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HOUSE BILL NO. 1727

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 create and empower the Tobacco Settlement Financing Corporation as an independent public corporation authorized to acquire from the Commonwealth a certain portion of its allocation of the tobacco settlement payments received from the Master Tobacco Settlement Agreement, entered into by forty-six states and the major tobacco manufacturers.*

Be it enacted by the General Assembly of Virginia:

1. That the Governor shall sell fifty percent of all money payable to the Commonwealth pursuant to the Master Settlement Agreement as follows:

§ 1. *This Act may be referred to as the "Tobacco Settlement Financing Corporation Act."*

§ 2. *Findings. The General Assembly hereby finds and declares as follows:*

A. *The major United States tobacco manufacturers and forty-six states (including the Commonwealth of Virginia), the District of Columbia, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa and the Territory of the Northern Marianas have signed a Master Settlement Agreement (MSA) that should result in the Commonwealth's receiving substantial sums of money in perpetuity. Virginia has reached State-Specific Finality, the Master Settlement Agreement has become effective in accordance with its terms, and Virginia has begun receiving its allocation of the tobacco settlement payments made under the Master Settlement Agreement.*

B. *Tobacco is Virginia's number one cash crop. Although tobacco production occurs in many states, substantially all occurs in six states, including Virginia, in the southeastern United States. Virginia is home to tobacco growers, processors, warehouses and manufacturers. The relative prosperity of the tobacco industry directly influences the relative prosperity of the Commonwealth. Virginia derives income, sales and excise taxes directly and indirectly from the tobacco industry. Virginia derives a higher percentage of its general fund revenue directly and indirectly from the tobacco industry than do most other states.*

C. *The General Assembly has studied the techniques used recently by other jurisdictions to address their most critical needs and, in particular, the techniques used to convert future tobacco settlement payments receivable under the Master Settlement Agreement into current assets and thereby to reduce such jurisdictions' exposure to the payment risks associated with the Master Settlement Agreement and the credit risks associated with the tobacco industry and finds that many jurisdictions have sold their allocations of payments under the Master Settlement Agreement and applied the proceeds toward such needs.*

D. *The General Assembly has determined to authorize the Governor to sell a portion of the Commonwealth's tobacco assets to the corporation created hereby, such sale to transfer to the corporation that portion of the tobacco settlement payments allocable to the Commonwealth under the Master Settlement Agreement.*

E. *The General Assembly finds and determines that the optimum method for Virginia to convert its future tobacco settlement payments under the Master Settlement Agreement to current assets is one that does not require any increase in general taxes, that is not funded from taxes or other traditional general fund sources, that does not divert resources from other needs of the Commonwealth and that is non-recourse to, and requires no credit support by, the Commonwealth.*

F. *The General Assembly finds and determines that its creation of a special purpose corporation with power to issue obligations and use the proceeds to purchase from the Commonwealth its future tobacco settlement payments is compatible with the preceding paragraphs.*

§ 3. *Definitions. As used in this act:*

"Agreement" means the agreement or agreements referred to in this act between the Commonwealth, as seller of the Tobacco Assets, and the Corporation, as purchaser of the Tobacco Assets. The sale by the Commonwealth of the Tobacco Assets pursuant to any such agreement shall be a true sale and not a borrowing.

"Ancillary Contracts" means contracts described in subsection A of § 15.

"Board" means the Board of the Corporation.

"Bonds" means Tobacco Bonds and refunding bonds, notes and other evidences of indebtedness, issued by the Corporation pursuant to this act.

"Closing Date" means the date of delivery of the first issue of Tobacco Bonds.

"Commonwealth Allocation" means all money payable to the Commonwealth pursuant to the MSA.

"Corporation" means the Tobacco Settlement Financing Corporation created pursuant to this act.

60 "Financing Costs" means all capitalized interest, costs, fees, reserves and credit and liquidity
61 enhancements as the Corporation determines to be desirable in issuing, securing and marketing the
62 bonds.

