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HOUSE BILL NO. 46**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Governor
on April 13, 2010)

(Patron Prior to Substitute—Delegate Oder)

A BILL to amend and reenact §§ 62.1-198 and 62.1-199 the Code of Virginia and to amend the Code of Virginia by adding in Title 36 a chapter numbered 10.1, consisting of sections numbered 36-156.1 and 36-156.2, relating to Virginia Defective Drywall Correction and Restoration Assistance Fund.

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-198 and 62.1-199 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 36 a chapter numbered 10.1, consisting of sections numbered 36-156.1 and 36-156.2, as follows:

CHAPTER 10.1.**VIRGINIA DEFECTIVE DRYWALL CORRECTION AND RESTORATION ASSISTANCE FUND.****§ 36-156.1. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Authority" means the Virginia Resources Authority.

"Bona fide prospective purchaser" means a person who acquires ownership, or proposes to acquire ownership, of real property affected by defective drywall.

"Cost," as applied to any project financed under the provisions of this chapter, means the reasonable and necessary costs incurred for carrying out all works and undertakings necessary or incident to the correction or elimination of defective drywall. It includes, without limitation, all necessary developmental, planning, and feasibility studies, surveys, plans, and specifications; architectural, engineering, financial, legal, or other special services; site assessments, remediation, containment, and demolition or removal of existing structures or portions thereof; the discharge of any obligation of the seller of such land, buildings, or improvements; labor; materials, machinery, and equipment; the funding of accounts and reserves that the Authority may require; the reasonable costs of financing incurred by the local government in the course of the development of the project; carrying charges incurred prior to completion of the project; and the cost of other items that the Authority determines to be reasonable and necessary.

"Defective drywall" means drywall installed during new construction or renovation that occurred between 2001 and 2008, where there is visual evidence of the blackening of copper electrical wiring or air conditioning evaporator coils (or documentation of the replacement of evaporator coils due to blackened corrosion resulting in failure), and where two or more pieces of corroborating evidence are present in the form of defective conditions as demonstrated by testing procedures recommended by the Consumer Products Safety Commission, confirmed markings of the Chinese origin of the drywall, or strontium levels from drywall core samples from the property exceeding 1200 parts per million (ppm); elemental sulfur levels in samples of drywall core found in the home exceeding 10 ppm; elevated levels of hydrogen sulfide, carbonyl sulfide, or carbon disulfide emitted from samples of drywall from the home when placed in test chambers using ASTM Standard Test Method D5504-08 or similar chamber or headspace testing; or the corrosion of copper metal to form copper sulfide when copper is placed in test chambers with drywall samples taken from the property.

"Department" means the Department of Housing and Community Development.

"Director" means the Director of the Department of Housing and Community Development.

"Fund" means the Virginia Defective Drywall Correction and Restoration Assistance Fund.

"Innocent land owner" means a person who holds any title, security interest, or any other interest in residential real property and who acquired that interest after the installation of defective drywall occurred.

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

§ 36-156.2. Virginia Defective Drywall Correction and Restoration Assistance Fund established; uses.

A. There is hereby created and set apart a special, permanent, perpetual, and nonreverting fund to be known as the Virginia Defective Drywall Correction and Restoration Assistance Fund for the purposes of promoting the correction and restoration of residential property affected by the environmental problems attributable to defective drywall or overcoming obstacles to the remediation of such properties attributable to the real or presumed presence of defective drywall. The Fund shall consist of such sums that may be appropriated to the Fund by the General Assembly, sums from all receipts by the Fund from loans made by it, all income from the investment of moneys held in the Fund,

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60 and any other sums designated for deposit to the Fund from any source, public or private, including any
61 federal grants, awards, or other forms of financial assistance received by the Commonwealth.

62 B. The Authority shall administer and manage the Fund and establish the interest rates and
63 repayment terms for loans made to eligible entities or individuals in accordance with a memorandum of
64 agreement with the Department of Housing and Community Development. The Department of Housing
65 and Community Development shall direct the distribution of loans or grants from the Fund to particular
66 recipients based upon guidelines developed for this purpose. With approval from the Department of
67 Housing and Community Development, the Authority may disperse moneys from the Fund for the
68 payment of reasonable and necessary costs and expenses incurred in the administration and
69 management of the Fund. The Authority may establish and collect a reasonable fee on outstanding loans
70 for its management services.

