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HOUSE BILL NO. 1504

Offered January 22, 1996

A BILL to amend and reenact §§ 36-55.33:2, 36-55.35, and 36-55.40 of the Code of Virginia, and to repeal § 36-55.37:1 of the Code of Virginia, relating to the Virginia Housing Development Authority.

Patrons—Diamonstein, Almand, Bennett, Darner, Hull, Jackson, Melvin, Mims, Reynolds, Stump, Tate and Woodrum; Senators: Benedetti, Hawkins, Holland, Lambert, Waddell and Wampler

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 36-55.33:2, 36-55.35, and 36-55.40 of the Code of Virginia are amended and reenacted as follows:

§ 36-55.33:2. Powers relative to acquisition, development and ownership by HDA of multi-family residential housing.

A. HDA shall have all the powers necessary or convenient to purchase, acquire, construct, rehabilitate, own, operate, improve, repair, maintain, encumber, mortgage, lease, sell and transfer or otherwise dispose of multi-family residential housing or any part or interest therein for occupancy by persons and families of low and moderate income. For the purposes of this section, HDA may form corporations, joint ventures, partnerships, trusts or other legal entities or any combination thereof, on its own behalf or in conjunction with individuals or other public or private entities, to serve as housing sponsors for multi-family residential housing developments; may acquire, own, encumber, pledge, sell, transfer or otherwise dispose of interests in such housing sponsors; may provide financing and other funding to such housing sponsors; and may exercise all necessary or convenient rights and powers and perform all requisite duties and obligations relating thereto. HDA shall not exercise the powers granted under this section with respect to any multi-family residential housing development, unless HDA makes the following findings:

1. That there exists a shortage of decent, safe and sanitary housing at rentals or prices which persons and families of low income or moderate income can afford within the general housing market area to be served by the proposed housing development.

2. That private enterprise and investment have been unable, without assistance, to provide the needed decent, safe and sanitary housing at rentals or prices which persons or families of low and moderate income can afford.

3. That private sponsors would not be willing, without assistance, to undertake the proposed housing development upon substantially similar terms and conditions.

4. That HDA has not received notification from both the local housing authority having jurisdiction over the area in which the housing development would be located and the sponsor of such development that it is the preference of both parties that the local housing authority undertake the proposed housing development.

5. That the proposed housing development will provide well-planned, well-designed housing for persons or families of low and moderate income.

6. That the housing development will be of public use and will provide a public benefit.

7. That the housing development will be undertaken within the authority conferred by this chapter upon HDA.

B. HDA shall also find, in connection with the new construction or substantial rehabilitation by HDA of any proposed multi-family residential housing development, that the governing body of the locality in which such housing development is to be located has not, within sixty days after written notification of such proposed construction or substantial rehabilitation has been sent by HDA to such governing body and to any local housing authority having jurisdiction in such locality, certified to HDA in writing its disapproval of the proposed multi-family residential housing development. The foregoing notwithstanding, no such finding need be made if HDA has received from the governing body its certified resolution approving the proposed housing development.

C. At least sixty days prior to purchasing, acquiring, constructing or rehabilitating any multi-family residential housing development pursuant to this section, HDA shall publish a notice in a newspaper of general circulation in the locality in which such development is to be located. Such notice (i) shall state that HDA intends to purchase, acquire, construct or rehabilitate a multi-family residential housing development or developments in such locality and shall solicit proposals from interested parties for such purchase, acquisition, construction or rehabilitation or (ii) shall identify the multi-family residential housing development or developments to be purchased, acquired, constructed or rehabilitated and shall

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60 request comments from the general public with respect to such proposed purchase, acquisition,
61 construction or rehabilitation.

62 D. In the event HDA or any legal entity formed by HDA is to construct or rehabilitate a
63 multi-family residential housing development pursuant to this section, HDA or such legal entity shall
64 contract with a private firm for the performance of such construction and rehabilitation, unless HDA
65 determines that no responsible private firm would be willing and able to contract for such construction
66 or rehabilitation at a price necessary for the financial feasibility of such development. HDA or any legal
67 entity formed by HDA shall contract with a private firm or public body for the performance of
68 management services for any multi-family residential housing development owned by HDA or such legal
69 entity pursuant to this section, unless HDA determines that no responsible private firm and no public
70 body would be willing and able to contract for the performance of such management services at a price
71 necessary for the financial feasibility of such development. For the purpose of this subsection, the term
72 "private firm" shall include an individual, joint venture, partnership, stock corporation, trust or other
73 similar business entity legally authorized to perform the construction, rehabilitation or management, as
74 may be applicable, of the proposed multi-family residential housing development.

