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SENATE BILL NO. 1352

Offered January 12, 2011

Prefiled January 12, 2011

A BILL to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 18.1, consisting of sections numbered 15.2-1815, 15.2-1816, and 15.2-1817, and by adding in Title 23 a chapter numbered 3.4, consisting of sections numbered 23-30.59, 23-30.60, and 23-30.61, relating to conduit lending for state and local governmental entities.

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Referred to Committee on Education and Health

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 18.1, consisting of sections numbered 15.2-1815, 15.2-1816, and 15.2-1817, and by adding in Title 23 a chapter numbered 3.4, consisting of sections numbered 23-30.59, 23-30.60, and 23-30.61, as follows:

CHAPTER 18.1.

LOCAL GOVERNMENT FACILITIES PRIVATE CAPITAL LENDING.

§ 15.2-1815. Definitions.

As used in this chapter, unless the context otherwise requires:

"Conduit entity" means an organization described in § 501(c)(3) of the Internal Revenue Code that qualifies as a public charity under § 509(a)(2) or 509(a)(3) of the Internal Revenue Code, and the purposes of which entity allow it to perform the functions and obligations of a conduit entity prescribed in a financing agreement.

"Conveyed property" means real and personal property conveyed by a local government to a conduit or other entity pursuant to a financing agreement.

"Costs," as applied to a project or any portion thereof financed under the provisions of this chapter, means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction, and remodeling of a project including all lands, structures, real or personal property, rights, rights-of-way, air rights, franchises, easements, and interests acquired or used for or in connection with a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved; the cost of all machinery and equipment; financing charges; interest prior to, during, and for a period after completion of such construction and acquisition; provisions for reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial, and legal services, plans, specifications, studies, surveys, and estimates of cost and of revenues; administrative expenses; expenses necessary or incident to determining the feasibility or practicability of constructing the project; and such other expenses as may be necessary or incident to the construction and acquisition of the project, the financing of such construction and acquisition, and the placing of the project in operation.

"Private capital funding source" means a private entity that enters into a financing agreement, under which that private entity shall purchase a lease of the conveyed property for a consideration to be provided in such agreement, and its successors and assigns.

"Project" means a structure or structures identified in the capital improvement program of the locality or an agency or instrumentality of the locality that is a revenue-producing undertaking as provided in § 15.2-2608.

§ 15.2-1816. Power to enter into financing agreements.

In addition to other powers granted by law, every local government may, by ordinance, enter into a financing agreement as described in this section and may as part of that financing agreement (i) convey title to any property that is part of a project as defined in this chapter to a conduit or other entity in exchange for consideration provided for under the financing agreement; (ii) assign, pledge to, and create a lien in favor of a conduit or other entity, and permit the conduit or other entity to reassign, pledge to, and create a lien in favor of an private capital funding source, any revenues derived from the project being financed as provided for under the financing agreement; (iii) enter into a lease-leaseback arrangement for a term not to exceed 99 years, under which the private capital funding source will lease from the conduit or other entity, and the conduit or other entity shall lease back from the private capital funding source, the conveyed project. In addition, the conduit or other entity has the power to contribute to the local government any funds received by it in excess of the payments it is required to make to the private capital funding source under the lease-leaseback arrangement and has the power to

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59 convey the conveyed property back to the local government when the property is no longer encumbered
60 by any lien or lease in favor of the funding source. The local government and the conduit or other
61 entity may enter into agreements or contracts under which the local government may maintain or
62 administer the conveyed property under the project or may collect rents or fees on behalf of the conduit
63 or other entity. The parties may modify or extend the financing agreement subject to approval by the
64 local government. The local government may enter into a financing agreement under this section either
65 through a competitive selection process or by direct negotiations with a private capital funding source,
66 as determined by the local government or as otherwise provided by law.

67 § 15.2-1817. Real estate taxation.

68 The conveyed property under the project shall be subject to real property taxation under Chapter 32
69 (§ 58.1-3200 et seq.) of Title 58.1.

70 CHAPTER 3.4.

71 HIGHER EDUCATIONAL FACILITIES PRIVATE CAPITAL LENDING.

72 § 23-30.59. Definitions.

73 As used in this chapter, unless the context otherwise requires:

74 "Conduit entity" means an organization described in § 501(c)(3) of the Internal Revenue Code that
75 qualifies as a public charity under § 509(a)(2) or 509(a)(3) of the Internal Revenue Code, and the
76 purposes of which entity allow it to perform the functions and obligations of a conduit entity prescribed
77 in a financing agreement.