63 "Holders" and similar terms refer to the owners of the bonds. References to covenants and contracts
64 with such holders, and to their rights and remedies, shall if so provided by the Corporation extend to
65 the parties to swaps and ancillary contracts.

66 "Income" means the tobacco settlement payments and all aid, rents, fees, charges, payments and other
67 income and receipts paid or payable to the Corporation or a trustee for the account of the Corporation
68 or the holders.

69 "Indenture Trustee" means the trust company or bank at the time serving as trustee under the trust
70 indenture referred to in § 14.

71 "Master Settlement Agreement" or "MSA" means the settlement agreement and related documents
72 between the Commonwealth and leading United States tobacco product manufacturers dated November
73 23, 1998, and including the Consent Decree and Final Judgment entered in the Circuit Court of the
74 City of Richmond on February 23, 1999, Chancery Number HJ-2241-4.

75 "One-half of the Commonwealth Allocation" means at the time of sale as provided under § 11 of this
76 act, fifty percent of the present value of the Commonwealth allocation as of July 1, 2001, less the sum
77 of (a) the aggregate principal amount of bonds sold under this act, excluding refunding bonds plus (b)
78 all expenses incurred in selling bonds, including expenses related to refunding bonds plus (c) any
79 amount deposited into the endowment established under § 9-383.1 of the Code of Virginia after July 1,
80 2001, that represents a portion of the annual payment under the MSA as described under subsection B
81 of § 9-385 of the Code of Virginia.

82 "Outstanding," when used with respect to bonds, shall exclude bonds that shall have been paid in full at
83 maturity, or shall have otherwise been refunded, redeemed, defeased or discharged, or that may be
84 deemed not outstanding pursuant to agreements with the holders thereof.

85 "Residual Trust" means the trust to be established by the Corporation, which is entitled to receive the
86 Income and bond proceeds of the Corporation that are in excess of the Corporation's expenses, debt
87 service and contractual obligations to the holders and the Commonwealth of Virginia.

88 "Swap Contracts" or "Swaps" means contracts described in subsection B of § 15.

89 "Tobacco Assets" means all right, title and interest in and to the portion of the Commonwealth
90 allocation that may be sold to the Corporation from time to time.

91 "Tobacco Bonds" means the bonds, notes and other obligations issued by the Corporation, exclusive of
92 bonds that the Corporation may issue to refund bonds, the net proceeds (after financing costs) of the
93 first issue of which shall be used by the Corporation to pay a portion of the purchase price to the
94 Commonwealth for the Tobacco Assets.

95 "Tobacco Settlement Payments" means the amounts paid or payable to the Corporation pursuant to the
96 MSA and the agreement as in effect from time to time.

97 § 4. Corporation created; public body corporate. The Tobacco Settlement Financing Corporation is
98 created as a public body corporate and an independent instrumentality of the Commonwealth.

99 § 5. Board; membership; terms; compensation and expenses; chairman and vice-chairman; quorum;
100 employees; agents, etc. The Board of the Corporation shall exercise all powers, rights and duties
101 conferred by this act or other provisions of law upon the Corporation. The Board shall consist of the
102 State Treasurer, the State Comptroller, and five additional members from the public at large to be
103 appointed by the Governor, subject to confirmation by the General Assembly. The members appointed by
104 the Governor shall have a background and significant experience in financial management and
105 investments. The members of the Board appointed by the Governor shall serve at the pleasure of the
106 Governor for terms of four years each, or until their successors shall have been appointed and
107 qualified, except that the initial terms of three of the members shall expire on June 30, 2002, 2003, and
108 2004, respectively, as designated by the Governor. Any appointment to fill a vacancy on the Board shall
109 be made for the unexpired term of the member whose death, resignation, or removal created such
110 vacancy. Members with less than six years of service on the Board may be appointed to an additional
111 term. Members shall be reimbursed for travel and other actual expenses incurred in performing their
112 official duties as members. Members of the Board appointed by the Governor shall be compensated at
113 the rate provided in § 2.1-20.3 for each day or portion thereof in which the member is engaged in the
114 business of the Corporation.

