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HOUSE BILL NO. 2317

Offered January 21, 1999

A *BILL to amend and reenact §§ 22.1-146, 22.1-148, 22.1-153, 22.1-165, 22.1-166.2, 22.1-167, 22.1-168, 22.1-171, 22.1-175.1, 22.1-175.2, 22.1-175.3, 22.1-175.4, and 58.1-4022 of the Code of Virginia, relating to public school construction.*

Patrons—Cranwell, Bloxom, Clement, Council, Day, Dickinson, Dillard, Jackson, Parrish, Puller, Rhodes and Woodrum; Senators: Howell, Mims, Reynolds and Whipple

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-146, 22.1-148, 22.1-153, 22.1-165, 22.1-166.2, 22.1-167, 22.1-168, 22.1-171, 22.1-175.1, 22.1-175.2, 22.1-175.3, 22.1-175.4, and 58.1-4022 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-146. Power of Board to make loans from Fund for erection, etc., of school buildings and fueling facilities for school buses.

The Board of Education may make loans or, subject to the approval of the General Assembly, loan interest rate subsidy payments from the Literary Fund to the school boards of the several school divisions making application therefor in the manner prescribed by law for the ~~purpose~~ *purposes of* (i) ~~of~~ *funding part or all of the costs for* erecting, ~~altering~~ *renovating, retrofitting* or enlarging school buildings in such school divisions; (ii) ~~for~~ purchasing and installing educational technology equipment and infrastructure; (iii) ~~for~~ equipping school buses for alternative fuel conversions and for construction of school bus fueling facilities for supplying compressed natural gas or other alternative fuels; and (iv) ~~for the refinancing or redemption of redeeming~~ negotiable notes, bonds, and other evidences of indebtedness or obligations incurred by a locality on behalf of a school division which has an application for a Literary Fund loan for an approved school project pending before the Board of Education. For the purpose of this section, "alternative fuels" means motor fuels other than gasoline and diesel fuel.

§ 22.1-148. Restrictions upon making loans; retirement of previous loans.

A. No loan from the Literary Fund shall exceed 100% ~~percent~~ of the cost of the building, addition thereto, and site on account of which such loan is made. No loan shall be made from the Literary Fund to aid in the erection of a building or addition to cost less than \$500. Whenever a loan is made from the Literary Fund for the purpose of enlarging a building, any part of the proceeds of such loan may, in the discretion of the Board, be used to retire any previous loan or loans on such building although not matured at the time of such additional loan. No loan shall be made from the Literary Fund in any case in which the payment of same with interest would, in the judgment of the Board of Education, entail too heavy a charge upon the revenues of the county, city or town comprising the school division to which such loan is granted. The Board may refuse to make any loan from the Literary Fund to any school board which is in default in the payment of any part of the principal of any previous loan from the Literary Fund or which for the two years next preceding the loan has been more than six months in default in the payment of interest due on any loan from the Literary Fund.

B. Any school division which has an application for a Literary Fund loan for an approved school project pending before the Board of Education shall not be denied or delayed in obtaining such loan solely for the reason that alternative financing had been obtained to begin or complete construction on such project.

C. *An application for a Literary Fund loan for part or all of the costs of construction for a school building shall not be denied or delayed solely because a grant pursuant to the Virginia Public School Construction Grants program established under Chapter 11.1 (§ 22.1-175.1 et seq.) of this title has been submitted or granted.*

§ 22.1-153. School boards authorized to borrow from Fund; form of application.

A. The school boards of the several school divisions are authorized to borrow money belonging to the Literary Fund, and any school board desiring to borrow from the Fund shall make written application to the Board of Education for such loan on a form to be prescribed by the Board.

B. *School boards may apply for, on such forms as the Board may prescribe, a loan to fund part or all of the costs of erecting, renovating, retrofitting or enlarging school buildings or purchasing and installing educational technology equipment and infrastructure while simultaneously applying for a grant to fund part of such construction pursuant to Chapter 11.1 (§ 22.1-175.1 et seq.) of this title. The school board shall note in its Literary Fund loan application that the grant application has been submitted. In*

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60 *no case shall the total funding through a Literary Fund loan and a grant equal more than 100 percent*
61 *of the costs of a construction project.*

62 § 22.1-165. Management and administration of moneys, etc., transferred from Literary Fund and the
63 Virginia Public School Construction Grants Fund.

