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SENATE BILL NO. 756

Offered January 21, 2022

A *BILL to amend the Code of Virginia by adding in Chapter 6 of Title 10.1 an article numbered 1.4, consisting of sections numbered 10.1-603.28 through 10.1-603.40, relating to Resilient Virginia Revolving Loan Fund.*

Patron—Lewis

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 6 of Title 10.1 an article numbered 1.4, consisting of sections numbered 10.1-603.28 through 10.1-603.40, as follows:

*Article 1.4.**Resilient Virginia Revolving Loan Fund.***§ 10.1-603.28. Definitions.**

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

"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of Title 62.1.

"Board" means the Virginia Soil and Water Conservation Board established pursuant to § 10.1-502.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. "Cost" includes, without limitation, all necessary developmental, planning, and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal, or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings, or improvements, site preparation and development, including demolition or removal of existing structures, construction and reconstruction, labor, materials, machinery and equipment, the reasonable costs of financing incurred in the course of the development of the project, carrying charges incurred before placing the project in service, interest on funds borrowed 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 that the Authority may require, and the cost of other items that the Authority determines to be reasonable and necessary.

"Fund" means the Resilient Virginia Revolving Loan Fund created by this chapter.

"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 or laws of the Commonwealth or any combination of any two or more of the foregoing.

"Project" means: (i) home upgrades for resilience purposes, home buyouts necessary for the construction of mitigation or resilience projects, relocations, and buyout assistance for homes, all including multifamily units; (ii) gap funding related to buyouts in order to move residents out of floodplain hazard areas and restore or enhance the natural flood mitigation capacity of functioning floodplains; (iii) assistance to low and moderate income homeowners to help lower flood risk through structural and nonstructural mitigation projects, or other means; (iv) loans and grants to state and local governmental entities for hazard mitigation and infrastructure improvement projects; and (v) projects identified in the Virginia Flood Protection Master Plan or the Virginia Coastal Resilience Master Plan.

"Resilience" means the capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, health, the economy, and the environment.

§ 10.1-603.29. Resilient Virginia Revolving Loan Fund.

There shall be set apart as a permanent and perpetual fund, to be known as the "Resilient Virginia Revolving Loan Fund," sums appropriated to the Fund by the General Assembly, sums allocated to the Commonwealth for the purposes of resilience through the federal government, all receipts by the Fund from loans made by it to local governments, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source public or private. The Fund shall be administered and managed by the Authority as prescribed in this chapter, subject to the right of the Board, following consultation with the Authority, to direct the distribution of loans or grants from the Fund to particular local governments and to establish the interest rates and repayment terms of such loans as provided in this chapter. In order to carry out the administration and management of the Fund, the Authority is granted the power to employ officers, employees, agents, advisers, and consultants,

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59 including, without limitation, attorneys, financial advisers, engineers, and other technical advisers and
60 public accountants and, the provisions of any other law to the contrary notwithstanding, to determine
61 their duties and compensation without the approval of any other agency or instrumentality. The
62 Authority may disburse from the Fund its reasonable costs and expenses incurred in the administration
63 and management of the Fund and a reasonable fee to be approved by the Board for its management
64 services. The Authority may provide a portion of that fee to the Department of Conservation and
65 Recreation to cover the Department's costs and expenses in administering the Fund.

66 **§ 10.1-603.30. Deposit of money; expenditures; investments.**

67 All money belonging to the Fund shall be deposited in an account or accounts in banks or trust
68 companies organized under the laws of the Commonwealth or in national banking associations located
69 in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth
70 or the United States. The money in these accounts shall be paid by electronic transfer signed by the
71 Executive Director of the Authority or other officers or employees designated by the Board of Directors
72 of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner
73 determined by the Authority to be prudent, and all banks, trust companies, and savings institutions are
74 authorized to give security for the deposits. Money in the Fund shall not be commingled with other
75 money of the Authority. Money in the Fund not needed for immediate use or disbursement may be
76 invested or reinvested by the Authority in obligations or securities that are considered lawful
77 investments for public funds under the laws of the Commonwealth. Interest earned on moneys in the
78 Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including any
79 appropriated funds and all principal, interest accrued, and payments at the end of each fiscal year shall
80 not revert to the general fund but shall remain in the Fund.