115 The Governor shall designate one member of the Board as chairman. The State Treasurer and the State
116 Comptroller shall be ineligible to serve as chairman. The chairman shall sign and execute all vouchers
117 for the disbursement of funds belonging to the Corporation upon authorization by the Board. Four
118 members of the Board shall constitute a quorum for the transaction of all business of the Corporation.
119 The Board shall elect one of its members as vice-chairman, who shall exercise the powers of the
120 chairman when so directed by the chairman, or when the chairman is absent. The State Treasurer shall
121 be the secretary-treasurer.

122 The Board may delegate its powers to its chairman, the secretary-treasurer, officers of the Corporation
 123 or committees of the Board, with such standards for the exercise of delegated powers as the Board may
 124 specify, and may, to the extent not inconsistent with the rights of the holders, revoke any such
 125 delegation.

126 § 6. Powers of Corporation enumerated.

127 A. To enable the Corporation to carry out the financing, purchasing, owning and managing of the
 128 tobacco assets and activities incidental thereto, the Corporation is vested (subject to § 8 and the other
 129 provisions of this second enactment) with all the powers of a private corporation including, without
 130 limitation, the power to sue and be sued, to make contracts, to adopt and use a common seal and to
 131 alter the same and is further particularly authorized and empowered to:

132 1. Purchase the tobacco assets and, receive, or to authorize the indenture trustee to receive, as the same
 133 shall become due, the Tobacco Settlement Payments;

134 2. Adopt or alter or repeal any bylaws, rules or regulations as the Board may deem necessary or
 135 expedient;

136 3. Issue bonds as authorized by this act and refund any of such bonds;

137 4. Commence any action to protect or enforce any right conferred upon it by any law, contract or other
 138 agreement;

139 5. Pay its operating expenses;

140 6. Establish the residual trust; and

141 7. Do any and all other acts and things necessary, convenient, appropriate or incidental in carrying out
 142 the provisions of this act.

143 B. The Corporation is further authorized and empowered to incur obligations to pay its operating
 144 expenses in such form as may be authorized by the Corporation. This act shall govern the issuance of
 145 such obligations insofar as the same may be applicable.

146 C. The Corporation shall submit an annual report to the Governor, the Appropriations Committee of the
 147 House of Delegates and the Finance Committee of the Senate on or before November 1 of each year.
 148 Such report shall contain, at a minimum, the annual operating and financial statements of the
 149 Corporation for the year ending the preceding June 30. The annual report shall be distributed in
 150 accordance with the provisions of § 2.1-467.

151 D. Any funds held by the Corporation or by the indenture trustee may be invested and reinvested in
 152 securities that are legal investments under the laws of the Commonwealth for funds held by fiduciaries.

153 E. The Corporation, subject to such agreements with holders as may then exist, shall have power to
 154 purchase bonds out of any funds available therefor.

155 § 7. Department of Treasury; Office of the Attorney General; Auditor of Public Accounts; consultants.

156 A. The Department of the Treasury shall serve as staff to the Corporation.

157 B. The Office of the Attorney General shall serve as counsel to the Corporation, and the Corporation
 158 may employ or retain such other attorneys as it may deem necessary and fix their compensation.

159 C. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the
 160 accounts of the Corporation.

161 D. The Corporation may employ or retain such agents, financial advisers, accountants and consultants
 162 as it may deem necessary, and the provisions of any other law to the contrary notwithstanding, may
 163 determine their duties and compensation without the approval of any other agency or instrumentality of
 164 the Commonwealth.

165 E. The exercise of the powers granted by this act shall be in all respects for the benefit of the citizens
 166 of the Commonwealth and for the promotion of their welfare, convenience and prosperity. Property,
 167 whether real or personal or tangible or intangible, of the Corporation and the income and operations of
 168 the Corporation shall be exempt from taxation or assessments upon any property acquired or used by
 169 the Corporation under the provisions of this act.

