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**HOUSE BILL NO. 121**

Offered January 11, 2012

Prefiled January 4, 2012

*A BILL to amend the Code of Virginia by adding in Chapter 22 of Title 2.2 an article numbered 11, consisting of sections numbered 2.2-2351 through 2.2-2362, relating to the creation of the Virginia Housing Trust Fund Authority.*

Patrons—Morrissey and Herring

Referred to Committee on General Laws

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Chapter 22 of Title 2.2 an article numbered 11, consisting of sections numbered 2.2-2351 through 2.2-2362, as follows:**

*Article 11.**Virginia Housing Trust Fund Authority.**§ 2.2-2351. Findings; declaration of public purpose.*

*A. The General Assembly finds that current and past economic conditions in Virginia, changing federal housing policies which devolve responsibility for housing back to state governments, declining resources at the federal level, and changing demographics have resulted in low and moderate income Virginians, including elderly persons and persons with special needs, being unable to obtain safe, decent, and affordable housing in Virginia. Lack of affordable housing affects the ability of communities to develop and maintain strong and stable economies and impairs the health, stability, and self-esteem of individuals and families. The General Assembly further finds that financing affordable housing, especially in rural areas and small communities, is becoming increasingly difficult and is often characterized by fragmented, uncoordinated, burdensome, and expensive funding mechanisms. For these reasons, it is in the public interest to establish a new resource known as the Virginia Housing Trust Fund to encourage stronger partnerships, collaboration, and greater involvement of local communities in meeting housing needs in Virginia. It is the intent of the General Assembly that the Virginia Housing Trust Fund Authority assist in increasing the capacity of community housing organizations and encourage private sector businesses and individuals to contribute capital to community-based housing organizations and assist them in providing safe, decent, and affordable housing to Virginia citizens.*

*B. To achieve the objectives of this article, there is created a political subdivision of the Commonwealth to be known as the Virginia Housing Trust Fund Authority (the "Authority"). The Authority's exercise of powers conferred by this article shall be deemed to be the performance of an essential governmental function and a matter of public necessity for which public moneys may be spent and private property acquired.*

*§ 2.2-2352. Definitions.*

*"Authority" means the Virginia Housing Trust Fund Authority established pursuant to this article.*

*"Board" means the Board of Directors of the Virginia Housing Trust Fund Authority.*

*"Fund" means the Virginia Housing Trust Fund established by this article.*

*"Housing" includes owner-occupied dwellings, residential rental dwelling units, and other types of shelter for individuals and families.*

*"Low or moderate income" means the income of individuals or families that is determined from time to time by the Authority as a percentage of the area median income for the state. The Authority may use the income data provided by the U.S. Department of Housing and Urban Development or other reliable income data as determined by a resolution of the Authority.*

*"Technical assistance" means activities that are directly related to a nonprofit organization's ability to provide housing for low-income persons, including land use and planning costs, design and engineering services, loan packaging assistance, program development assistance, and construction consultation.*

*§ 2.2-2353. Board of Directors; membership; terms; compensation.*

*A. The Authority shall be governed by a board of directors, consisting of 11 voting members, appointed by the Governor as follows:*

*1. The Secretary of Health and Human Resources, ex officio, or his designee;*

*2. The Chief Executive Officer of the Virginia Economic Development Partnership, ex officio, or his designee;*

*3. The Director of the Department of Housing and Community Development, ex officio, or his designee;*

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59 4. One member representative of the manufactured housing sales industry, after consideration of  
60 three individuals nominated by the Virginia Manufactured/Modular Housing Association;

61 5. One member representative of the real estate development or real estate sales industry, after  
62 consideration of three individual nominated by the Virginia Association of Realtors;

63 6. One member who is the executive director or officer of a local, community-based organization that  
64 provides housing assistance to low or moderate income citizens of Virginia and that is (i) currently  
65 licensed to do business in Virginia and (ii) exempt from taxation under Section 501(c)(3) of the Internal  
66 Revenue Code, as amended;

