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SENATE BILL NO. 1309

Offered January 12, 2011

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A BILL to amend and reenact §§ 62.1-199, 62.1-203, 62.1-209, and 62.1-216.1 of the Code of Virginia, relating to the Virginia Resources Authority.

Patron—Colgan

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-199, 62.1-203, 62.1-209, and 62.1-216.1 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-199. Definitions.

As used in this chapter, unless a different meaning clearly appears from the context:

"Authority" means the Virginia Resources Authority created by this chapter.

"Board of Directors" 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 obligations of the Authority for the payment of money.

"Capital Reserve Fund" means the reserve fund created and established by the Authority in accordance with § 62.1-215.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident 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, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements, real estate appraisals, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, 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 before placing the project in service, 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, the funding of accounts and reserves which the Authority may require and the cost of other items which the Authority determines to be reasonable and necessary. It also includes the amount of any contribution, grant or aid which a local government may make or give to any adjoining state, the District of Columbia or any department, agency or instrumentality thereof to pay the costs incident and necessary to the accomplishment of any project, including, without limitation, the items set forth above. The term also includes interest and principal payments pursuant to any installment purchase agreement.

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

"Defective drywall" means the same as that term is defined in § 36-156.1.

"Federal facility" means any building or infrastructure used or to be used by the federal government, including any building or infrastructure located on lands owned by the federal government.

"Federal government" means the United States of America, or any department, agency or instrumentality, corporate or otherwise, of the United States of America.

"Former federal facility" means any federal facility formerly used by the federal government or in transition from use by the federal government to a facility all or part of which is to serve any local government.

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

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

"Minimum capital reserve fund requirement" means, as of any particular date of computation, the amount of money designated as the minimum capital reserve fund requirement which may be established

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59 in the resolution of the Authority authorizing the issuance of, or the trust indenture securing, any
60 outstanding issue of bonds or credit enhancement.

61 "Project" means (i) any water supply or wastewater treatment facility including a facility for
62 receiving and stabilizing septage or a soil drainage management facility and any solid waste treatment,
63 disposal, or management facility, recycling facility, federal facility or former federal facility, or resource
64 recovery facility located or to be located in the Commonwealth, the District of Columbia or any
65 adjoining state, all or part of which facility serves or is to serve any local government; and (ii) any
66 federal facility located or to be located in the Commonwealth, provided that both the Board of Directors
67 of the Authority and the governing body of the local government receiving the benefit of the loan, grant,
68 or credit enhancement from the Authority make a determination or finding to be embodied in a
69 resolution or ordinance that the undertaking and financing of such facility is necessary for the location
70 or retention of such facility and the related use by the federal government in the Commonwealth. The
71 term includes, without limitation, water supply and intake facilities; water treatment and filtration
72 facilities; water storage facilities; water distribution facilities; sewage and wastewater (including surface
73 and ground water) collection, treatment and disposal facilities; drainage facilities and projects; solid
74 waste treatment, disposal or management facilities; recycling facilities; resource recovery facilities;
75 related office, administrative, storage, maintenance and laboratory facilities; and interests in land related
76 thereto. The term also includes energy conservation measures and facility technology infrastructure as
77 defined in § 11-34.2 and other energy objectives as defined in § 67-101. The term also means any heavy
78 rail transportation facilities operated by a transportation district, created under the Transportation District
79 Act of 1964 (§ 15.2-4500 et seq.), which operates heavy rail freight service, including rolling stock,
80 barge loading facilities, and any related marine or rail equipment. The term also means, without
81 limitation, the design and construction of roads, the construction of local government buildings,
82 including administrative and operations systems and other local government equipment and
83 infrastructure, public parking garages and other public transportation facilities, and facilities for public
84 transportation by commuter rail. In addition, the term means any project as defined in § 5.1-30.1 and
85 any professional sports facility, including a major league baseball stadium as defined in § 15.2-5800,
86 provided that the specific professional sports facility projects have been designated by the General
87 Assembly as eligible for assistance from the Authority. The term also means any equipment, facilities,
88 and technology infrastructure designed to provide broadband service. The term also means facilities
89 supporting, related to, or otherwise used for public safety including, but not limited to, law-enforcement
90 training facilities and emergency response, fire, rescue and police stations. The term also means the
91 remediation, redevelopment and rehabilitation of property contaminated by the release of hazardous
92 substances, hazardous wastes, solid wastes or petroleum where such remediation has not clearly been
93 mandated by the United States Environmental Protection Agency, the Department of Environmental
94 Quality, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability
95 Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.),
96 the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et
97 seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been
98 waived. The term also means any program or project for land conservation, parks, park facilities, land
99 for recreational purposes, or land preservation, including but not limited to any program or project
100 involving the acquisition of rights or interests in land for the conservation or preservation of such land.
101 The term also means any oyster restoration project, including planting and replanting with seed oysters,
102 oyster shells, or other material that will catch, support, and grow oysters. The term also means any
103 program or project to perform site acquisition or site development work for the benefit of economic and
104 community development projects for any local government. The term also means any undertaking by a
105 local government to build or facilitate the building of a recovered gas energy facility. The term also
106 means any undertaking by a local government to facilitate the remediation of residential properties
107 contaminated by the presence of defective drywall.