170 F. The Corporation shall have perpetual existence. The Board of the Corporation may, however, wind
 171 up the affairs of the Corporation and terminate the existence of the Corporation at any time by making
 172 provisions for the discharge of all of its liabilities. All of the assets and property of the Corporation
 173 shall pass to and be vested in the Commonwealth upon the termination or dissolution of the
 174 Corporation.

175 § 8. No bankruptcy. Prior to the date that is one year and one day after which the Corporation no
 176 longer has any bonds outstanding, the Corporation shall have no authority to file a voluntary petition
 177 under the federal bankruptcy code as it may, from time to time, be in effect, and neither any public
 178 officer nor any organization, entity or other person shall authorize the Corporation to be or become a
 179 debtor under the federal bankruptcy code during such period. The Commonwealth hereby covenants with
 180 the holders that the Commonwealth will not limit or alter the denial of authority under this paragraph
 181 during the period referred to in the preceding sentence.

182 § 9. Exemptions from Public Procurement Act. The provisions of the Virginia Public Procurement Act

183 (§11-35 et seq.) shall not apply to the Corporation.

184 § 10. Jurisdiction of suits affecting corporation; service of process. The Circuit Court of the City of
185 Richmond shall have exclusive jurisdiction of any suit brought by or against the Corporation, and
186 process in such suit shall be served on the chairman of the Board.

187 § 11. Sale of tobacco assets. Subject to the limitations and conditions set forth in this section, the
188 Governor, after consulting with the Tobacco Indemnification and Community Revitalization Commission,
189 shall sell, beginning July 1, 2001, at one time or from time to time, one-half of the Commonwealth
190 allocation to the Corporation and, in particular, to execute and deliver an agreement on the closing
191 date. Such agreement shall provide that the purchase price payable by the Corporation to the
192 Commonwealth for the tobacco assets sold shall consist of the net proceeds (after financing costs) of
193 each issue of tobacco bonds and the beneficial interest in the residual trust. All agreements for the sale
194 of tobacco assets shall provide that the net proceeds (after financing costs) of each issue of tobacco
195 bonds and the beneficial interest in the residual trust shall be deposited into the Endowment established
196 under § 9-383.1 of the Code of Virginia, as soon as practicable after each issue of tobacco bonds.

197 Any sale of tobacco assets shall be treated as a true sale and absolute transfer of the property so
198 transferred and not as a pledge or other security interest for any borrowing. The characterization of
199 such a sale as an absolute transfer by the participants shall not be negated or adversely affected by the
200 fact that only a portion of the Commonwealth allocation is transferred, nor by the Commonwealth's
201 acquisition of an ownership interest in the residual trust or a subordinate interest in the tobacco assets,
202 nor by any characterization of the Corporation or its bonds for purposes of accounting, taxation or
203 securities regulation, nor by any other factor whatsoever.

204 § 12. Ownership of tobacco assets and tobacco settlement payments. On and after the effective date of
205 each sale of tobacco assets, the Commonwealth shall have no right, title or interest in or to the tobacco
206 assets sold; and the tobacco settlement payments shall be property of the Corporation and not of the
207 Commonwealth, and shall be owned, received, held and disbursed by the Corporation or the indenture
208 trustee and not the State Treasury. On or before the closing date and the effective date of any
209 subsequent sale, the Commonwealth, through the Attorney General, shall notify the escrow agent under
210 the MSA that the tobacco assets have been sold to the Corporation and irrevocably instruct such escrow
211 agent that, subsequent to the closing date or other effective date, the tobacco settlement payments are to
212 be paid directly to the indenture trustee for the account of the Corporation.