78 "Conveyed property" means real and personal property that is part of a project conveyed by a public
79 institution of higher education to a conduit or other entity pursuant to a financing agreement.

80 "Costs," as applied to a project or any portion thereof financed under the provisions of this chapter,
81 means all or any part of the cost of construction, acquisition, alteration, enlargement, reconstruction,
82 and remodeling of a project including all lands, structures, real or personal property, rights,
83 rights-of-way, air rights, franchises, easements, and interests acquired or used for or in connection with
84 a project; the cost of demolishing or removing any buildings or structures on land so acquired,
85 including the cost of acquiring any lands to which such buildings or structures may be moved; the cost
86 of all machinery and equipment; financing charges; interest prior to, during, and for a period after
87 completion of such construction and acquisition; provisions for reserves for principal and interest and
88 for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of
89 architectural, engineering, financial, and legal services, plans, specifications, studies, surveys, and
90 estimates of cost and of revenues; administrative expenses; expenses necessary or incident to
91 determining the feasibility or practicability of constructing the project; and such other expenses as may
92 be necessary or incident to the construction and acquisition of the project, the financing of such
93 construction and acquisition, and the placing of the project in operation.

94 "Private capital funding source" means a private entity that enters into a financing agreement, under
95 which that private entity shall purchase a lease of the conveyed property for a consideration to be
96 provided in such agreement, and its successors and assigns.

97 "Project" means a structure or structures suitable for use as a dormitory or other multi-unit housing
98 facility for students, faculty, officers, or employees; a dining hall, student union, administration building,
99 academic building, library, laboratory, research facility, classroom, athletic facility, or health care
100 facility; a maintenance, storage, or utility facility; and other structures or facilities related to any of the
101 foregoing or required or useful for the instruction of students or the conduct of research or the
102 operation of an public institution of higher education, including parking and other facilities or
103 structures essential or convenient for the orderly conduct of such public institution of higher education,
104 and shall also include landscaping, site preparation, furniture, equipment and machinery, and other
105 similar items necessary or convenient for the operation of a particular facility or structure in the
106 manner for which its use is intended, but shall not include such items as books, fuel, supplies, or other
107 items the costs of which are customarily deemed to result in a current operating charge, and shall not
108 include any facility used or to be used for sectarian instruction or as a place of religious worship nor
109 any facility used or to be used primarily in connection with any part of the program of a school or
110 department of divinity for any religious denomination.

111 § 23-30.60. Power to enter into financing agreements.

112 In addition to other powers granted by law, every public institution of higher education shall have
113 the power and is hereby authorized and empowered, with the approval of the Governor, to enter into a
114 financing agreement for any revenue-producing undertaking and may as part of that financing
115 agreement (i) convey title to any property that is part of a project as defined in this chapter to a
116 conduit or other entity in exchange for consideration provided for under the financing agreement; (ii)
117 assign, pledge to, and create a lien in favor of a conduit or other entity, and permit the conduit or
118 other entity to reassign, pledge to, and create a lien in favor of an private capital funding source, any
119 revenues derived from the project being financed as provided for under the financing agreement; (iii)
120 enter into a lease-leaseback arrangement for a term not to exceed 99 years, under which the private

capital funding source will lease from the conduit or other entity, and the conduit or other entity shall lease back from the private capital funding source, the conveyed project. In addition, the conduit or other entity has the power to contribute to the institution any funds received by it in excess of the payments it is required to make to the private capital funding source under the lease-leaseback arrangement, and has the power to convey the conveyed property back to the public institution of higher education when the property is no longer encumbered by any lien or lease in favor of the private capital funding source. The public institution of higher education and the conduit or other entity may enter into agreements or contracts under which such public institution may maintain or administer the conveyed property under the project or may collect rents or fees on behalf of the conduit or other entity. The public institution of higher education may enter into a financing agreement under this section either through a competitive selection process or by direct negotiations with a private capital funding source, as determined by the public institution of higher education or as otherwise provided by law.

§ 23-30.61. Real estate taxation.

The conveyed real property under any project shall be subject to real property taxation in accordance with the provisions of Chapter 32 (§ 58.1-3200 et seq.) of Title 58.1.