67 7. One member who is the executive director or officer of a statewide organization that has as one  
68 of its primary missions the provision of housing assistance to low and moderate income citizens of  
69 Virginia and that is (i) currently licensed to do business in Virginia and (ii) exempt from taxation under  
70 Section 501(c)(3) of the Internal Revenue Code, as amended;

71 8. One member representative of the banking industry;

72 9. One member who is an officer or member of a local governing body, or his designee;

73 10. One member who is an executive director of a housing authority created pursuant to Chapter 1  
74 (§ 36-1 et seq.); and

75 11. One member representing the homebuilding industry, after special consideration of three  
76 individuals nominated by the Home Builders Association of Virginia.

77 B. Except for initial appointments, Board members shall serve three-year terms. Members are eligible  
78 for reappointment. However, no member appointed by the Governor may serve for more than two  
79 consecutive full three-year terms. All vacancies shall be filled for the balance of the unexpired term in  
80 the same manner as original appointments.

81 C. The Board shall annually select a chairman and vice-chairman from among its members.

82 D. Six members of the Board shall constitute a quorum. No vacancy in the membership of the Board  
83 shall impair the right of a quorum to exercise all the rights and perform all the duties of the Board.

84 E. The Board shall meet not less than four times during the fiscal year, and additional meetings may  
85 be held upon a call of the chairman or of a majority of the members.

86 F. The members of the Board shall not receive any compensation for their services, but shall be  
87 reimbursed for the reasonable and necessary expenses incurred in the discharge of their duties as  
88 provided in § 2.2-2825. The ex officio members may not be reimbursed by the Fund for travel expenses  
89 to attend Board meetings.

90 § 2.2-2354. General power of the Authority.

91 The Authority shall have the power to:

92 1. Make loans or grants;

93 2. Accept appropriations, gifts, grants, bequests, and devises and to utilize or dispose of the same to  
94 carry out its corporate purposes. The Authority has the discretion to refuse any gift it considers  
95 inappropriate;

96 3. Make and execute contracts, releases, compromises, agreements, and other instruments necessary  
97 or convenient for the exercise of its powers or to carry out its corporate purposes;

98 4. Collect reasonable fees and charges in connection with making and servicing loans, notes, bonds,  
99 obligations, commitments, and other evidences of indebtedness, and in connection with providing  
100 technical, consultative, and project assistance services;

101 5. Sue and be sued;

102 6. Have a seal and alter the same at will;

103 7. Hire its own employees and appoint officers and consultants as it considers advisable, and to fix  
104 their compensation and prescribe their duties;

105 8. Acquire, hold, and dispose of real and personal property for its corporate purposes;

106 9. Enter into agreements or other transactions with any federal or state agency, any person, and any  
107 domestic or foreign partnership, corporation, association, or organization;

108 10. Acquire real property, or an interest in real property, in its own name by purchase, transfer,  
109 bequest, gift, or foreclosure, where appropriate or necessary to protect any loan in which the Authority  
110 has an interest, and to sell, transfer, and convey any property to a buyer and, in the event that a sale,  
111 transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease  
112 property to a tenant. Before any real property is transferred to the Fund, the seller or donor must have  
113 clear title to the property. The Authority has the discretion to require that the seller or donor agree, in  
114 the terms of the transfer, that any liability for environmental defects on the property is not waived by  
115 the transfer and that the seller or donor indemnify the Fund for any liability associated with activities  
116 that occurred or conditions that exist on the property. The Authority may require the transferor of the  
117 property to bear the costs of an environmental assessment of the property, conducted in a manner  
118 satisfactory to the Authority;

119 11. Purchase or sell, at public or private sale, any mortgage or other negotiable instrument or  
120 obligation securing a loan;

12. Procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

13. Consent, whenever it considers it necessary or desirable in the fulfillment of its corporate purpose, to the modification of the rate of interest, time of payment, or any installment of principal or interest or of any other terms of an investment, loan, contract, or agreement of any kind to which the Authority is a party;

14. Establish training and educational programs to further the purposes of this article;

15. Acquire, by purchase or otherwise, and to hold, transfer, sell, assign, pool, or syndicate, or participate in the syndication of, any loans, notes, mortgages, securities, or debt instruments or other instruments evidencing loans or equity interests in or for the fostering, repairing, or providing affordable housing to the citizens of the Commonwealth;

16. Make and, from time to time, amend and repeal bylaws and rules not inconsistent with the provisions of this article; and

17. Have and exercise all other general powers of a corporation in the Commonwealth.

§ 2.2-2355. Additional powers and duties of the Authority; management of the Fund.