64 The Authority shall manage and administer as provided in this chapter all moneys or obligations that
65 may be set aside and transferred to it from the principal of the Literary Fund by the General Assembly
66 for public school purposes pursuant to Article VIII, Section 8 of the Constitution of Virginia and any
67 funds authorized by the General Assembly from the Literary Fund, *the Virginia Public School*
68 *Construction Grants Fund established in § 22.1-175.2* or otherwise appropriated by the General
69 Assembly for public school purposes.

70 § 22.1-166.2. Grants to local school boards.

71 A. The Authority is authorized to make grants of money, from any of the funds of the Authority
72 available for such purpose, to local school boards for the purchase of capital projects for school
73 purposes.

74 B. *From such funds as may be appropriated for this purpose, any notes or bonds issued for this*
75 *purpose, and any funds deposited to the Virginia Public School Construction Grants Fund established in*
76 *§ 22.1-175.2, the Authority is also empowered to distribute grants of money pursuant to the provisions*
77 *of the Virginia Public School Construction Grants Program established under Chapter 11.1*
78 *(§ 22.1-175.1 et seq.) of this title, upon the approval of such grants by the Board of Education.*

79 § 22.1-167. Issuance of bonds of Authority.

80 In order to provide funds for the purchase of local school bonds as authorized by § 22.1-166, to
81 provide funds for the making of loans to local school boards as authorized by § 22.1-166.1, or to
82 provide funds for the making of grants to local school boards as authorized by § 22.1-166.2, the Board
83 of Commissioners is hereby authorized to provide by resolution, at one time or from time to time, for
84 the issuance of bonds of the Authority in such amount or amounts as the Board of Commissioners shall
85 determine. Such bonds of the Authority shall be payable solely from funds of the Authority, including,
86 without limitation, all or any combination of the following sources: (i) payments of principal of and
87 interest on local school bonds purchased by the Authority, (ii) the proceeds of the sale of any such local
88 school bonds, (iii) payments of principal of and interest on obligations transferred to the Authority from
89 the Literary Fund, (iv) the proceeds of the sale of any such obligations, (v) any moneys transferred to
90 the Authority from the Literary Fund, (vi) payments of principal of and interest on loans made to local
91 school boards, ~~and~~ (vii) *any funds deposited in the Virginia Public School Construction Grants Fund*
92 *established pursuant to § 22.1-175.2, (viii) any funds authorized by the General Assembly from the*
93 *Literary Fund* ~~or~~, *and (ix) any funds otherwise appropriated by the General Assembly, as shall be*
94 *provided by the resolution of the Board of Commissioners authorizing any such bonds. Bonds of the*
95 *Authority issued under the provisions of this chapter shall not be deemed to constitute a debt of the*
96 *Commonwealth or a pledge of the faith or credit of the Commonwealth, and all bonds of the Authority*
97 *shall contain on the face thereof a statement to the effect that neither the faith and credit nor the taxing*
98 *power of the Commonwealth or of any political subdivision thereof is or shall be pledged to the*
99 *payment of the principal of or the interest on such bonds.*

