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HOUSE BILL NO. 1726

Offered January 10, 2001

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A *BILL to amend and reenact §§ 9-380, 9-385, 32.1-354 and 32.1-360 of the Code of Virginia and to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 56, consisting of sections numbered 2.1-820 through 2.1-824 and by adding sections numbered 9-383.1 and 32.1-360.1, the amended and added sections providing for the custody, investment and disbursement of the proceeds of any sale of the allocation to the Commonwealth of Virginia pursuant to the Tobacco Master Settlement Agreement by the creation and application of the Higher Education and Economic Development Trust Fund, the Virginia Tobacco Indemnification and Community Revitalization Endowment and the Virginia Tobacco Settlement Foundation Endowment.*

Patrons—Rust and Dudley

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-380, 9-385, 32.1-354 and 32.1-360 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 56, consisting of sections numbered 2.1-820 through 2.1-824 and by adding sections numbered 9-383.1 and 32.1-360.1 as follows:

CHAPTER 56.**HIGHER EDUCATION AND ECONOMIC DEVELOPMENT TRUST FUND.**

§ 2.1-820. *Definitions. As used in this chapter:*

"Commonwealth Allocation" means all money payable to the Commonwealth pursuant to the Master Settlement Agreement.

"Income" means the tobacco settlement payments, whether received in a lump sum as the proceeds of sale of up to and including forty percent of the Commonwealth allocation or otherwise, and all aid, rent, fees, charges, payments and other income and receipts paid or payable to the trust fund.

"Master Settlement Agreement" or "MSA" 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.

"Trust Fund" means the Higher Education and Economic Development Trust Fund created by this chapter.

§ 2.1-821. *Creation of Trust Fund. There is hereby created in the Department of Treasury a special nonreverting fund to be known as the Higher Education and Economic Development Trust Fund, consisting of:*

1. *Subject to appropriation by the General Assembly, forty percent of the Commonwealth's allocation under the Master Settlement Agreement, whether received in lump sums as proceeds of the sale of all or a portion of such forty percent of such Commonwealth allocation or in periodic payments or otherwise.*

2. *Such other funds as may be appropriated by the General Assembly from time to time, and designated for the Trust Fund.*

3. *All interest, dividends and appreciation that may accrue to the Trust Fund.*

§ 2.1-822. *Applications of the Trust Fund. Amounts held to the credit of the Trust Fund shall be disbursed pursuant to the appropriations by the General Assembly for the following purposes:*

1. *To pay all or part of the capital costs, including the cost of planning, acquiring, constructing, improving, renovating, enlarging, equipping and financing, of all or part of projects authorized by the General Assembly for education institutions described in § 23-14; and*

2. *To pay all or part of the capital costs, including the cost of planning, acquiring, constructing, improving, renovating, enlarging, equipping and financing, of all or part of economic development and general government projects authorized by the General Assembly.*

§ 2.1-823. *Administration of the Trust Fund. The Trust Fund shall be established on the books of the Comptroller so as to segregate the amounts appropriated to the Trust Fund and the amounts earned or accumulated by such Trust Fund. No portion of such Trust Fund shall be used for a purpose other than as provided herein. Funds remaining in the Trust Fund at the end of a biennium shall not revert to the general fund but shall remain in the Trust Fund, to be used for the purposes set forth in this chapter and shall accumulate interest and dividends throughout the existence of the Trust Fund. Whenever in the State Treasurer's opinion there are funds in the Trust Fund in excess of the amount required to meet*

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HB1726

59 *current needs, the State Treasurer may invest such excess funds in accordance with Chapter 18*
60 *(§ 2.1-237 et seq.) of Title 2.1, as amended from time to time. The investment of moneys held in the*
61 *Trust Fund shall be administered by the State Treasurer under guidelines adopted by the Treasury*
62 *Board pursuant to this section.*

63 *§ 2.1-824. Construction and effect. This chapter and all powers granted hereby shall be liberally*
64 *construed to effectuate its and their purposes, without implied limitations thereon. This chapter shall*
65 *constitute full and complete authority for all things herein contemplated to be done. All rights and*
66 *powers herein granted shall be cumulative with those derived from other sources and shall not, except*
67 *as expressly stated herein, be construed in limitation thereof. Insofar as the provisions of this chapter*
68 *are inconsistent with the provisions of any other act, general or special, the provisions of this chapter*
69 *shall be controlling. If any clause, sentence, paragraph, section or part of this act be adjudged by any*
70 *court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the*
71 *remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or*
72 *part thereof directly involved in the controversy in which such judgment shall have been rendered.*