A. The Authority shall manage and control the Fund. In order to carry out the day-to-day management and control of the Fund and effectuate the purposes of this article, the Authority may appoint an executive director and other staff. The Authority shall fix the executive director's duties and compensation as well as that of other staff. The executive director and other staff serve at the pleasure of the Authority.

B. The Authority shall:

1. Develop and implement comprehensive policies and programs for the use of the Fund that ensure the equitable distribution of moneys from the Fund throughout the various geographic areas of the Commonwealth and between urban and rural areas of the Commonwealth;

2. Develop and implement an application and selection system to identify housing sponsors or providers of affordable housing developments or programs that qualify to receive assistance from the Fund for eligible activities;

3. Provide funds for technical assistance to prospective applicants;

4. Monitor services, developments, projects, or programs receiving assistance from the Fund to ensure that the developments are operated in a manner consistent with this article and in accordance with the representations made to the Authority by the sponsors of the services, developments, projects, or programs;

5. Recommend legislation to further its mission of providing housing for low to moderate income citizens of the Commonwealth;

6. Provide funding to increase the capacity of nonprofit community housing organizations to serve their communities;

7. Research and study housing needs and potential solutions to the substandard quality or lack of affordable housing;

8. Coordinate programs with other entities when doing so fulfills its mission to provide housing to low to moderate income citizens of the Commonwealth;

9. Convene public meetings to gather information or receive public comments regarding housing policies or issues;

10. Distribute available funds pursuant to policies established by it which may permit the establishment of a permanent endowment; and

11. Serve as a clearinghouse for information regarding housing services and providers within the Commonwealth.

C. Members of the Board and its officers shall not be liable personally, either jointly or severally, for any debt or obligation created by the Authority.

D. Members of the Board and its officers and employees shall be provided insurance coverage by the Division of Risk Management to the same extent and in the same manner the coverage is applicable to state government agencies and appointed state officials and employees. The Authority may elect to obtain other forms of insurance coverage it considers reasonable for its operations.

E. The acts of the Authority are solely acts of its corporation and are not those of an agent of the Commonwealth nor is any debt or obligation of the Authority a debt or obligation of the Commonwealth.

F. The Department of Housing and Community Development shall (i) provide office space and staff support services for the executive director and the Authority, (ii) act as fiscal agent for the Authority and, as such, (iii) provide accounting services for the Authority, (iv) invest all funds as directed by the Authority, (v) service all investment and loan activities of the Authority as requested, (vi) make the disbursements of all funds as directed by the Authority, and (vii) establish best practices for recipient organizations, for which the Department of Housing and Community Development shall be reasonably

182 compensated, as determined by the Authority.

183 § 2.2-2356. Virginia Housing Trust Fund established; uses.

184 A. There is hereby created in the state treasury a special nonreverting fund to be known as the  
185 Virginia Housing Trust Fund, hereafter referred to as "the Fund." The Fund shall be established on the  
186 books of the Comptroller. All moneys received by the Authority shall be paid into the state treasury and  
187 credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited  
188 to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall  
189 not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the  
190 Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request  
191 signed by the chair of the Board.