108 "Recovered gas energy facility" means a facility, located at or adjacent to (i) a solid waste
109 management facility permitted by the Department of Environmental Quality or (ii) a sewerage system or
110 sewage treatment work described in § 62.1-44.18 that is constructed and operated for the purpose of
111 treating sewage and wastewater for discharge to state waters, which facility or work is constructed and
112 operated for the purpose of (a) reclaiming or collecting methane or other combustible gas from the
113 biodegradation or decomposition of solid waste, as defined in § 10.1-1400, that has been deposited in
114 the solid waste management facility or sewerage system or sewage treatment work and (b) either using
115 such gas to generate electric energy or upgrading the gas to pipeline quality and transmitting it off
116 premises for sale or delivery to commercial or industrial purchasers or to a public utility or locality.

117 § 62.1-203. Powers of Authority.

118 The Authority is granted all powers necessary or appropriate to carry out and to effectuate its
119 purposes, including the following:

120 1. To have perpetual succession as a public body corporate and as a political subdivision of the

- 121 Commonwealth;
- 122 2. To adopt, amend and repeal bylaws, and rules and regulations, not inconsistent with this chapter
- 123 for the administration and regulation of its affairs and to carry into effect the powers and purposes of
- 124 the Authority and the conduct of its business;
- 125 3. To sue and be sued in its own name;
- 126 4. To have an official seal and alter it at will although the failure to affix this seal shall not affect
- 127 the validity of any instrument executed on behalf of the Authority;
- 128 5. To maintain an office at any place within the Commonwealth which it designates;
- 129 6. To make and execute contracts and all other instruments and agreements necessary or convenient
- 130 for the performance of its duties and the exercise of its powers and functions under this chapter;
- 131 7. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any
- 132 part of its properties and assets;
- 133 8. To employ officers, employees, agents, advisers and consultants, including without limitations,
- 134 attorneys, financial advisers, engineers and other technical advisers and public accountants and, the
- 135 provisions of any other law to the contrary notwithstanding, to determine their duties and compensation
- 136 without the approval of any other agency or instrumentality;
- 137 9. To procure insurance, in amounts and from insurers of its choice, or provide self-insurance,
- 138 against any loss, cost, or expense in connection with its property, assets or activities, including insurance
- 139 or self-insurance against liability for its acts or the acts of its directors, employees or agents and for the
- 140 indemnification of the members of its Board of Directors and its employees and agents;
- 141 10. To procure credit enhancements from any public or private entities, including any department,
- 142 agency or instrumentality of the United States of America or the Commonwealth, for the payment of
- 143 any bonds issued by the Authority, including the power to pay premiums or fees on any such credit
- 144 enhancements;
- 145 11. To receive and accept from any source aid, grants and contributions of money, property, labor or
- 146 other things of value to be held, used and applied to carry out the purposes of this chapter subject to the
- 147 conditions upon which the aid, grants or contributions are made;
- 148 12. To enter into agreements with any department, agency or instrumentality of the United States of
- 149 America or, the Commonwealth, the District of Columbia or any adjoining state for the purpose of
- 150 planning, regulating and providing for the financing of any projects;
- 151 13. To collect, or to authorize the trustee under any trust indenture securing any bonds or any other
- 152 fiduciary to collect, amounts due under any local obligations owned or credit enhanced by the Authority,
- 153 including taking the action required by § 15.2-2659 or § 62.1-216.1 to obtain payment of any *unpaid*