213 § 13. Issuance of bonds of Corporation. In order to provide funds for the direct or indirect use or
214 benefit of the Commonwealth, the Board is hereby authorized to provide by resolution, at one time or
215 from time to time, for the issuance of bonds of the Corporation in such amount or amounts as the
216 Board shall determine. Such bonds shall be payable solely from funds of the Corporation, including,
217 without limitation, all or any combination of the following sources: (i) tobacco settlement payments, (ii)
218 the proceeds of the sale of any such bonds, (iii) earnings on funds of the Corporation or the indenture
219 trustee, and (iv) such other funds as may become available, as shall be provided by the resolution of the
220 Board authorizing any such bonds. Bonds issued under the provisions of this act shall not be deemed to
221 constitute a debt of the Commonwealth or a pledge of the faith or credit of the Commonwealth, and all
222 bonds shall contain on the face thereof a statement to the effect that neither the faith and credit nor the
223 taxing power nor any other assets or revenues of the Commonwealth or of any political subdivision
224 thereof is or shall be pledged to the payment of the principal of or the interest on such bonds.

225 The bonds of each issue shall be dated, shall bear interest (which may be includable or excludable in
226 the gross income of the holders for federal income tax purposes) at such fixed or variable rates, payable
227 at or prior to maturity, and shall mature at such time or times, as may be determined by the Board and
228 may be made redeemable before maturity, at the option of the Corporation, at such price or prices and
229 under such terms and conditions as may be fixed by the Board. The principal and interest of such bonds
230 may be made payable in any lawful medium. The Board shall determine the form of the bonds,
231 including any interest coupons to be attached thereto, and the manner of execution of the bonds and
232 shall fix the denomination or denominations of the bonds and the place or places of payment of
233 principal and interest thereof, which may be at any bank or trust company within or without the
234 Commonwealth. If any officer whose signature or a facsimile thereof appears on any bonds or coupons
235 shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall
236 nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such
237 delivery. The bonds may be issued in coupon or in registered form or both, as the Board may
238 determine, and provisions may be made for the registration of any coupon bonds as to principal alone
239 and as to both principal and interest and for the reconversion of any bonds registered as to both
240 principal and interest into coupon bonds. The Board may sell such bonds in such manner, either at
241 public or at private sale, and for such price as it may determine to be for the best interests of the
242 Corporation. The proceeds of such bonds shall be disbursed for the purposes for which such bonds were
243 issued under such restrictions, if any, as the laws of the Commonwealth and the resolution authorizing
244 the issuance of such bonds or the trust indenture provided for in § 14 may provide. The Corporation

may also provide for temporary bonds and for the replacement of any bond that shall become mutilated or shall be destroyed or lost. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than the proceedings, conditions, and things that are specified and required by this act.

Neither the members of the Board nor any other person executing the bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

§ 14. Security for payment of bonds; provisions of trust indenture or resolution.

A. In the discretion of the Board, any Bonds issued and any swaps or ancillary contracts made under the provisions of this act may be secured by a trust indenture by and between the Corporation and the indenture trustee, which may be any trust company or bank having the powers of a trust company, whether located within or without the Commonwealth. Such trust indenture or the resolution providing for the issuance of such bonds may:

1. Pledge or assign all or any part of the Income or other assets of the Corporation available for such purpose;

2. Provide for the creation and maintenance of such reserves as the Board shall determine to be proper;

3. Include covenants setting forth the duties of the Corporation in relation to the bonds, the income of the Corporation, the related agreement and the tobacco assets;

4. Contain provisions respecting the custody, safeguarding and application of all money and securities and such provisions for protecting and enforcing the rights and remedies (pursuant thereto and to the related agreement) of the holders and other beneficiaries as may be reasonable and proper and not in violation of law; and

5. Contain such other provisions as the Corporation may deem reasonable and proper for priorities and subordination among the holders and other beneficiaries.

It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth that may act as depository of the proceeds of bonds or of any other funds or obligations received on behalf of the Corporation to furnish such indemnifying bonds or to pledge such securities as may be required by the Corporation. Any reference in this act to a resolution of the Board shall include any trust indenture authorized thereby.