71 C. All money belonging to the Fund shall be deposited in an account or accounts in banks or trust
72 companies organized under the laws of the Commonwealth or in national banking associations located
73 in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth
74 or the United States. The money in these accounts shall be paid by check and signed by the Executive
75 Director of the Authority or other officers or employees designated by the Board of Directors of the
76 Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined
77 by the Authority to be prudent, and all banks, trust companies, and savings institutions are authorized to
78 give security for the deposits. Money in the Fund shall not be commingled with other money of the
79 Authority. Money in the Fund not needed for immediate use or disbursement may be invested or
80 reinvested by the Authority in obligations or securities that are considered lawful investments for public
81 funds under the laws of the Commonwealth. Expenditures and disbursements from the Fund shall be
82 made by the Authority upon written request signed by the Director of the Department of Housing and
83 Community Development.

84 D. The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due
85 to the Fund under any loan including, if appropriate, taking the action required by § 15.2-2659 to
86 obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be
87 instituted by the Authority in the name of the Fund in the appropriate circuit court.

88 E. The Department of Housing and Community Development may approve grants to local
89 governments for the purposes of promoting the correction or restoration of residential real property and
90 addressing environmental problems or obstacles to the correction or restoration of such properties. The
91 grants may be used to pay the reasonable and necessary costs associated with the remediation of a
92 contaminated property to remove hazardous substances, hazardous wastes, or solid wastes or the
93 stabilization or restoration of these structures or the demolition and removal of the existing structures or
94 other work necessary to remediate or reuse the real property. The Department of Housing and
95 Community Development may establish such terms and conditions as it deems appropriate and shall
96 evaluate each grant request in accordance with the guidelines developed for this purpose. The Authority
97 shall disburse grants from the Fund in accordance with a written request from the Department of
98 Housing and Community Development.

99 F. The Authority may make loans to local governments, public authorities, corporations,
100 partnerships, or innocent landowners to finance or refinance the cost of any defective drywall
101 restoration or remediation project for the purposes of promoting the restoration and redevelopment of
102 residential real property and addressing real environmental problems or obstacles to reuse of these
103 properties. The loans shall be used to pay the reasonable and necessary costs related to the restoration
104 and redevelopment of residential real property for the remediation of a contaminated property to remove
105 hazardous substances, hazardous wastes, or solid wastes; stabilization or restoration of the affected
106 properties; demolition and removal of existing structures; or other work necessary to remediate or reuse
107 the real property

108 The Department of Housing and Community Development shall designate in writing the recipient of
109 each loan, the purposes of the loan, and the amount of each such loan. No loan from the Fund shall
110 exceed the total cost of the project to be financed or the outstanding principal amount of the
111 indebtedness to be refinanced plus reasonable financing expenses.

112 G. Except as otherwise provided in this chapter, the Authority shall determine the interest rate and
113 terms and conditions of any loan from the Fund, which may vary between local governments. Each loan
114 shall be evidenced by appropriate bonds or notes of the loan recipient payable to the Fund. The bonds
115 or notes shall have been duly authorized by the local government and executed by its authorized legal
116 representatives. The Authority is authorized to require in connection with any loan from the Fund such
117 documents, instruments, certificates, legal opinions, and other information as it may deem necessary or
118 convenient. In addition to any other terms or conditions that the Authority may establish, the Authority
119 may require, as a condition to making any loan from the Fund, that the entity receiving the loan
120 covenant and perform any of the following:

121 1. Establish and collect rents, rates, fees, taxes, and charges to produce revenue sufficient to pay all

or a specified portion of (i) the costs of the project, (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund to the local government, and (iii) any amounts necessary to create and maintain any required reserve.

2. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government.

3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable.

