VIRGINIA ACTS OF ASSEMBLY -- 2001 RECONVENED SESSION

CHAPTER 807

An Act to amend and reenact §§ 9-380 and 9-382 through 9-385 of the Code of Virginia, relating to the Tobacco Indemnification and Community Revitalization Commission.

[H 2180]

Approved April 4, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-380 and 9-382 through 9-385 of the Code of Virginia are amended and reenacted as follows:

§ 9-380. Definitions.

As used in this chapter:

"Active tobacco producer" means a person ~~who is the actual producer, as determined by the United States Department of Agriculture (USDA), of tobacco~~ *(i) actively engaged in planting, growing, harvesting, and marketing of flue-cured or burley tobacco, or who shares in the variable expenses of producing the crop, and is therefore entitled to share in the revenue derived from marketing the crop; and (ii) who produces such crop* on a farm where tobacco ~~is~~ *was* produced *for the 1998 crop year, or any subsequent crop year upon which the Commission may determine to base indemnification payments,* pursuant to a tobacco farm marketing quota or farm acreage allotment ~~for the 1998 crop year~~ as established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

"Commission" means the Tobacco Indemnification and Community Revitalization Commission created pursuant to § 9-381.

"Fund" means the Tobacco Indemnification and Community Revitalization Fund established pursuant to § 9-385.

"Master Settlement Agreement" means the settlement agreement and related documents between the Commonwealth and leading United States tobacco product manufacturers dated November 23, 1998, and including the Consent Decree and Final Judgment entered in the Circuit Court of the City of Richmond on February 23, 1999, Chancery Number HJ-2241-4.

"Quota holder" means an owner of a farm on ~~January~~ *July* 1, 1998, *or July 1 of any subsequent crop year upon which the Commission may determine to base indemnification payments,* for which a tobacco farm marketing quota or farm acreage allotment was established under the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).

"Tobacco farmer" means a person who is an active tobacco producer, a quota holder, or both.

§ 9-382. Membership; terms; vacancies; chairman.

A. The Commission shall be composed of thirty-one members as follows:

1. Six members shall be appointed by the Speaker of the House of Delegates from the membership thereof in accordance with the principles of Rule 16 of the House of Delegates adopted at the 1998 Regular Session of the General Assembly;

2. Four members shall be appointed by the Privileges and Elections Committee of the Senate from the membership of the Senate;

3. The Secretary of Commerce and Trade or his designee;

4. The Secretary of Finance or his designee;

5. The Commissioner of Agriculture and Consumer Affairs or his designee;

6. Three members shall be active flue-cured tobacco producers appointed by the Governor. Of the active flue-cured tobacco producers, two shall be appointed by the Governor from a list of six persons provided by the members of the General Assembly appointed to the Commission;

7. Three members shall be active burley tobacco producers appointed by the Governor. Of the active burley tobacco producers, one member shall be appointed by the Governor from a list of three persons provided by the members of the General Assembly appointed to the Commission;

8. One member shall be a representative of the Virginia Farm Bureau Federation appointed by the Governor from a list of at least three persons provided by Virginia Farm Bureau Federation; and

9. Eleven members shall be citizens appointed by the Governor. Of the eleven citizen members, three shall be appointed by the Governor from a list of nine provided by the members of the General Assembly appointed to the Commission.

With the exception of the Secretary of Commerce and Trade or his designee, the Secretary of Finance or his designee and the Commissioner of Agriculture and Consumer Affairs or his designee, all members of the Commission shall reside in the Southside and Southwest regions of the Commonwealth and shall be subject to confirmation by the General Assembly. To the extent feasible, appointments representing the Southside and Southwest regions shall be proportional to the tobacco quota production of each region.

Except as otherwise provided herein, all appointments shall be for terms of four years each. Vacancies shall be filled for the unexpired terms. No member shall be eligible to serve more than two successive four-year terms; however, after expiration of a term of three years or less, or after the expiration of the remainder of a term to which he was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto. Whenever any legislative member fails to retain his membership in the house from which he was appointed, he shall relinquish his membership on the Commission and the appointing authority who appointed such member shall make an appointment from his respective house to complete the term. Any appointment to fill a vacancy shall be made in the same manner as the original appointment. The initial appointments of the active flue-cured tobacco producers, the active burley tobacco producers, and the citizen members shall be as follows: one active flue-cured tobacco producer, one active burley tobacco producer and four citizen members shall be appointed for terms of two years; one active flue-cured tobacco producer, one active burley tobacco producer and four citizen members shall be appointed for terms of three years; and one active flue-cured tobacco producer, one active burley tobacco producer and three citizen members shall be appointed for terms of four years. Thereafter all appointments shall be for terms of four years.

B. The Commission shall appoint from its membership a chairman and a vice-chairman, both of whom shall serve in such capacities at the pleasure of the Commission. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Commission. A majority of members of the Commission serving at any one time shall constitute a quorum for the transaction of business.