75 E. ~~The power to purchase, acquire, construct and rehabilitate multi-family residential housing~~
76 ~~pursuant to this section shall expire on July 1, 1997.~~

77 § 36-55.35. Terms and conditions of purchase and sale to mortgage lenders of mortgage loans; loans
78 to mortgage lenders.

79 ~~(1)~~A. No obligation shall be eligible for purchase or commitment to purchase by HDA from a
80 mortgage lender hereunder if the date of said obligation precedes the date of HDA's commitment to
81 purchase such obligation by such number of years as shall be determined by HDA and unless at or
82 before the time of transfer thereof to HDA such mortgage lender certifies:

83 ~~(a)~~1. That in its judgment the loan would in all respects be a prudent investment; and

84 ~~(b)~~2. That the proceeds of sale or its equivalent shall be reinvested as provided in subsection ~~(6)~~F of
85 this section, or invested in short-term obligations pending such reinvestment. *However, certification shall*
86 *not be required in the case of the purchase or commitment to purchase by HDA of a mortgage loan*
87 *held, insured or assisted by the federal government or any agency or instrumentality thereof.*

88 ~~(2)~~B. HDA shall purchase mortgage loans at a purchase price equal to the outstanding principal
89 balance; however, discount from the principal balance or the payment of a premium may be employed
90 to effect a fair rate of return which in the opinion of HDA is consistent with the obligations of the HDA
91 hereunder and the purposes of this chapter. In addition to the aforesaid payment of outstanding principal
92 balance HDA shall pay the accrued interest due thereon, on the date the loan or obligation is delivered
93 against payment therefor. *The provisions of this subsection shall not apply to the purchase by HDA of a*
94 *mortgage loan held, insured or assisted by the federal government or any agency or instrumentality*
95 *thereof, in which case the purchase price shall be determined by agreement of HDA and the mortgage*
96 *lender.*

97 ~~(3)~~C. Loans purchased or sold hereunder may include but shall not be limited to loans which are
98 insured, guaranteed or assisted by the federal government or for which there is a commitment by the
99 federal government to insure, guarantee or assist such loan.

100 ~~(4)~~D. HDA shall from time to time adopt, modify or repeal rules and regulations governing the
101 making of loans to mortgage lenders and the purchase and sale of mortgage loans and the application of
102 the proceeds thereof, including rules and regulations as to any or all of the following:

103 ~~(a)~~1. Procedures for the submission of requests or the invitation of proposals for the purchase and
104 sale of mortgage loans or for loans to mortgage lenders;

105 ~~(b)~~2. Limitations or restrictions as to number of family units, location or other qualifications or
106 characteristics of residences to be financed by residential mortgage loans and requirements as to the
107 income limits of persons and families of low and moderate income occupying such residences;

108 ~~(c)~~3. Restrictions as to the interest rates on residential mortgage loans or the return realized therefrom
109 by mortgage lenders;

110 ~~(d)~~4. Requirements as to commitments by mortgage lenders with respect to residential mortgage
111 loans;

112 ~~(e)~~5. Schedules of any fees and charges necessary to provide for expenses and reserves of the HDA;
113 and

114 ~~(f)~~6. Any other matters related to the duties and the exercise of the powers of HDA to purchase and
115 sell mortgage loans or to make mortgage loans or other loans to mortgage lenders.

116 Such rules and regulations shall be designed to effectuate the general purposes of this chapter and the
117 following specific objectives: (i) the expansion of the supply of funds in the Commonwealth available
118 for residential mortgage loans; (ii) the provision of the additional housing needed to remedy the shortage
119 of adequate housing in the Commonwealth and eliminate the existence of a large number of substandard
120 dwellings; and (iii) the restriction of the financial return and benefit to that necessary to protect against
121 the realization by mortgage lenders of an excessive financial return or benefit as determined by

122 prevailing market conditions.

123 ~~(5)~~E. The interest rate or rates and other terms of the loans to mortgage lenders made from the
 124 proceeds of any issue of bonds of the HDA shall be at least sufficient so as to assure the payment of
 125 said bonds and the interest thereon as the same become due from the amounts received by HDA in
 126 repayment of such loans and interest thereon.