4. Create and maintain other special funds as required by the Authority.

5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and to provide for the remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:

a. The conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title, and interest therein, to the Fund;

b. The procurement of insurance, guarantees, letters of credit, and other forms of collateral, security, liquidity arrangements, or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

c. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, for the purpose of financing, and the pledging of the revenues from such combined projects and undertakings to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;

d. The maintenance, replacement, renewal, and repair of the project; and

e. The procurement of casualty and liability insurance.

6. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts or his legally authorized representatives. The Authority may request additional reviews at any time during the term of the loan.

7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to obtain payment of any amounts in default.

H. All local governments borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings, and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Fund.

I. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.

J. The Department of Housing and Community Development, through its Director, shall have the authority to access and release moneys in the Fund for purposes of this section as long as the disbursement does not exceed the balance of the Fund. If the Department of Housing and Community Development, through its Director, requests a disbursement in an amount exceeding the current Fund balance, the disbursement shall require the written approval of the Governor. Disbursements from the Fund may be made for the purposes outlined in this section, including, but not limited to, personnel, administrative, and equipment costs and expenses directly incurred by the Partnership or the Authority, or by any other agency or political subdivision acting at the direction of the Department of Housing and Community Development.

K. The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the Fund.

L. The Authority may, with the approval of the Department of Housing and Community Development, pledge, assign, or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment, or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned, or transferred or held in trust may be applied by the trustee thereof to the

183 *payment of the principal of, premium, if any, and interest on such bonds of the Authority secured*
184 *thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or*
185 *all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium,*
186 *if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned, or*
187 *transferred in trust as set forth above and any payments of principal, interest, or earnings received*
188 *thereon shall remain part of the Fund but shall be subject to the pledge, assignment, or transfer to*
189 *secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned,*
190 *or transferred until no longer required for such purpose by the terms of the pledge, assignment, or*
191 *transfer.*

192 *M. The Department of Housing and Community shall develop guidelines governing the use of the*
193 *Fund and including criteria for project eligibility that considers the extent to which a grant or loan will*
194 *facilitate the use or reuse of the existing residential property, the extent to which a grant or loan will*
195 *meet the needs of a recipient, the potential restoration of the property, the economic and environmental*
196 *benefits to the surrounding community, and the extent of the perceived or real environmental*
197 *contamination at the site.*

198 § 62.1-198. Legislative findings and purposes.

199 The General Assembly finds that there exists in the Commonwealth a critical need for additional
200 sources of funding to finance the present and future needs of the Commonwealth for water supply; land
201 conservation or land preservation including land for parks and other recreational purposes; wastewater
202 treatment facilities; drainage facilities; solid waste treatment, disposal and management facilities;
203 recycling facilities; resource recovery facilities; energy conservation and energy efficiency projects;
204 professional sports facilities; certain heavy rail transportation facilities; public safety facilities; airport
205 facilities; the remediation of brownfields and contaminated properties, *including properties contaminated*
206 *by defective drywall*; the design and construction of roads, public parking garages and other public
207 transportation facilities, and facilities for public transportation by commuter rail; construction of local
208 government buildings, including administrative and operations systems and other local government
209 equipment and infrastructure; site acquisition and site development work for economic and community
210 development projects; and the location or retention of federal facilities in the Commonwealth and the
211 support of the transition of former federal facilities from use by the federal government to other uses.
212 This need can be alleviated in part through the creation of a resources authority. Its purpose is to
213 encourage the investment of both public and private funds and to make loans, grants, and credit
214 enhancements available to local governments to finance water and sewer projects, land conservation or
215 land preservation programs or projects, drainage projects, solid waste treatment, disposal and
216 management projects, recycling projects, energy conservation and energy efficiency projects, professional
217 sports facilities, resource recovery projects, public safety facilities, airport facilities, the remediation of
218 brownfields and contaminated properties *including properties contaminated by defective drywall*, the
219 design and construction of roads, public parking garages and other public transportation facilities, and
220 facilities for public transportation by commuter rail, site acquisition and site development work for the
221 benefit of economic development projects, technology, construction of local government buildings,
222 including administrative and operations systems and other local government equipment and
223 infrastructure, and infrastructure for broadband services, and federal facilities or former federal facilities.
224 The General Assembly determines that the creation of an authority for this purpose is in the public
225 interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity
226 of the people of the Commonwealth.