C. Members of the Commission shall receive compensation for their services at the rate provided in the appropriation act and reimbursement for actual expenses incurred in the performance of their duties on behalf of the Commission. Such compensation and expenses shall be paid from the Fund.

D. Members ~~of the Board~~ and employees of the Commission shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

E. *Except as otherwise provided in this chapter,* members ~~of the Board~~ and employees of the Commission shall be subject to the provisions set forth in the Virginia Freedom of Information Act (§ 2.1-340 et seq.).

§ 9-383. Powers and duties of the Commission.

A. The Commission is hereby granted, shall have, and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following:

1. To adopt, use, and alter at will an official seal;

2. To make bylaws for the management and regulation of its affairs;

3. To maintain an office at such place or places within this Commonwealth as it may designate;

4. To accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Commission, absolutely or in trust, for the purposes for which the Commission is created;

5. To determine how moneys in the Fund are to be distributed and to authorize ~~distribution~~ *grants, loans, or other distributions* of moneys in the Fund for the purposes set forth in this chapter;

6. To make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;

7. To invest its funds as provided in this chapter or permitted by applicable law; and

8. To do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied, including use of whatever lawful means may be necessary and appropriate to recover any payments wrongfully made from the Fund.

B. The Commission shall cause moneys in the Fund to be distributed as follows:

1. To cause payment to be made to tobacco farmers in the Commonwealth for the decline or elimination of tobacco quota based on averaging the basic burley and flue-cured quota as allocated by the USDA for the crop years 1995 through 1998. To the extent ~~such tobacco farmers~~ *quota holders* are not otherwise compensated by a national tobacco community trust fund *or a federal tobacco loss assistance program that is based on substantially the same distribution criteria established by the Commission for indemnification payments* and to the extent moneys are available in the Fund, the Commission shall cause compensation to be paid to such ~~tobacco farmers~~ *quota holders* in an amount equal to the total lost asset value in quota incurred annually by such ~~tobacco farmers~~ *quota holders*. To the extent an active tobacco producer is not otherwise compensated by a national tobacco community trust fund *or a federal tobacco loss assistance program that is based on substantially the same distribution criteria established by the Commission for indemnification payments* and to the extent moneys are available in the Fund, the Commission shall also cause compensation to be paid to an active tobacco producer for the economic loss resulting from any annual quota reduction. The total asset loss value in quota and economic losses for ~~active~~ tobacco ~~producers~~ *farmers* in Virginia is estimated to be $1.2 billion. The Commission ~~shall~~ *may* establish criteria for determining economic loss resulting from any annual quota reduction. When establishing such criteria, the Commission shall consider any similar

criteria established pursuant to creation of a national tobacco community trust fund; and

2. To promote economic growth and development in tobacco dependent communities in an equitable manner throughout the southside and southwest regions of the Commonwealth, in order to assist such communities in reducing their dependency on, *or finding alternative uses for,* tobacco and tobacco-related business.

~~D.~~ *C.* The Commission shall undertake studies and gather information and data in order to determine (i) the economic consequences of the reduction in or elimination of quota for tobacco growers, (ii) the potential for alternative cash crops, and (iii) any other matters the Commission believes will affect tobacco growers in the Commonwealth.

§ 9-384. Appointment of director; counsel to the Commission.

A. The Governor shall appoint an executive director subject to confirmation by the General Assembly. The compensation ~~of the executive director~~ shall be determined by the Commission, subject to approval by the Governor. The executive director shall be the secretary and shall administer the affairs and business of the Commission in accordance with the provisions of this chapter and subject to the policies, control and direction of the Commission. The Commission may employ technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The Commission may delegate to one or more of its agents or employees such administrative duties as it may deem proper. The actual expenses incurred in the performance of such duties shall be paid from the Fund.

B. The Office of the Attorney General shall provide counsel to the Commission.

§ 9-385. Tax Credits for Technology Industries in Tobacco-Dependent Localities.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited into the state treasury subject to the special nonreverting funds established by subsection B of this section and by § 32.1-360 and shall be included in general fund revenue calculations for purposes of subsection C of § 58.1-3524 and subsection B of § 58.1-3536.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the Comptroller. Fifty percent of the annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes described in this chapter; however, starting with the fiscal year beginning July 1, 2000, through December 31, 2009, the Commission may deposit moneys from the Fund into the Technology Initiative in Tobacco-Dependent Localities Fund, established under § 58.1-439.15, for purposes of funding the tax credits provided in §§ 58.1-439.13 and 58.1-439.14 and the grants provided in § 58.1-439.17. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written authorization signed by the chairman of the Commission or his designee. The Fund shall also consist of other moneys received by the Commission, from any source, for the purpose of implementing the provisions of this chapter.

C. The obligations of the Commission shall not be a debt or grant or loan of credit of the Commonwealth of Virginia, and the Commonwealth shall not be liable thereon, nor shall such obligations be payable out of any funds other than those credited to the Fund.

2. That an emergency exists and this act is in force from its passage.