127 ~~(6)~~F. HDA shall require as a condition of each loan to a mortgage lender and as a condition of the
 128 purchase or the making of a commitment to purchase mortgage loans from a mortgage lender that such
 129 mortgage lender within such period of time following the receipt of the proceeds as shall be prescribed
 130 by rules and regulations of HDA, shall have entered into written commitments to make, and shall
 131 thereafter proceed as promptly as practicable to make and disburse from such proceeds, residential
 132 mortgage loans in the Commonwealth of Virginia having a stated maturity of not less than twenty years
 133 from the date thereof in an aggregate principal amount equal to the amount of such proceeds. HDA shall
 134 not purchase nor make commitment to purchase mortgage loans or obligations from a mortgage lender
 135 from which it has previously purchased mortgage loans nor make a loan to a mortgage lender to which
 136 it has previously made a loan unless said mortgage lender has either restored or made commitments to
 137 restore to its portfolio of residential mortgage loans in the Commonwealth of Virginia, residential
 138 mortgage loans having a stated maturity of not less than twenty years from the date thereof in an
 139 aggregate principal amount equal to either the proceeds of prior sale or the amount of prior loan to said
 140 mortgage lender. HDA may require the submission to it by each mortgage lender of evidence
 141 satisfactory to it of the making of such new residential mortgage loans. *The provisions of this subsection*
 142 *shall not apply to the purchase or commitment to purchase by HDA of a mortgage loan held, insured or*
 143 *assisted by the federal government or any agency or instrumentality thereof.*

144 ~~(7)~~G. HDA shall require that such loans to mortgage lenders shall be additionally secured as to
 145 payment of both principal and interest by a pledge of and lien upon collateral security in such amounts
 146 as HDA shall by resolution determine to be necessary to assure the payment of such loans and the
 147 interest thereon as the same become due. Such collateral security shall consist of (a) direct obligations
 148 of, or obligations guaranteed by, the United States of America or the Commonwealth of Virginia; (b)
 149 bonds, debentures, notes or other evidences of indebtedness, satisfactory to the HDA, issued by any of
 150 the following federal agencies: Bank for Cooperatives, Federal Intermediate Credit Bank, Federal Home
 151 Loan Bank System, Export-Import Bank of Washington, Federal Land Banks, the Federal National
 152 Mortgage Association or the Government National Mortgage Association; (c) direct obligations of or
 153 obligations guaranteed by the Commonwealth; or (d) mortgages insured or guaranteed, upon terms and
 154 conditions satisfactory to the HDA, by the federal government or private mortgage insurance companies
 155 as to payment of principal and interest.

156 § 36-55.40. Notes and bonds.

157 ~~(1)~~ ~~(a)~~A. 1. HDA shall have power and is hereby authorized to issue from time to time its negotiable
 158 notes and bonds in conformity with applicable provisions of the Uniform Commercial Code in such
 159 principal amount as HDA shall determine to be necessary to provide sufficient funds for achieving any
 160 of its corporate purposes, including the payment of interest on notes and bonds of HDA, establishment
 161 of reserves to secure such notes and bonds, and all other expenditures of HDA incident to and necessary
 162 or convenient to carry out its corporate purposes and powers. *In accordance with § 2.1-326.2:1, such*
 163 *power to issue notes and bonds shall not be restricted or limited solely because the interest on the notes*
 164 *and bonds is subject, in whole or in part, directly or indirectly, to federal income taxes.*

165 ~~(b)~~2. HDA shall have the power, from time to time, to issue (i) notes to renew notes and (ii) bonds,
 166 to pay notes, including the interest thereon and, whenever it deems refunding expedient, to refund any
 167 bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and
 168 to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. The
 169 refunding bonds may be (i) exchanged for the bonds to be refunded or (ii) sold and the proceeds applied
 170 to the purchase, redemption or payment of such bonds.

171 ~~(c)~~3. Except as may otherwise be expressly provided by HDA, every issue of its notes and bonds
 172 shall be general obligations of HDA payable out of any revenues or moneys of HDA, subject only to
 173 any agreements with the holders of particular notes or bonds pledging any particular revenues.

174 ~~(2)~~B. The notes and bonds shall be authorized by resolution or resolutions of HDA, shall bear such
 175 date or dates and shall mature at such time or times as such resolution or resolutions may provide,
 176 except that no bond shall mature more than fifty years from the date of its issue. The bonds may be
 177 issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The
 178 notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form,
 179 either coupon or registered, carry such registration privileges, be executed in such manner, be payable in
 180 such medium of payment, at such place or places, and be subject to such terms of redemption as such
 181 resolution or resolutions may provide. The notes and bonds of HDA may be sold by HDA, at public or
 182 private sale, at such price or prices as HDA shall determine.