- 154 *sums in default*;
- 155 14. To enter into contracts or agreements for the servicing and processing of local obligations owned
- 156 by the Authority;
- 157 15. To invest or reinvest its funds as provided in this chapter or permitted by applicable law;
- 158 16. Unless restricted under any agreement with holders of bonds, to consent to any modification with
- 159 respect to the rate of interest, time and payment of any installment of principal or interest, or any other
- 160 term of any local obligations owned by the Authority;
- 161 17. To establish and revise, amend and repeal, and to charge and collect, fees and charges in
- 162 connection with any activities or services of the Authority;
- 163 18. To do any act necessary or convenient to the exercise of the powers granted or reasonably
- 164 implied by this chapter; and
- 165 19. To pledge as security for the payment of any or all bonds of the Authority, all or any part of the
- 166 Capital Reserve Fund or other reserve fund or account transferred to a trustee for such purpose from the
- 167 Water Facilities Revolving Fund pursuant to § 62.1-231, from the Water Supply Revolving Fund
- 168 pursuant to § 62.1-240, from the Virginia Solid Waste or Recycling Revolving Fund pursuant to
- 169 § 62.1-241.9, from the Virginia Airports Revolving Fund pursuant to § 5.1-30.6, or from the Dam
- 170 Safety, Flood Prevention and Protection Assistance Fund pursuant to § 10.1-603.17.
- 171 § 62.1-209. Provisions of resolution or trust indenture authorizing issuance of bonds.
- 172 A. Bonds may be secured by a trust indenture between the Authority and a corporate trustee, which
- 173 may be any bank having the power of a trust company or any trust company within or without the
- 174 Commonwealth. A trust indenture may contain provisions for protecting and enforcing the rights and
- 175 remedies of the bondholders that are reasonable and proper and not in violation of law, including
- 176 covenants setting forth the duties of the Authority in relation to the exercise of its powers and the
- 177 custody, safekeeping and application of all money. The Authority may provide by the trust indenture for
- 178 the payment of the proceeds of the bonds and all or any part of the revenues of the Authority to the
- 179 trustee under the trust indenture or to some other depository, and for the method of their disbursement
- 180 with whatever safeguards and restrictions as the Authority specifies. All expenses incurred in carrying
- 181 out the trust indenture may be treated as part of the operating expenses of the Authority.

182 B. Any resolution or trust indenture pursuant to which bonds are issued may contain provisions,
183 which shall be part of the contract or contracts with the holders of such bonds as to:

184 1. Pledging all or any part of the revenue of the Authority to secure the payment of the bonds,
185 subject to any agreements with bondholders that then exist;

186 2. Pledging all or any part of the assets of, or funds under control of the Authority, including local
187 obligations owned by the Authority, to secure the payment of the bonds, subject to any agreements with
188 bondholders that then exist;

189 3. The use and disposition of the gross income from, and payment of the principal of and premium,
190 if any, and interest on local obligations owned by the Authority;

191 4. The establishment of reserves, sinking funds and other funds and accounts and the regulation and
192 disposition thereof;

193 5. Limitations on the purposes to which the proceeds from the sale of the bonds may be applied, and
194 limitations pledging the proceeds to secure the payment of the bonds;

195 6. Limitations on the issuance of additional bonds, the terms on which additional bonds may be
196 issued and secured, and the refunding of outstanding or other bonds;

197 7. The procedure, if any, by which the terms of any contract with bondholders may be amended or
198 abrogated, the amount of bonds, if any, the holders of which must consent thereto, and the manner in
199 which any consent may be given;

200 8. Limitations on the amount of money to be expended by the Authority for operating expenses of
201 the Authority;