B. Any pledge made by the Corporation shall be valid and binding from the time when the pledge is made. The income or other assets so pledged and then or thereafter received by the Corporation shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Corporation, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded or filed to perfect such pledge.

C. Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds are hereby made negotiable instruments for all purposes, subject only to the provisions of the bonds for registration.

§ 15. Swaps and ancillary contracts.

A. The Corporation may enter into, amend or terminate, as it determines to be necessary or appropriate, any ancillary contracts (i) to facilitate the issuance, sale, resale, purchase, repurchase or payment of bonds or the making or performance of swap contracts, including without limitation bond insurance, letters of credit and liquidity facilities, or (ii) to attempt to hedge risk or achieve a desirable effective interest rate or cash flow. The determination of the Board that an ancillary contract or the amendment or termination thereof is necessary or appropriate as aforesaid shall be conclusive. Such contracts shall be made upon the terms and conditions established by the Board, including without limitation provisions as to security, default, termination, payment, remedy and consent to service of process.

B. The Corporation may enter into, amend or terminate, any swap contract that it determines to be necessary or appropriate to place the obligations or investments of the Corporation, as represented by the bonds or the investment of their proceeds, in whole or in part, on the interest rate, cash flow or other basis desired by the Board, which contract may include without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the Corporation in connection with, or incidental to, entering into, or maintaining any (i) agreement that secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. The determination by the Board that a swap contract or the amendment or termination thereof is necessary or appropriate as aforesaid shall be conclusive. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the Board, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate.

306 § 16. No invalidity. Any failure of the Corporation to comply with this act shall not invalidate or impair
307 any bond or swap or ancillary contract. Bonds may contain a recital that they are issued pursuant to
308 this act, which recital shall be conclusive evidence of their validity, the validity of the related
309 agreements, and the regularity of the proceedings relating thereto.

310 § 17. Bonds exempt from taxation. The Bonds, their transfer and the income therefrom, including any
311 profit made on the sale thereof, shall at all times be free and exempt from taxation by the
312 Commonwealth and by any municipality, county, or any other political subdivision thereof.

313 § 18. Residual Trust. The total amount in the residual trust shall be distributed annually to the Virginia
314 Tobacco Indemnification and Community Revitalization Endowment established pursuant to § 9-383.1 of
315 the Code of Virginia.

316 § 19. Pledge and agreement. The Commonwealth pledges and agrees with the Corporation, and the
317 holders of the bonds in which the Corporation has included such pledge and agreement, that the
318 Commonwealth will (i) irrevocably direct the escrow agent under the MSA to transfer all tobacco
319 settlement payments directly to the Corporation or its assignee, (ii) enforce the Corporation's rights to
320 receive the tobacco settlement payments to the full extent permitted by the terms of the MSA, (iii) not
321 amend the MSA in any manner that would materially impair the rights of the holders, (iv) not limit or
322 alter the rights of the Corporation to fulfill the terms of its agreements with such holders, and (v) not in
323 any way impair the rights and remedies of such holders or the security for such bonds until such bonds,
324 together with the interest thereon and all costs and expenses in connection with any action or
325 proceeding by or on behalf of such holders, are fully paid and discharged.

326 § 20. Construction and Effect. This act and all powers granted hereby shall be liberally construed to
327 effectuate its and their purposes, without implied limitations thereon. This act shall constitute full and
328 complete authority for all things herein contemplated to be done. All rights and powers herein granted
329 shall be cumulative with those derived from other sources and shall not, except as expressly stated
330 herein, be construed in limitation thereof. Insofar as the provisions of this act are inconsistent with the
331 provisions of any other act, general or special, the provisions of this act shall be controlling. If any
332 clause, sentence, paragraph, section or part of this act be adjudged by any court of competent
333 jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but
334 shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly
335 involved in the controversy in which such judgment shall have been rendered.