100 The bonds of each issue shall be dated, shall bear interest and shall mature at such time or times, not
101 exceeding thirty years from their date or dates, as may be determined by the Board of Commissioners
102 and may be made redeemable before maturity, at the option of the Board of Commissioners, at such
103 price or prices and under such terms and conditions as may be fixed by the Board of Commissioners
104 prior to the issuance of the bonds. The principal and interest of such bonds may be made payable in any
105 lawful medium. The Board of Commissioners shall determine the form of the bonds, including any
106 interest coupons to be attached thereto, and the manner of execution of the bonds and shall fix the
107 denomination or denominations of the bonds and the place or places of payment of principal and interest
108 thereof, which may be at the office of the State Treasurer or at any bank or trust company within or
109 without the Commonwealth. If any officer whose signature or a facsimile of whose signature appears on
110 any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or
111 such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained
112 in office until such delivery. All bonds issued under the provisions of this chapter shall have and are
113 hereby declared to have, as between successive holders, all the qualities and incidents of negotiable
114 instruments under the negotiable instruments law of the Commonwealth. The bonds may be issued in
115 coupon or in registered form or both, as the Board of Commissioners may determine, and provision may
116 be made for the registration of any coupon bonds as to principal alone and as to both principal and
117 interest and for the reconversion of any bonds registered as to both principal and interest into coupon
118 bonds. The Board of Commissioners may sell such bonds in such manner, either at public or at private
119 sale, and for such price as it may determine to be for the best interests of the Authority. The proceeds
120 of such bonds shall be disbursed for the purposes for which such bonds were issued under such
121 restrictions, if any, as the resolution authorizing the issuance of such bonds or the trust indenture

provided for in § 22.1-171 may provide. Prior to the preparation of definitive bonds, the Board of Commissioners may under like restrictions issue temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Board of Commissioners may also provide for the replacement of any bond which shall become mutilated or shall be destroyed or lost. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than the proceedings, conditions, and things which are specified and required by this chapter.

§ 22.1-168. Security for payment and bonds; provisions of trust indenture or resolution of Board.

In the discretion of the Board of Commissioners, any bonds issued under the provisions of this chapter may be secured by a trust indenture by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. Such trust indenture or the resolution providing for the issuance of such bonds may pledge or assign all or any part of the funds of the Authority available for such purpose including, but without limitation, all or any combination of the following sources: (i) payments of principal of and interest on local school bonds purchased by the Authority, (ii) the proceeds of the sale of any such local school bonds, (iii) payments of principal of and interest on obligations transferred to the Authority from the Literary Fund, (iv) the proceeds of the sale of any such obligations, (v) any moneys transferred to the Authority from the Literary Fund, (vi) payments of principal of and interest on loans made to local school boards, ~~and~~ (vii) *any funds deposited into the Virginia Public School Construction Grants Fund established in § 22.1-175.2, and* (viii) any funds authorized by the General Assembly for such purpose from the Literary Fund or otherwise appropriated by the General Assembly. Such trust indenture or resolution providing for the issuance of such bonds may provide for the creation and maintenance of such reserves as the Board of Commissioners shall determine to be proper and may include covenants setting forth the duties of the Board of Commissioners in relation to the acquisition of any local school bonds, the substitution of any local school bonds as security for payment of the bonds of the Authority, the collection of payments of principal and interest on (i) any local school bonds, (ii) ~~on~~ any obligations transferred to the Authority from the Literary Fund, and (iii) ~~on~~ any loans made to local school boards. Such trust indenture or resolution may include provisions requiring the Authority or the trustee under such trust indenture or any depository to file a petition with the Governor and to take any and all other action required under § 15.2-2659 to secure payment of all sums necessary to cover any default as to any bonds or the interest thereon held by the Authority or by such trustee or depository to which § 15.2-2659 shall be applicable. Such trust indenture or resolution may contain provisions respecting the custody, safeguarding and application of all moneys and securities including local school bonds purchased by the Authority and obligations transferred to the Authority from the Literary Fund and may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of any other funds or obligations received on behalf of the Authority to furnish such indemnifying bonds or to pledge such securities as may be required by the Board of Commissioners. Any such trust indenture or resolution may contain such other provisions as the Board may deem reasonable and proper for the security of the bondholders. Any reference in this chapter to a resolution of the Board of Commissioners shall include any trust indenture authorized thereby.

§ 22.1-171. Powers of Authority enumerated.

