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HOUSE BILL NO. 2665

Offered January 23, 2009

A BILL to amend the Code of Virginia by adding in Title 15.2 a chapter numbered 24.2, consisting of sections numbered 15.2-2419 through 15.2-2429, relating to creation of the Virginia Broadband Infrastructure Loan Fund.

Patron—May

Referred to Committee on Appropriations

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 15.2 a chapter numbered 24.2, consisting of sections numbered 15.2-2419 through 15.2-2429, as follows:

§ 15.2-2419. 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.

"Cost," as applied to any project financed under the provisions of this chapter, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project.

"Fund" means the Virginia Broadband Infrastructure Loan Fund.

"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.

"Project" means any undertaking by a local government to build or facilitate the building of broadband infrastructure, including wireless broadband infrastructure.

§ 15.2-2420. Creation and management of Fund.

There shall be set apart as a permanent and perpetual fund, to be known as the Virginia Broadband Infrastructure Loan Fund, consisting of such sums that may be appropriated to the Fund by the General Assembly, 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. The Authority shall establish guidelines regarding the distribution of loans or grants from the Fund, prioritization of such loans and grants, and shall establish interest rates and repayment terms of such loans as provided in this chapter. The Authority may disperse from the Fund its reasonable costs and expenses incurred in the administration and management of the Fund.

§ 15.2-2421. Deposit of money; expenditures; investments.

All money belonging to the Fund shall be deposited in an account or accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies, and savings institutions are authorized to give security for the deposits. Money in the Fund shall not be comingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth.

§ 15.2-2422. Annual audit.

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

§ 15.2-2423. Collection of money due Fund.

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

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59 *Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.*

60 *§ 15.2-2424. Loans to local governments.*

61 *Except as otherwise provided in this chapter, money in the Fund shall be used solely to make loans*
62 *to local governments to finance or refinance the cost of any project. No loan from the Fund shall*
63 *exceed the total cost of the project to be financed or the outstanding principal amount of indebtedness*
64 *to be refinanced plus reasonable financing expenses.*

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

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

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

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

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

90 *5. Perform other acts, including the conveyance of, or the granting of liens on or security interests*
91 *in, real and personal property, together with all rights, title and interest therein, to the Fund, or to take*
92 *other actions as may be deemed necessary or desirable by the Authority to secure payment of the*
93 *principal and premium, if any, and interest on the loan from the Fund to the local government and to*
94 *provide for the remedies of the Fund in the event of any default by the local government in the payment*
95 *of the loan, including, without limitation, any of the following:*

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

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

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

105 *d. The procurement of casualty and liability insurance.*

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

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

113 *§ 15.2-2425. Prioritization of loans.*

114 *In approving loans, the Authority shall give preference to loans for projects that will (i) utilize*
115 *private industry in the operation and maintenance of such projects where a material savings in cost can*
116 *be shown over public operation and maintenance, (ii) serve two or more local governments to*
117 *encourage regional cooperation, or (iii) provide broadband services in areas with a demonstrated need*
118 *that, in the opinion of the Secretary of Technology and the Secretary of Economic Development, are*
119 *currently underserved by broadband providers.*

120 *§ 15.2-2426. Pledge of loans to secure bonds of Authority.*

121 The Authority is empowered at any time and from time to time to transfer from the Fund to banks or
122 trust companies designated by the Authority any or all assets of the Fund to be held in trust as security
123 for the payment of the principal and premium, if any, and interest on any or all of the bonds (as defined
124 in § 62.1-199) of the Authority. The interests of the Fund in any obligations so transferred shall be
125 subordinate to the rights of the trustee under the pledge. To the extent funds are not available from
126 other sources pledged for such purpose, any payments of principal and interest received on the assets
127 transferred or held in trust may be applied by the trustee thereof to the payment of the principal and
128 premium, if any, and interest on such bonds of the Authority to which the obligations have been
129 pledged, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or
130 all of such assets and apply the net proceeds from the sale to the payment of the principal and
131 premium, if any, and interest on such bonds of the Authority. Any assets of the Fund transferred in trust
132 as set forth above and any payments of principal, interest, or earnings received thereon shall remain
133 part of the Fund but shall be subject to the pledge to secure the bonds of the Authority and shall be
134 held by the trustee to which they are pledged until no longer required for such purpose by the terms of
135 the pledge. On or before January 10 each year, the Authority shall transfer, or shall cause the trustee to
136 transfer, to the Fund any assets transferred or held in trust as set forth above that are no longer
137 required to be held in trust pursuant to the terms of the pledge.

138 § 15.2-2427. Sale of loans.

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

143 § 15.2-2428. Powers of the Authority.

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

146 § 15.2-2429. Liberal construction of chapter.

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