192 B. The Authority shall use the moneys from the Fund solely to make, or participate in the making of,  
193 loans or grants for eligible activities that shall include providing:

194 1. Funds for new construction, rehabilitation, repair, or acquisition of housing to assist low or  
195 moderate income citizens including land and land improvements;

196 2. Matching funds for federal housing moneys requiring a local or state match;

197 3. Funds for administrative costs for housing assistance programs or nonprofit organizations eligible  
198 for funding pursuant to subsection C if the grants or loans provided will substantially increase the  
199 recipient's access to housing funds or increase its capacity to supply affordable housing;

200 4. Loan guarantees and other financial mechanisms to facilitate the provision of housing products or  
201 services;

202 5. Funds for down payments, closing costs, foreclosure prevention, home ownership counseling, and  
203 security bonds that facilitate the construction, rehabilitation, repair, or acquisition of housing by low to  
204 moderate income citizens;

205 6. Risk underwriting products not provided by private sector entities to facilitate broader  
206 accessibility of citizens to other federal or state housing funds or loan programs. The products shall be  
207 established using professional risk underwriting standards, and separate corporate vehicles may be  
208 created and capitalized by the Fund to provide the products; and

209 7. Start-up funds for initial operational expenses of local government programs to reduce  
210 substandard housing or inappropriate land use patterns.

211 C. Organizations eligible for funding from the Fund shall include the following: (i) localities; (ii)  
212 local government housing authorities; (iii) nonprofit organizations that provide assistance to low or  
213 moderate income citizens of Virginia and are exempt from taxation under Section 501(c)(3) of the  
214 Internal Revenue Code, as amended; and (iv) regional or statewide housing assistance organizations  
215 that provide assistance to low and moderate income or low-income citizens of Virginia and are exempt  
216 from taxation under Section 501(c)(3) of the Internal Revenue Code, as amended.

217 § 2.2-2357. Confidentiality.

218 Any records or data made or received by the Authority for the purpose of furnishing assistance, to  
219 the extent that the records or data consists of financial or personal information regarding the financial  
220 position or activities of a for-profit business or individual, shall be exempt from the Freedom of  
221 Information Act (§ 2.2-3700 et seq.). Any discussion or consideration of the financial or personal  
222 information may be held by the Board in a closed session in accordance with § 2.2-3712.

223 § 2.2-2358. Annual report.

224 The Authority shall make a report to the Governor and the General Assembly within 90 days of the  
225 close of each fiscal year. The report shall include summaries of all meetings of the Board, an analysis  
226 of the overall progress of the program, fiscal concerns, the relative impact the program is having on the  
227 Commonwealth, and all suggestions and policy or legislative recommendations that the Authority may  
228 have. The report shall include (i) the applications funded in the previous calendar year; (ii) the identity  
229 of organizations receiving funds and significant private sector partners of each project or program; (iii)  
230 the location of each project, unless the disclosure would endanger occupants or unduly invade the  
231 privacy of occupants; (iv) the amount, maturity, interest rate, collateral, and other pertinent terms of  
232 funding provided to the project or program and the amount of other funds leveraged; (v) the number of  
233 units of housing created by the project and the occupancy rate; (vi) the expected cost of rent or monthly  
234 payment for those units; and (vii) the amount of revenue deposited into Fund.

235 § 2.2-2359. Annual audit.

236 The accounts and records of the Authority and the Fund shall be subject to an annual audit by the  
237 Auditor of Public Accounts or his legal representative, and the costs of such audit services shall be paid  
238 from the Fund.

239 § 2.2-2360. Exemption from taxation.

240 All real and personal property and any interest therein of the Authority, and all income derived  
241 therefrom by the Authority, shall at all times be free from taxation by the Commonwealth or by any  
242 political subdivision thereof.

243 § 2.2-2361. Dissolution.

244 *In the event that the Authority is dissolved or liquidated by the General Assembly, after payment of*  
245 *all debts, obligations, or expenses of the Fund, all assets then remaining in the Fund shall be*  
246 *distributed to the Virginia Housing Partnership Revolving Fund created pursuant to Chapter 9*  
247 *(§ 36-141 et seq.) of Title 36.*

248 *§2.2-2362. Liberal construction of article.*

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

252 **2. That the initial appointments of the Board of Directors created pursuant to this act by the**  
253 **Governor shall be staggered as follows: three members appointed for a term of three years; three**  
254 **members appointed for a term of two years; and two members appointed for a term of one year.**