A. In order to enable the Authority to carry out the purposes for which it is established, the Authority is vested with the powers of a body corporate, including the power to sue and be sued, to make contracts, *and* to adopt and use a common seal and to alter the same, and is authorized and empowered:

1. To collect, or to authorize the trustee under any trust indenture securing any bonds of the Authority to collect, as the same shall become due, the principal of and the interest on all obligations transferred to the Authority from the Literary Fund;

2. To collect, or to authorize the trustee under any trust indenture securing any bonds of the Authority to collect, as the same shall become due, the principal of and the interest on all local school bonds purchased by the Authority;

3. *To collect, or to authorize the trustee under any trust indenture securing any bonds of the Authority to collect, as the same shall become due, the principal of and the interest on all obligations relating to grants for school construction issued pursuant to the Virginia Public School Construction Grants Program established under Chapter 11.1 (§ 22.1-175.1 et seq.) of this title;*

4. To pay the compensation of the chief executive officer of the Authority and all such employees, agents, financial advisers and attorneys as may be employed by the Authority either from moneys received by the Authority under the provisions of this chapter or from appropriations made by the General Assembly for such purpose;

183 45. To issue bonds of the Authority as authorized by this chapter and to refund any of such bonds;
184 56. To adopt or alter or repeal any bylaws, rules or regulations as the Authority may deem necessary
185 or expedient; and

186 67. To do any and all other acts and things necessary, appropriate or incidental in carrying out the
187 purposes of this chapter.

188 B. The Authority is further authorized and empowered to issue notes and other obligations for any of
189 its purposes in such form as may be authorized by resolution of the Authority. The issuance of such
190 notes or other obligations shall be governed by the provisions of this chapter insofar as the same may be
191 applicable.

192 C. The Board of Commissioners shall submit an annual report to the Governor and General
193 Assembly on or before November 1 of each year. Such report shall contain, at a minimum, the annual
194 financial statements of the Authority for the year ending the preceding June 30. The annual report shall
195 be distributed in accordance with the provisions of § 2.1-467.

196 § 22.1-175.1. Virginia Public School Construction Grants Program established.

197 The Virginia Public School Construction Grants Program is hereby established to provide grants to
198 eligible school divisions for school construction, ~~additions, infrastructure, including the costs of erecting,~~
199 ~~renovating, retrofitting or enlarging public school buildings and~~ site acquisition for public school
200 ~~buildings and facilities, and renovations, including the costs of retrofitting or enlarging public school~~
201 ~~buildings and the costs of purchasing and installing educational technology equipment and~~
202 ~~infrastructure;~~ further, if a school division has completed any such projects during the previous ten
203 years, the grants may be used for debt service payments or a portion thereof. The Program shall be
204 administered by the Board of Education and the Virginia Public School Authority.

205 § 22.1-175.2. Virginia Public School Construction Grants Fund created.

206 A. From such funds as may be appropriated for this purpose ~~and from such; any bonds issued for~~
207 ~~this purpose by the Virginia Public School Authority; any gifts, donations, grants, or bequests; any~~
208 ~~moneys deposited into the Fund from the State Lottery Fund pursuant to § 58.1-4022; and any other~~
209 funds as may be received on its behalf ~~by the Virginia Public School Authority~~, there is hereby created
210 in the Department of the Treasury a special nonreverting fund known as the Virginia Public School
211 Construction Grants Fund. The Fund shall be established on the books of the Comptroller, and any
212 moneys remaining in such Fund at the end of the biennium shall not revert to the general fund but shall
213 remain in the Fund. Interest earned on such funds shall remain in the Fund and be credited to it. Funds
214 may be disbursed to any school division that is eligible for financial assistance pursuant to the
215 provisions of this chapter.

216 B. ~~The State Treasurer~~ Virginia Public School authority shall manage the Virginia Public School
217 Construction Grants Fund, subject to the authority of the Board of Education to ~~provide for its~~
218 ~~disbursement~~ *establish the criteria for and to award grants for public school construction.* The Fund
219 shall be disbursed ~~by the Virginia Public School Authority to award school boards to which the Board~~
220 ~~awards grants as provided in § 22.1-175.4 in accordance with the application procedures and~~
221 ~~requirements established by the Board in regulation.~~ The amount of each grant awarded to a qualifying
222 school division in any fiscal year shall not exceed ~~400~~ fifty percent of the school division's aggregate
223 annual expenditures for school construction, additions, infrastructure, site acquisition for public school
224 buildings ~~and facilities,~~ renovations, including the costs of retrofitting or enlarging public school
225 buildings, and debt service payments on such school projects which have been completed during the last
226 ten years.

