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HOUSE BILL NO. 1726

FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Delegates Bennett and Rust
on February 5, 2001)

(Patron Prior to Substitute—Delegate Rust)

A BILL to amend and reenact §§ 9-380 and 9-385 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 9-383.1, relating to the disbursement of the proceeds of a sale of one-half of the allocation to the Commonwealth of Virginia pursuant to the Tobacco Master Settlement Agreement by the creation and application of the Virginia Tobacco Indemnification and Community Revitalization Endowment.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9-380 and 9-385 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 9-383.1 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 on a farm where tobacco is produced 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.

"Endowment" means the Tobacco Indemnification and Community Revitalization Endowment established pursuant to § 9-383.1.

"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 1, 1998, 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.

§ 9-383.1. Virginia Tobacco Indemnification and Community Revitalization Endowment.

A. There is hereby established in the state treasury a special fund to be designated the "Virginia Tobacco Indemnification and Community Revitalization Endowment" (the "Endowment"). The Endowment shall receive a portion of the annual amount received by the Commonwealth from the Master Settlement Agreement, as such portion is determined under § 9-385, and 100 percent of the proceeds from the sale of fifty percent 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 control consistent with the provisions of this section. The income of the Endowment shall be paid out, not less than annually, to the Fund. Any or all portions of the corpus of the Endowment shall be paid to the Fund upon request of the Commission to the Treasury Board. For purposes of this section, "income" of the Endowment means at the time of determination the lesser of the available cash in, or the realized investment income for the applicable period of, the Endowment, and "corpus" of the Endowment means at the time of determination the sum of the allocable revenues and proceeds from the sale of revenues derived from the Master Settlement Agreement, any gifts, grants and contributions that have been credited to such Endowment, and any income not appropriated and withdrawn from the Endowment prior to June 30 of each year, less withdrawals from the corpus. Determinations by the Treasury Board, or the State Treasurer on behalf of the Treasury Board, as to the amount of income or the amount of the corpus shall be conclusive.

B. The Treasury Board shall serve as trustee of the Endowment and the corpus and income of the Endowment shall be withdrawn and credited to the Fund by order of the Treasury Board. The State Treasurer shall be custodian of the funds credited to the Endowment. No part of the Endowment, neither corpus nor income, shall revert to the general fund of the state treasury. The Treasury Board shall have full power to invest and reinvest funds credited to the Endowment in accordance with the provisions of the Uniform Management of Institutional Funds Act (§ 55-268.1 et seq.) and, in addition, as otherwise

60 provided by law. The Treasury Board may borrow money in such amounts as may be necessary
61 whenever in its judgment it would be more advantageous to borrow money than to sell securities held
62 for the Fund. Any debt so incurred may be evidenced by notes duly authorized by resolution of the
63 Treasury Board, such notes to be retired no later than the end of the biennium in which such debt is
64 incurred. The Treasury Board may commingle, for purposes of investment, the corpus of the Endowment
65 provided that it shall appropriately account for the investments credited to the Endowment. The
66 Treasury Board may hire independent investment advisors and managers as it deems appropriate to
67 assist with investing the Endowment. The expenses of making and disposing of investments, such as
68 brokerage commissions, legal expenses related to a particular transaction, investment advisory and
69 management fees and expenses, transfer taxes and other customary transactional expenses shall be
70 payable out of the income of the Endowment.

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

76 § 9-385. Tax Credits for Technology Industries in Tobacco-Dependent Localities.

77 A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be
78 deposited into the state treasury subject to the special nonreverting funds established by subsection B of
79 this section and by §§ 9-383.1 and 32.1-360 and shall be included in general fund revenue calculations
80 for purposes of subsection C of § 58.1-3524 and subsection B of § 58.1-3536. However, in no case shall
81 the amount received by the Tobacco Indemnification and Community Revitalization Endowment
82 established pursuant to § 9-383.1 be included in such general fund revenue calculation.

83 B. There is hereby created in the state treasury a special nonreverting fund to be known as the
84 Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the
85 books of the Comptroller and shall receive, beginning July 1, 2001, the amounts deposited into the
86 Tobacco Indemnification and Community Revitalization Endowment established pursuant to § 9-383.1.
87 Subject to the provisions of § 9-383.1, fifty Fifty percent of the annual amount received by the
88 Commonwealth from the Master Settlement Agreement shall be paid into the state treasury and credited
89 to the Fund until 12:00 p.m. on June 30, 2001. Beginning July 1, 2001, such fifty percent shall be paid
90 into the state treasury and credited to such Endowment until such time as one-half of the present value
91 of all moneys payable to the Commonwealth under the Master Settlement Agreement, as determined on
92 July 1, 2001, have been deposited into such Endowment. Interest earned on moneys in the Fund shall
93 remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon,
94 at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys
95 in the Fund shall be used solely for the purposes described in this chapter; however, starting with the
96 fiscal year beginning July 1, 2000, through December 31, 2009, the Commission may deposit moneys
97 from the Fund into the Technology Initiative in Tobacco-Dependent Localities Fund, established under
98 § 58.1-439.15, for purposes of funding the tax credits provided in §§ 58.1-439.13 and 58.1-439.14 and
99 the grants provided in § 58.1-439.17. Expenditures and disbursements from the Fund shall be made by
100 the State Treasurer on warrants issued by the Comptroller upon written authorization signed by the
101 chairman of the Commission or his designee. The Fund shall also consist of other moneys received by
102 the Commission, from any source, for the purpose of implementing the provisions of this chapter.