183 ~~(3)~~C. Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain
184 provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

185 ~~(a)~~1. Pledging all or any part of the revenues to secure the payment of the notes or bonds or of any
186 issue thereof, subject to such agreements with noteholders or bondholders as may then exist;

187 ~~(b)~~2. Pledging all or any part of the assets of HDA, including mortgages and obligations securing the
188 same, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such
189 agreements with noteholders or bondholders as may then exist;

190 ~~(c)~~3. The use and disposition of the gross income from mortgages owned by HDA and payment of
191 principal of mortgages owned by HDA;

192 ~~(d)~~4. The setting aside of reserves or sinking funds and the regulation and disposition thereof;

193 ~~(e)~~5. Limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and
194 pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

195 ~~(f)~~6. Limitations on the issuance of additional notes or bonds; the terms upon which additional notes
196 or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;

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

200 ~~(h)~~8. Limitations on the amount of moneys to be expended by HDA for operating expenses of HDA;

201 ~~(i)~~9. Vesting in a trustee or trustees such property, rights, powers and duties in trust as HDA may
202 determine, which may include any or all of the rights, powers and duties of the trustee appointed by the
203 bondholders pursuant to this chapter and limiting or abrogating the right of the bondholders to appoint a
204 trustee under this chapter or limiting the rights, powers and duties of such trustee;

205 ~~(j)~~10. Defining the acts or omissions to act which shall constitute a default in the obligations and
206 duties of HDA to the holders of the notes or bonds and providing for the rights and remedies of the
207 holders of the notes or bonds in the event of such default, including as a matter of right the appointment
208 of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general
209 laws of the Commonwealth and the other provisions of this chapter;

210 ~~(k)~~11. Any other matters, of like or different character, which in any way affect the security or
211 protection of the holders of the notes or bonds.

212 (4)D. Any pledge made by HDA shall be valid and binding from the time when the pledge is made;
213 HDA's interest, then existing or thereafter obtained, in the revenues, moneys, mortgage loans,
214 receivables, contract rights or other property or proceeds so pledged shall immediately be subject to the
215 lien of such pledge without any physical delivery or further act, and the lien of such pledge shall be
216 valid and binding as against all parties having claims of any kind in tort, contract or otherwise against
217 HDA, irrespective of whether such parties have notice thereof. Neither the resolution nor any other
218 instrument by which a pledge is created need be recorded, nor shall any filing be required with respect
219 thereto.

220 ~~(5)~~E. Neither the commissioners of HDA nor any other person executing such notes or bonds shall
221 be subject to any personal liability or accountability by reason of the issuance thereof.

222 ~~(6)~~F. HDA, subject to such agreements with noteholders or bondholders as may then exist, shall have
223 power out of any funds available therefor to purchase notes or bonds of HDA, which shall thereupon be
224 cancelled, at a price not exceeding

225 ~~(a)~~1. If the notes or bonds are then redeemable, the redemption price then applicable plus accrued
226 interest to the next interest payment thereon, or

227 ~~(b)~~2. If the notes or bonds are not then redeemable, the redemption price applicable on the first date
228 after such purchase upon which the notes or bonds become subject to redemption plus accrued interest
229 to such date.

230 ~~(7)~~G. In the discretion of HDA, the bonds may be secured by a trust indenture by and between HDA
231 and a corporate trustee, which may be any trust company or bank having the power of a trust company
232 within or without the Commonwealth. Such trust indenture may contain such provisions for protecting
233 and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in
234 violation of law, including covenants setting forth the duties of HDA in relation to the exercise of its
235 corporate powers and the custody, safeguarding and application of all moneys. HDA may provide by
236 such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under
237 such trust indenture or other depository, and for the method of disbursement thereof, with such
238 safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust
239 indenture may be treated as a part of the operating expenses of HDA. If the bonds shall be secured by a
240 trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

241 ~~(8)~~H. Whether or not the notes and bonds are of such form and character as to be negotiable
242 instruments under the terms of the Uniform Commercial Code, the notes and bonds are hereby made
243 negotiable instruments within the meaning of and for all the purposes of the Uniform Commercial Code,
244 subject only to the provisions of the notes and bonds for registration.

245 (9)I. In case any of the commissioners or officers of HDA whose signatures appear on any notes or
246 bonds or coupons shall cease to be such commissioners or officers before the delivery of such notes or
247 bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such
248 commissioners or officers had remained in office until such delivery.
249 **2. That § 36-55.37:1 of the Code of Virginia is repealed.**

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