227 C. The amount of such public school construction grants shall be matched by funds of the qualifying
228 school division based on the locality's composite index of ability to pay. In awarding such grants, the
229 Board shall take into consideration any Literary Fund loan which may have been applied for or awarded
230 for the same projects.

231 § 22.1-175.3. Board to promulgate regulations.

232 The Board shall ~~issue guidelines~~ *promulgate regulations pursuant to the Administrative Process Act*
233 *(§ 9-6.14:1 et seq.) for the administration of governing the Program as it may deem necessary and*
234 ~~appropriate~~ *be required to comply with the provisions of this title and the Board's regulations governing*
235 *the applications for and awarding of Literary Fund loans.* The ~~guidelines~~ regulations shall include, but
236 shall not be limited to, ~~provisions which address:~~

237 1. *Procedures for obtaining the approval by the local governing body of the construction, renovation,*
238 *retrofitting or addition, or site acquisition for which grant moneys are sought; the application for a*
239 *grant from the Fund; and implementation of the procedure for disbursing grants to school divisions as*
240 *provided in § 22.1-175.4;*

241 2. *Components for school division applications which document (i) financial need and local ability to*
242 *pay for public school construction, (ii) emergency needs for school construction, renovation or*
243 *retrofitting resulting from any natural or other disaster, (iii) classroom space need based on present*
244 *population and projected growth rates, (iv) previous construction programs within the school division*

which demonstrate local commitment to resolve educational needs, (v) the availability and pledge of local matching funds, and (vi) the tax base within the jurisdiction and the tax rate as compared to other localities having similar demographics;

3. Procedures to ensure that the total amount of any funding obtained through a Literary Fund loan and a grant pursuant to this article, together with the local matching funds, shall not be greater than 100 percent of the cost of construction of the project;

4. Procedures to require the submission of a plan for any proposed project which demonstrates that the project can be constructed and completed in a cost-effective manner;

5. Procedures setting annual deadlines for application and plan submissions;

6. Procedures for determining priority for awarding grants to qualifying school divisions; and

7. Certification of the required maintenance of local effort pursuant to § 22.1-175.4 C.

§ 22.1-175.4. Application for grants; distribution of funds; certification of maintenance of local effort required.

A. All Pursuant to Item 554 of the 1998-2000 Appropriation Act as in effect on January 1, 1999, funds appropriated for financial assistance for the purposes of this chapter during fiscal years 1998-1999 and 1999-2000 pursuant to Item 554 of the 1998-2000 Appropriation Act shall be apportioned and distributed among the school divisions of the Commonwealth as follows: (i) there shall be apportioned and distributed equally to every school division grants in the sum of \$200,000 each and (ii) the balance of all available funds shall be apportioned and distributed to each school division on a pro rata basis according to the school division's average daily membership adjusted by the locality's composite index of ability to pay as set forth in the general appropriation act.

B. All funds appropriated for financial assistance for the purposes of this chapter pursuant to Item 554 of an amended Appropriation Act for 1998-2000, as enacted in 1999, for fiscal years 1998-1999 and 1999-2000 and for subsequent fiscal years shall be apportioned and distributed among the school divisions of the Commonwealth in accordance with eligibility and needs criteria to be established by the 2000 Session of the General Assembly. In developing such eligibility and needs criteria, the 2000 Session of the General Assembly shall consider the recommendations of the Commission on State Funding of Public School Construction the following conditions:

1. Twenty-five percent of such funds shall be apportioned equally among all school divisions and distributed as so apportioned in the form of equal grants to every school division;

2. Twenty-five percent of such funds shall be apportioned and distributed to all school divisions based on an average daily membership which has been weighted to reflect the relevant composite index of local ability to pay;

3. Twenty-five percent of such funds shall be apportioned and distributed to all school divisions based on a formula, set forth in the appropriation act, based on local growth rates; and

4. Twenty-five percent of such funds shall be deposited to the Virginia Public School Grants Program Fund established pursuant to § 22.1-175.2.