227 § 62.1-199. Definitions.

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

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

230 "Board of Directors" means the Board of Directors of the Authority.

231 "Bonds" means any bonds, notes, debentures, interim certificates, bond, grant or revenue anticipation
232 notes, lease and sale-leaseback transactions or any other evidences of indebtedness of the Authority.

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

235 "Cost," as applied to any project financed under the provisions of this chapter, means the total of all
236 costs incurred by the local government as reasonable and necessary for carrying out all works and
237 undertakings necessary or incident to the accomplishment of any project. It includes, without limitation,
238 all necessary developmental, planning and feasibility studies, surveys, plans and specifications,
239 architectural, engineering, financial, legal or other special services, the cost of acquisition of land and
240 any buildings and improvements thereon, including the discharge of any obligations of the sellers of
241 such land, buildings or improvements, real estate appraisals, site preparation and development, including
242 demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery
243 and equipment, the reasonable costs of financing incurred by the local government in the course of the
244 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 or any other evidences of indebtedness of a local government.

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

"Project" means (i) any water supply or wastewater treatment facility including a facility for receiving and stabilizing septage or a soil drainage management facility and any solid waste treatment, disposal, or management facility, recycling facility, federal facility or former federal facility, or resource recovery facility located or to be located in the Commonwealth, the District of Columbia or any adjoining state, all or part of which facility serves or is to serve any local government; and (ii) any federal facility located or to be located in the Commonwealth, provided that both the Board of Directors of the Authority and the governing body of the local government receiving the benefit of the loan, grant, or credit enhancement from the Authority make a determination or finding to be embodied in a resolution or ordinance that the undertaking and financing of such facility is necessary for the location or retention of such facility and the related use by the federal government in the Commonwealth. The term includes, without limitation, water supply and intake facilities; water treatment and filtration facilities; water storage facilities; water distribution facilities; sewage and wastewater (including surface and ground water) collection, treatment and disposal facilities; drainage facilities and projects; solid waste treatment, disposal or management facilities; recycling facilities; resource recovery facilities; related office, administrative, storage, maintenance and laboratory facilities; and interests in land related thereto. The term also includes energy conservation measures and facility technology infrastructure as defined in § 11-34.2 and other energy objectives as defined in § 67-101. The term also means any heavy rail transportation facilities operated by a transportation district, created under the Transportation District Act of 1964 (§ 15.2-4500 et seq.), which operates heavy rail freight service, including rolling stock, barge loading facilities, and any related marine or rail equipment. The term also means, without limitation, the design and construction of roads, the construction of local government buildings, including administrative and operations systems and other local government equipment and infrastructure, public parking garages and other public transportation facilities, and facilities for public transportation by commuter rail. In addition, the term means any project as defined in § 5.1-30.1 and any professional sports facility, including a major league baseball stadium as defined in § 15.2-5800, provided that the specific professional sports facility projects have been designated by the General Assembly as eligible for assistance from the Authority. The term also means any equipment, facilities, and technology infrastructure designed to provide broadband service. The term also means facilities supporting, related to, or otherwise used for public safety including, but not limited to, law-enforcement training facilities and emergency response, fire, rescue and police stations. The term also means the remediation, redevelopment and rehabilitation of property contaminated by the release of hazardous substances, hazardous wastes, solid wastes or petroleum where such remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department of Environmental

306 Quality, or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability
307 Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.),
308 the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et
309 seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been
310 waived. The term also means any program or project for land conservation, parks, park facilities, land
311 for recreational purposes, or land preservation, including but not limited to any program or project
312 involving the acquisition of rights or interests in land for the conservation or preservation of such land.
313 The term also means any program or project to perform site acquisition or site development work for
314 the benefit of economic and community development projects for any local government. *The term also*
315 *means any undertaking by a local government to facilitate the remediation of residential properties*
316 *contaminated by the presence of defective drywall.*