81 **§ 10.1-603.31. Annual audit.**

82 The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the
83 accounts of the Authority, and the cost of such audit services as shall be required shall be borne by the
84 Authority. The audit shall be performed at least each fiscal year, in accordance with generally accepted
85 auditing standards and, accordingly, include such tests of the accounting records and such auditing
86 procedures as considered necessary under the circumstances. The Authority shall furnish copies of such
87 audit to the Governor and to the Board.

88 **§ 10.1-603.32. Collection of money due to Fund.**

89 The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to
90 the Fund under any loan to a local government, including, if appropriate, taking the action required by
91 § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the
92 Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

93 **§ 10.1-603.33. Loans to local governments.**

94 Except as otherwise provided in this chapter, money in the Fund shall be used to make loans to
95 local governments. The local governments to which loans are to be made, the purposes of the loan, the
96 amount of each such loan, the interest rate thereon, and the repayment terms thereof, which may vary
97 between loan recipients, shall be designated in writing by the Board to the Authority following
98 consultation with the Authority. No loan from the Fund shall exceed the total cost of the project to be
99 financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable
100 financing expenses.

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

110 1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a
111 specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the
112 project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the
113 principal of and premium, if any, and interest on the loan from the Fund to the local government; and
114 (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization
115 fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future
116 increases in rents, rates, fees, or charges;

117 2. With respect to local governments, levy and collect ad valorem taxes on all property within the
118 jurisdiction of the local government subject to local taxation sufficient to pay the principal of and
119 premium, if any, and interest on the loan from the Fund to the local government;

120 3. 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;

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

5. 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 and to provide for the remedies of the Fund in the event of any default in the payment of the loan, including, without limitation, any of the following:

a. 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;

b. 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 made in connection with such combination or any part or parts thereof;

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

d. 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 subject to guidelines adopted by the Board.

§ 10.1-603.34. Grants to local governments.

Subject to any restrictions that may apply to the use of money in the Fund, the Board may approve the use of money in the Fund to make grants or appropriations to local governments to pay the cost of any project. The Board may establish such terms and conditions on any grant as it deems appropriate. Grants shall be disbursed from the Fund by the Authority in accordance with the written direction of the Board.

§ 10.1-603.35. Loans and grants for regional projects, etc.

In approving loans and grants, the Board shall give preference to loans and grants for projects that will (i) utilize private industry in the operation and maintenance of such projects where a material savings in cost can be shown over public operation and maintenance, (ii) serve two or more local governments to encourage regional cooperation, or (iii) both.

§ 10.1-603.36. Loans and Grants for individuals.

Subject to any restrictions that may apply to the use of money in the Fund, the Board may approve the use of money in the Fund to make grants or appropriations individuals to pay the cost of any project pursuant to this chapter. The Authority may contract with a financial institution for administration of individual loans. In approving loans and grants, the Board shall give preference to loans and grants for individuals who are eligible for low-income tax credits or federal low-income housing credits.

§ 10.1-603.37. Pledge of loans to secure bonds of Authority.

The Authority is empowered at any time and from time to time to 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 and premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, of the Authority. The interests of the Fund in any obligations so transferred shall be subordinate to the rights of the trustee under the pledge. To the extent funds are not available from other sources pledged for such purpose, any payments of principal and interest received on the assets transferred or held in trust may be applied by the trustee thereof to the payment of the principal of and premium, if any, and interest on such bonds of the Authority to which the obligations have been pledged, and if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of and premium, if any, and interest on such bonds of the Authority. Any assets of the Fund transferred in trust as set forth in this section and any payments of principal, interest, or earnings received thereon shall remain part of the Fund but shall be subject to the pledge to secure the bonds of the Authority

182 and shall be held by the trustee to which they are pledged until no longer required for such purpose by
183 the terms of the pledge. On or before January 10 of each year, the Authority shall transfer, or shall
184 cause the trustee to transfer, to the Fund any assets transferred or held in trust as set forth in this
185 section that are no longer required to be held in trust pursuant to the terms of the pledge.

186 **§ 10.1-603.38. Sale of loans.**

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

191 **§ 10.1-603.39. Powers of the Authority.**

192 The Authority is authorized to do any act necessary or convenient to the exercise of the powers
193 granted in this chapter or reasonably implied thereby.

194 **§ 10.1-603.40. Liberal construction of chapter.**

195 The provisions of this chapter shall be liberally construed to the end that its beneficial purposes may
196 be effectuated. Insofar as the provisions of this chapter are inconsistent with the provisions of any other
197 law, general, special, or local, the provisions of this chapter shall be controlling.