C. The Virginia Public School Grants Program is a voluntary educational incentive program. Funds appropriated to and distributed pursuant to the Virginia Public School Grants Program shall not be utilized by any local school board or governing body in the Commonwealth for meeting the local required cost of maintaining an educational program meeting the prescribed Standards of Quality pursuant to Section 2 of Article VIII of the Constitution of Virginia. Therefore, as a condition of applying for and receiving grants for school construction pursuant to this program, local school boards and governing bodies shall certify to the Board of Education that any required local match, as set forth in the appropriation act for such school construction program, shall be appropriated and that local appropriations to the relevant school board for support of the local education program in the relevant school division, regardless of whether such local funding exceeds the amount required by Section 2 of Article VIII of the Constitution of Virginia, shall be maintained in the local budget for the fiscal years of the grant period. This certification shall verify that local appropriations for public K-12 education have not been and shall not be reduced or supplanted with any funds received hereunder for any school construction project.

§ 58.1-4022. State Lottery Fund.

A. All moneys received from the sale of lottery tickets or shares, less payment for prizes and compensation of agents as authorized by regulation and any other revenues received under this chapter, shall be placed in a special fund known as the "State Lottery Fund." Notwithstanding any other provisions of law, interest earned from moneys in the State Lottery Fund shall accrue to the benefit of such Fund.

B. The total costs for the operation and administration of the lottery shall be funded from the State Lottery Fund and shall be in such amount as provided in the general appropriation act. Appropriations to the Department during any fiscal year beginning on and after July 1, 1989, exclusive of agent compensation, shall at no time exceed ten percent of the total annual estimated gross revenues to be

306 generated from lottery sales. However, should it be anticipated at any time by the Director that such
307 operational and administrative costs for a fiscal year will exceed the limitation provided herein, the
308 Director shall immediately report such information to the Board, the Governor and the Chairmen of
309 Senate Finance and House Appropriations Committees. From the moneys in the Fund, the Comptroller
310 shall establish a special reserve fund in such amount as shall be provided by regulation of the
311 Department for (i) operation of the lottery, (ii) use if the game's pay-out liabilities exceed its cash on
312 hand, or (iii) enhancement of the prize pool with income derived from lending securities held for
313 payment of prize installments, which lending of securities shall be conducted in accordance with lending
314 programs approved by the Department of the Treasury.

315 C. Any start-up sums appropriated from the general fund of the Commonwealth necessary to
316 commence operation of a state lottery shall be repaid within the first twelve months of initial lottery
317 sales.

318 D. Appropriation of lottery revenues shall be made only upon actual and audited collections as
319 transferred to the general fund and shall in no event be predicated upon an estimation of such revenues.
320 No later than ten days after receipt of the audit report required by § 58.1-4023, the Comptroller shall
321 transfer to the general fund, less the special reserve fund, the audited balances of the State Lottery Fund.

322 In addition to such other funds as may be appropriated, 100 percent of the lottery revenues
323 transferred to the general fund shall be appropriated entirely and solely for the purpose of public
324 education *school construction and educational technology* in the Commonwealth, ~~which purposes shall~~
325 ~~include, but not be limited to, those programs specified in § 22.1-199.1.~~

326 *Lottery revenues transferred to the general fund and appropriated entirely and solely for the purpose*
327 *of public education in the Commonwealth shall be apportioned in accordance with the appropriation*
328 *act, as follows: on and after July 1, 1999, an amount equal to 100 percent of such lottery revenues*
329 *shall be dedicated to the Virginia Public School Construction Program established pursuant to Chapter*
330 *11.1 (§ 22.1-175.1 et seq.) of Title 22.1.*

331 E. As a function of the administration of this chapter, funds may be expended for the purposes of
332 reasonably informing the public concerning (i) the facts embraced in the subjects contained in
333 subdivisions 1 through 7 of subsection A of § 58.1-4007 and (ii) the fact that the net proceeds are paid
334 into the general fund of the Commonwealth; but no funds shall be expended for the primary purpose of
335 inducing persons to participate in the lottery.