commonwealth by writing the type of insurance as defined in §§ 38.2-110, 38.2-130, and the property portion of 38.2-132 shall pay, in addition to any other assessments provided in this title, an assessment in an amount equal to six-tenths of one percent of the direct gross premium income for such insurance during the preceding calendar year. The assessment shall be apportioned and assessed and paid as prescribed by § 38.2-403.

B. The assessments made by the Commission under subsection A and paid into the state treasury, including any interest thereon, shall be deposited to the Virginia Defective Drywall Correction and Restoration Assistance Fund established pursuant to § 36-156.2.

C. The Commission shall be reimbursed from the Fund for all necessary expenses for the administration of this section.

D. This section shall expire on July 1, 2016.

§ 58.1-2508. Taxes applicable to insurance companies.

A. The real estate and tangible personal property, situated or located in the Commonwealth, of every such company and every fraternal benefit society transacting insurance in the Commonwealth shall be listed and assessed on the land and property books of the commissioner of the revenue in the same manner as other real estate and tangible personal property are assessed, and shall be taxed at the same

182 rates as other like property is taxed.

183 B. The license tax provided in this chapter, the tax on real estate and tangible personal property
184 provided for in subsection A, the fee assessed by the Commission for the administration of the insurance
185 laws pursuant to Chapter 4 (§ 38.2-400 et seq.) of Title 38.2, the fee assessed by the Commission for
186 the Fire Programs Fund pursuant to § 38.2-401, the fee assessed by the Commission for the Dam Safety,
187 Flood Prevention and Protection Assistance Fund pursuant to § 38.2-401.1, the fee assessed by the
188 Commission to fund the program to reduce losses from motor vehicle thefts pursuant to § 38.2-414, the
189 fee assessed by the Commission to fund the program to reduce losses from insurance fraud pursuant to
190 § 38.2-415, *the fee assessed by the Commission for the Virginia Defective Drywall Correction and*
191 *Restoration Assistance Fund pursuant to § 38.2-416*, and the retaliatory amounts assessed by the
192 Commission pursuant to § 38.2-1026 shall be in lieu of all fees, licenses, taxes and levies whatsoever,
193 state, county, city or town; however, nothing in this section shall be construed to exempt insurance
194 companies from the tax levied in Chapter 6 (§ 58.1-600 et seq.) ~~of this title~~. No additional fee or license
195 tax shall be applicable to an agent of an insurance company other than the annual license fee on agents
196 required pursuant to Article 3 (§ 38.2-1819 et seq.) of Chapter 18 of Title 38.2.