73 *§ 9-380. Definitions.*

74 *As used in this chapter:*

75 *"Active tobacco producer" means a person who is the actual producer, as determined by the United*
76 *States Department of Agriculture (USDA), of tobacco on a farm where tobacco is produced pursuant to*
77 *a tobacco farm marketing quota or farm acreage allotment for the 1998 crop year as established under*
78 *the Agriculture Adjustment Act of 1938 (7 U.S.C. § 1281 et seq.).*

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

81 *"Endowment" means the Tobacco Indemnification and Community Revitalization Endowment*
82 *established pursuant to § 9.1-383.1.*

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

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

89 *"Quota holder" means an owner of a farm on January 1, 1998, for which a tobacco farm marketing*
90 *quota or farm acreage allotment was established under the Agriculture Adjustment Act of 1938 (7*
91 *U.S.C. § 1281 et seq.).*

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

93 *§ 9-383.1. Endowment. A. There is hereby establish in the state treasury a special fund to be*
94 *designated the "Virginia Tobacco Indemnification and Community Revitalization Endowment" (the*
95 *"Endowment"). Except as otherwise provided in the applicable appropriation act, the Endowment shall*
96 *receive fifty percent of the revenues, and of the proceeds from the sale of revenues, derived from the*
97 *Master Settlement Agreement, and any gifts, grants and contributions that are specifically designated for*
98 *inclusion in such Endowment. The Endowment shall be under the management and control of the*
99 *Treasury Board, and the Treasury Board shall have such powers and authority as may be necessary to*
100 *exercise such management and control. The income of the Endowment and up to five percent of the*
101 *corpus of the Endowment shall be paid out, not less than annually, to the Fund. For purposes of this*
102 *section, "income" of the Endowment means at the time of determination the lesser of the available cash*
103 *in, or the realized investment income for the applicable period of, the Endowment, and "corpus" of the*
104 *Endowment means at the time of determination the sum of the allocable revenues and proceeds from the*
105 *sale of revenues derived from the Master Settlement Agreement, any gifts, grants and contributions that*
106 *have been credited to such Endowment, and any income not appropriated and withdrawn from the*
107 *Endowment prior to June 30 of each year, less withdrawals from the corpus. Determinations by the*
108 *Treasury Board, or the State Treasurer on behalf of the Treasury Board, as to the amount of income or*
109 *the amount of the corpus shall be conclusive.*

110 *B. The Treasury Board shall serve as trustee of the Endowment and the corpus and income of the*
111 *Endowment shall be withdrawn and credited to the Fund by order of the Treasury Board. The State*
112 *Treasurer shall be custodian of the funds credited to the Endowment. No part of the Endowment, neither*
113 *corpus nor income, shall revert to the general fund of the state treasury. The Treasury Board shall have*
114 *full power to invest and reinvest funds credited to the Endowment in accordance with the provisions of*
115 *the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) and, in addition, as otherwise*
116 *provided by law. The Treasury Board may borrow money in such amounts as may be necessary*
117 *whenever in its judgment it would be more advantageous to borrow money than to sell securities held*
118 *for the Fund. Any debt so incurred may be evidenced by notes duly authorized by resolution of the*
119 *Treasury Board, such notes to be retired no later than the end of the biennium in which such debt is*
120 *incurred. The Treasury Board may commingle for purposes of investment the corpus of the Endowment*

provided that it shall appropriately account for the investments credited to the Endowment. The Treasury Board may hire independent investment advisors and managers as it deems appropriate to assist with investing the Endowment. The expenses of making and disposing of investments, such as brokerage commissions, legal expenses related to a particular transaction, investment advisory and management fees and expenses, transfer taxes and other customary transactional expenses shall be payable out of the income of the Endowment.

Not less than annually and more frequently if so desired by the Fund or requested by the Treasury Board, the Fund shall provide to the Treasury Board schedules of anticipated disbursements from the Fund for the current and succeeding fiscal year, and the Treasury Board shall, to the extent practicable, take into account such schedules and changes thereto in scheduling maturities and redemptions of its investments of the Endowment.

