

LD5355633

SENATE BILL NO. 1019

Offered January 23, 1995

A BILL to amend and reenact §§ 62.1-229 and 62.1-238 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 62.1-229.1 and 62.1-238.1, relating to loans from the Virginia Resources Authority.

Patrons—Colgan; Delegates: Diamonstein, Parrish and Woodrum

Referred to the Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-229 and 62.1-238 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 62.1-229.1 and 62.1-238.1 as follows:

§ 62.1-229. Loans to local governments.

Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans to local governments to finance or refinance the cost of any project. The local governments to which loans are to be made, the purposes of the loan, and the amount of each such loan, the interest rate thereon and the repayment terms thereof, which may vary between local governments, shall be designated in writing by the Board to the Authority following consultation with the Authority. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses. *Loans of up to \$40,000, evidenced by a note, may be made from the Fund, in the Board's discretion, to a local government for financing the cost of repairs or upgrades of a project from funds available and allowable for such use, and need only be secured by the provisions of § 62.1-229.1, provided that the Board shall make no such loan if the Board determines that such loans and security method would negatively impact the financial integrity of the Fund. Loans of up to \$100,000 may be made under the same conditions contained in the previous sentence to a local government which has developed a low-interest loan program to provide loans or other incentives to facilitate the correction of onsite sewage disposal system problems, provided that the moneys may be used only for the program and that the onsite sewage disposal systems to be repaired or upgraded are owned by individual citizens of the Commonwealth where (i) public health or water quality concerns are present and (ii) connection to a public sewer system is not feasible because of location or cost. Loans made under the previous two sentences shall be referred to in this chapter as "small water facility project loans."*

Except as set forth above, the Authority shall determine the terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and 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, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. 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;

C. Create and maintain a special fund or funds for the payment of the principal of and 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 for the operation, maintenance, repair or replacement of 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;

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

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60 E. Perform other acts, including the conveyance of, or the granting of liens on or security interests
61 in, real and personal property, together with all rights, title and interest therein, to the Fund, or take
62 other actions as may be deemed necessary or desirable by the Authority to secure payment of the
63 principal of and premium, if any, and interest on the loan from the Fund to the local government and to
64 provide for the remedies of the Fund in the event of any default by the local government in the payment
65 of the loan, including, without limitation, any of the following:

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

69 2. The combination of one or more projects, or the combination of one or more projects with one or
70 more other undertakings, facilities, utilities or systems, for the purpose of operations and financing, and
71 the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems
72 to secure the loan from the Fund to the local government made in connection with such combination or
73 any part or parts thereof;

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

75 4. The procurement of casualty and liability insurance.

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

80 Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the
81 Authority may consent to and approve any modification in the terms of any loan to any local
82 government subject to guidelines adopted by the Board.

83 § 62.1-229.1. *Small water facility project loan security.*

84 A. *Any local government entitled to returns of local taxes collected under the provisions of*
85 *§§ 58.1-605 or 58.1-606 may secure small water facility project loans allowed in § 62.1-229 with such*
86 *returns by the means and conditions provided for in this section.*

87 B. *If any local government defaults on a small water facility project loan, the Board, by providing*
88 *proof of such default, shall notify the Comptroller. When it is established to the satisfaction of the*
89 *Comptroller that a default has occurred, the Comptroller shall withhold from the defaulting local*
90 *government the payment of its share of the optional sales and use taxes authorized by §§ 58.1-605 and*
91 *58.1-606 in an amount sufficient to cure the default. The Comptroller shall pay over to the creditor all*
92 *sums withheld so as to cure, or cure insofar as possible, the default. Any payment so made by the*
93 *Comptroller to the creditor shall be credited as if made directly by the defaulting local government and*
94 *shall be charged by the Comptroller against the first taxes collected and otherwise payable to the local*
95 *government as if paid to the local government. The creditor, at the time of payment or at the time of*
96 *each payment, shall provide a receipt for the payment and deliver it to the Comptroller. The*
97 *Comptroller shall report each payment made to the local government by delivering or sending by*
98 *registered mail to the local government copies of receipts or other evidence of payment of the debt*
99 *received by it.*