202 9. Vesting in a trustee or trustees any property, rights, powers and duties in trust that the Authority
203 may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limit the
204 rights, powers and duties of the trustees;

205 10. Defining the acts or omissions which shall constitute a default, the obligations or duties of the
206 Authority to the holders of the bonds, and the rights and remedies of the holders of the bonds in the
207 event of default, including as a matter of right the appointment of a receiver; these rights and remedies
208 may include the general laws of the Commonwealth and other provisions of this chapter;

209 11. Requiring the Authority or the trustees under the trust indenture to file a petition with the
210 Governor and to take any and all other actions required under § 15.2-2659 or § 62.1-216.1 to obtain
211 payment of all *unpaid* sums necessary to cover any default as to any principal of and premium, if any,
212 and interest on local obligations owned by the Authority or held by a trustee to which § 15.2-2659 or
213 § 62.1-216.1 shall be applicable; and

214 12. Any other matter, of like or different character, relating to the terms of the bonds or the security
215 or protection of the holders of the bonds.

216 § 62.1-216.1. Investigation by Governor of ~~alleged defaults~~ *nonpayments*; withholding state funds
217 from ~~defaulting~~ *nonpaying* locality; payment of funds withheld; receipts, reports, etc.

218 Whenever it appears to the Governor from an affidavit filed with him by the Authority as the
219 purchaser, holder, or credit enhancer of local obligations (regardless of the security therefor) issued by
220 any county, city or town that ~~the county, city or town has defaulted in its~~ *a payment has not been made*
221 ~~of the principal of or premium, if any, or interest on any of its outstanding local obligations purchased,~~
222 ~~held, or credit enhanced by the Authority,~~ the Governor shall immediately make a summary
223 investigation into the facts set forth in the affidavit. The Authority may, but shall not be required to, file
224 such an affidavit unless the Authority has otherwise contracted to make such filing for the benefit of the
225 holders of any of its bonds or the local obligations credit enhanced by it. The affidavit described in this
226 section may be filed by a trustee to which the Authority has assigned the local obligations *or the*
227 *payment thereon* as security for bonds of the Authority under a resolution or trust indenture or
228 otherwise.

229 If it is established to the satisfaction of the Governor that ~~the county, city or town is in default in the~~
230 ~~payment of such nonpayment has occurred, such local obligations or the interest on them,~~ the Governor
231 shall immediately make an order directing the Comptroller to withhold all further payment to the county,
232 city or town of all funds, or of any part of them, appropriated and payable by the Commonwealth to the
233 county, city or town for any and all purposes, until the ~~default is cured~~ *unpaid sum is obtained*. The
234 Governor shall, while the ~~default~~ *nonpayment* continues, direct in writing the payment of all sums
235 withheld by the Comptroller, or as much of them as is necessary, to the Authority, so as to cure, or cure
236 insofar as possible, the ~~default as to nonpayment on~~ the local obligations ~~or interest on them~~.

237 The Governor shall, as soon as practicable, give notice of the ~~default nonpayment~~ and of the
238 availability of funds with the Comptroller in writing to the Authority. Any payment so made by the
239 Comptroller to the Authority shall be credited as if made directly by the county, city or town and shall
240 be charged by the Comptroller against the first appropriations otherwise payable to the county, city or
241 town as if paid to the county, city or town. The Authority, at the time of payment or at the time of each
242 payment shall receipt for the payment and deliver to the Comptroller all local obligations or other
243 instruments or documents, in a form satisfactory to the Comptroller, evidencing the Authority's right to

244 receive the amounts satisfied by the payment. The Comptroller shall report each payment made to the
245 governing body of the ~~defaulting nonpaying~~ county, city or town and deliver or send by registered mail
246 to the governing body all local obligations, or other instruments or documents received by the
247 Comptroller under the provisions of this section.

248 Nothing in this section shall be construed to create any obligation on the part of the Comptroller or
249 the Commonwealth to make any payment on behalf of the ~~defaulting nonpaying~~ county, city or town
250 other than from funds appropriated and payable to the ~~defaulting nonpaying~~ county, city or town.
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