§ 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 and shall receive the amounts withdrawn from the Endowment and credited to the Fund in accordance with the provisions of § 9-383.1. 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.

§ 32.1-354. Definitions.

As used in this chapter, unless the context clearly indicates otherwise:

"Board" means the Board of Trustees of the Foundation appointed pursuant to § 32.1-357.

"Director" means the director of the Foundation appointed pursuant to § 32.1-358.

"Endowment" means the Virginia Tobacco Settlement Foundation Endowment established pursuant to § 32.1-360.1.

"Foundation" means the Virginia Tobacco Settlement Foundation, created pursuant to § 32.1-355.

"Fund" means the Virginia Tobacco Settlement Fund established pursuant to § 32.1-360.

§ 32.1-360. Virginia Tobacco Settlement Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Tobacco Settlement Fund. The Fund shall be established on the books of the Comptroller. ~~For~~ Subject to the provisions of § 32.1-360.1, ten 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. 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 Board or his designee. Moneys in the Fund shall be used for the purposes of discouraging, eliminating or preventing the use of tobacco products by minors, including but not limited to educational and awareness programs on the health effects of tobacco use on minors and laws restricting the distribution of tobacco products to minors.

§ 32.1-360.1. Endowment. A. There is hereby established in the state treasury a special fund to be designated the "Virginia Tobacco Settlement Foundation Endowment" (the "Endowment"). Except as otherwise provided in the applicable appropriation act, the Endowment shall receive ten percent of the revenues, and of the proceeds from the sale of revenues, derived from the Master Settlement Agreement, and any gifts, grants and contributions that are specifically designated for inclusion in such Endowment. The Endowment shall be under the management and control of the Treasury Board, and the Treasury Board shall have such powers and authority as may be necessary to exercise such management and

182 control. The income of the Endowment and up to five percent of the corpus of the Endowment shall be
183 paid out, not less than annually, to the Fund. For purposes of this section, "income" of the Endowment
184 means at the time of determination the lesser of the available cash in, or the realized investment income
185 for the applicable period of, the Endowment, and "corpus" of the Endowment means at the time of
186 determination the sum of the allocable revenues and proceeds from the sale of revenues derived from
187 the Master Settlement Agreement, any gifts, grants and contributions that have been credited to such
188 Endowment, and any income not appropriated and withdrawn from the Endowment prior to June 30 of
189 each year, less withdrawals from the corpus. Determinations by the Treasury Board, or the State
190 Treasurer on behalf of the Treasury Board, as to the amount of income or the amount of the corpus
191 shall be conclusive.

192 B. The Treasury Board shall serve as trustee of the Endowment and the corpus and income of the
193 Endowment shall be withdrawn and credited to the Fund by order of the Treasury Board. The State
194 Treasurer shall be custodian of the funds credited to the Endowment. No part of the Endowment, neither
195 corpus nor income, shall revert to the general fund of the state treasury. The Treasury Board shall have
196 full power to invest and reinvest funds credited to the Endowment in accordance with the provisions of
197 the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) and, in addition, as otherwise
198 provided by law. The Treasury Board may borrow money in such amounts as may be necessary
199 whenever in its judgment it would be more advantageous to borrow money than to sell securities held
200 for the Fund. Any debt so incurred may be evidenced by notes duly authorized by resolution of the
201 Treasury Board, such notes to be retired no later than the end of the biennium in which such debt is
202 incurred. The Treasury Board may commingle for purposes of investment the corpus of the Endowment
203 provided that it shall appropriately account for the investments credited to the Endowment. The
204 Treasury Board may hire independent investment advisors and managers as it deems appropriate to
205 assist with investing the Endowment. The expenses of making and disposing of investments, such as
206 brokerage commissions, legal expenses related to a particular transaction, investment advisory and
207 management fees and expenses, transfer taxes and other customary transactional expenses shall be
208 payable out of the income of the Endowment.

209 Not less than annually and more frequently if so desired by the Fund or requested by the Treasury
210 Board, the Fund shall provide to the Treasury Board schedules of anticipated disbursements from the
211 Fund for the current and succeeding fiscal year, and the Treasury Board shall, to the extent practicable,
212 take into account such schedules and changes thereto in scheduling maturities and redemptions of its
213 investments of the Endowment.