100 *The costs incurred by the Comptroller under this section shall be a further charge against the funds*
101 *in the hands of the Comptroller payable to the local government and collected under §§ 58.1-605 or*
102 *58.1-606.*

103 C. *Nothing in this section shall be construed to create any obligation on the part of the Comptroller*
104 *or the Commonwealth to make any payment on behalf of the defaulting local government other than*
105 *from funds received by the Comptroller through taxes collected pursuant to §§ 58.1-605 and 58.1-606*
106 *and due to the defaulting local government. Nor shall it be construed as authorizing the pledging of the*
107 *faith and credit of the Commonwealth of Virginia, or any of its revenues, for the payment of any debts.*

108 § 62.1-238. *Loans to local governments.*

109 Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans
110 to local governments to finance or refinance the cost of any project. The local governments to which
111 loans are to be made, the purposes of the loan, and the amount of each such loan, the interest rate
112 thereon and the repayment terms thereof, which may vary between local governments, shall be
113 designated in writing by the Board to the Authority following consultation with the Authority. No loan
114 from the Fund shall exceed the total cost of the project to be financed or the outstanding principal
115 amount of the indebtedness to be refinanced plus reasonable financing expenses. *Loans of up to \$40,000,*
116 *evidenced by a note, may be made from the Fund, in the Board's discretion, to a local government for*
117 *financing the cost of repairs or upgrades of a project from funds available and allowable for such use,*
118 *and need only be secured by the provisions of § 62.1-238.1, provided that the Board shall make no such*
119 *loan if the Board determines that such loans and security method would negatively impact the financial*
120 *integrity of the Fund. Loans made under the previous sentence shall be referred to in this chapter as*
121 *"small water supply project loans."*

Except as set forth above, the Authority shall determine the terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions which the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant to perform any of the following:

A. Establish and collect rents, rates, fees and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of and 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, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees or charges;

B. 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;

C. Create and maintain a special fund or funds for the payment of the principal of and 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 for the operation, maintenance, repair or replacement of 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;

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

E. Perform other acts, including 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, or take other actions as may be deemed necessary or desirable by the Authority to secure payment of the principal of and 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:

1. 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;

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

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

4. The procurement of casualty and liability insurance.

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.

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 subject to guidelines adopted by the Board.

§ 62.1-238.1. Small water supply project loan security.

A. Any local government entitled to monthly returns of local taxes collected under the provisions of §§ 58.1-605 or 58.1-606 may secure small water supply project loans allowed in § 62.1-238 with such returns by the means and conditions provided for in this section.

B. If any local government defaults on a small water supply project loan, the Board, by providing proof of such default, shall notify the Comptroller. When it is established to the satisfaction of the Comptroller that a default has occurred, the Comptroller shall withhold from the defaulting local government the payment of its share of the optional sales and use taxes authorized by §§ 58.1-605 and 58.1-606 in an amount sufficient to cure the default. The Comptroller shall pay over to the creditor all sums withheld so as to cure, or cure insofar as possible, the default. Any payment so made by the Comptroller to the creditor shall be credited as if made directly by the local government and shall be charged by the Comptroller against the first taxes collected and otherwise payable to the local

183 government as if paid to the local government. The creditor, at the time of payment or at the time of
184 each payment, shall provide a receipt for the payment and deliver it to the Comptroller. The
185 Comptroller shall report each payment made to the defaulting local government by delivering or
186 sending, by registered mail, to the local government copies of receipts or other evidence of payment of
187 the debt received by it.

188 The costs incurred by the Comptroller under this section shall be a further charge against the funds
189 in the hands of the Comptroller payable to the local government and collected pursuant to §§ 58.1-605
190 or 58.1-606.

191 C. Nothing in this section shall be construed to create any obligation on the part of the Comptroller
192 or the Commonwealth to make any payment on behalf of the defaulting local government other than
193 from funds received by the Comptroller through taxes collected pursuant to §§ 58.1-605 and 58.1-606
194 and due to the defaulting local government. Nor shall it be construed as authorizing the pledging of the
195 faith and credit of the Commonwealth of Virginia, or any of its revenues, for the payment of any debts.