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HOUSE BILL NO. 2872**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Finance
on February 21, 2001)

(Patron Prior to Substitute—Delegate Byron)

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 sale of revenues derived from the Tobacco Master Settlement Agreement.

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 provided by law. The Treasury Board may borrow money in such amounts as may be necessary whenever in its judgment it would be more advantageous to borrow money than to sell securities held

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

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

74 § 9-385. Tax Credits for Technology Industries in Tobacco-Dependent Localities.

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

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

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

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

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

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

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

119 C. The General Assembly has studied the techniques used recently by other jurisdictions to address
120 their most critical needs and, in particular, the techniques used to convert future tobacco settlement
121 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.

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

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

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

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

"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.

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

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

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

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

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

"Tobacco Bonds" means the bonds, notes and other obligations issued by the Corporation, exclusive of bonds that the Corporation may issue to refund bonds, the net proceeds (after financing costs) of the

183 first issue of which shall be used by the Corporation to pay a portion of the purchase price to the
184 Commonwealth for the Tobacco Assets.

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

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

189 § 5. Board; membership; terms; compensation and expenses; chairman and vice-chairman; quorum;
190 employees; agents, etc. The Board of the Corporation shall exercise all powers, rights and duties
191 conferred by this act or other provisions of law upon the Corporation. The Board shall consist of the
192 State Treasurer, the State Comptroller, and five additional members from the public at large to be
193 appointed by the Governor, subject to confirmation by the General Assembly. The members appointed by
194 the Governor shall have a background and significant experience in financial management and
195 investments. The members of the Board appointed by the Governor shall serve at the pleasure of the
196 Governor for terms of four years each, or until their successors shall have been appointed and
197 qualified, except that the initial terms of three of the members shall expire on June 30, 2002, 2003, and
198 2004, respectively, as designated by the Governor. Any appointment to fill a vacancy on the Board shall
199 be made for the unexpired term of the member whose death, resignation, or removal created such
200 vacancy. Members with less than six years of service on the Board may be appointed to an additional
201 term. Members shall be reimbursed for travel and other actual expenses incurred in performing their
202 official duties as members. Members of the Board appointed by the Governor shall be compensated at
203 the rate provided in § 2.1-20.3 for each day or portion thereof in which the member is engaged in the
204 business of the Corporation.

205 The Governor shall designate one member of the Board as chairman. The State Treasurer and the
206 State Comptroller shall be ineligible to serve as chairman. The chairman shall sign and execute all
207 vouchers for the disbursement of funds belonging to the Corporation upon authorization by the Board.
208 Four members of the Board shall constitute a quorum for the transaction of all business of the
209 Corporation. The Board shall elect one of its members as vice-chairman, who shall exercise the powers
210 of the chairman when so directed by the chairman, or when the chairman is absent. The State Treasurer
211 shall be the secretary-treasurer.

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

216 § 6. Powers of Corporation enumerated.

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

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

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

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

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

229 5. Pay its operating expenses;

230 6. Establish the residual trust; and

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 9. Exemptions from Public Procurement Act. The provisions of the Virginia Public Procurement Act (§11-35 et seq.) shall not apply to the Corporation.

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

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

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

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

§ 13. Issuance of bonds of Corporation. In order to provide funds for the direct or indirect use or benefit of the Commonwealth, the Board is hereby authorized to provide by resolution, at one time or

306 from time to time, for the issuance of bonds of the Corporation in such amount or amounts as the
307 Board shall determine. Such bonds shall be payable solely from funds of the Corporation, including,
308 without limitation, all or any combination of the following sources: (i) tobacco settlement payments, (ii)
309 the proceeds of the sale of any such bonds, (iii) earnings on funds of the Corporation or the indenture
310 trustee, and (iv) such other funds as may become available, as shall be provided by the resolution of the
311 Board authorizing any such bonds. Bonds issued under the provisions of this act shall not be deemed to
312 constitute a debt of the Commonwealth or a pledge of the faith or credit of the Commonwealth, and all
313 bonds shall contain on the face thereof a statement to the effect that neither the faith and credit nor the
314 taxing power nor any other assets or revenues of the Commonwealth or of any political subdivision
315 thereof is or shall be pledged to the payment of the principal of or the interest on such bonds.

316 The bonds of each issue shall be dated, shall bear interest (which may be includable or excludable
317 in the gross income of the holders for federal income tax purposes) at such fixed or variable rates,
318 payable at or prior to maturity, and shall mature at such time or times, as may be determined by the
319 Board and may be made redeemable before maturity, at the option of the Corporation, at such price or
320 prices and under such terms and conditions as may be fixed by the Board. The principal and interest of
321 such bonds may be made payable in any lawful medium. The Board shall determine the form of the
322 bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds
323 and shall fix the denomination or denominations of the bonds and the place or places of payment of
324 principal and interest thereof, which may be at any bank or trust company within or without the
325 Commonwealth. If any officer whose signature or a facsimile thereof appears on any bonds or coupons
326 shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall
327 nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such
328 delivery. The bonds may be issued in coupon or in registered form or both, as the Board may
329 determine, and provisions may be made for the registration of any coupon bonds as to principal alone
330 and as to both principal and interest and for the reconversion of any bonds registered as to both
331 principal and interest into coupon bonds. The Board may sell such bonds in such manner, either at
332 public or at private sale, and for such price as it may determine to be for the best interests of the
333 Corporation. The proceeds of such bonds shall be disbursed for the purposes for which such bonds were
334 issued under such restrictions, if any, as the laws of the Commonwealth and the resolution authorizing
335 the issuance of such bonds or the trust indenture provided for in § 14 may provide. The Corporation
336 may also provide for temporary bonds and for the replacement of any bond that shall become mutilated
337 or shall be destroyed or lost. Such bonds may be issued without any other proceedings or the happening
338 of any other conditions or things than the proceedings, conditions, and things that are specified and
339 required by this act.

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

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

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

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

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

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

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

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

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

365 B. Any pledge made by the Corporation shall be valid and binding from the time when the pledge is
366 made. The income or other assets so pledged and then or thereafter received by the Corporation shall
367 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.

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

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

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

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

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