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SENATE BILL NO. 457

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 5, 2002)

(Patron Prior to Substitute—Senator Hawkins)

A BILL to amend and reenact §§ 3.1-1106, 3.1-1110 and 3.1-1111 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 3.1-1109.1, and to authorize the Governor to sell a portion of the revenues from the Tobacco Master Settlement Agreement, all relating to sale of revenues derived from the Tobacco Master Settlement Agreement.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-1106, 3.1-1110 and 3.1-1111 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 3.1-1109.1 as follows:

§ 3.1-1106. Definitions.

As used in this chapter, unless the context requires a different meaning:

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

"Agreement" means the agreement or agreements 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.

"Commission" means the Tobacco Indemnification and Community Revitalization Commission created pursuant to § 3.1-1107.

"Commission Allocation" means fifty percent of the annual amount received under the Master Settlement Agreement by the Commonwealth, or that would have been received but for a sale of such allocation pursuant to an agreement, between the commencing and ending dates specified in the agreement.

"Corporation" means the Tobacco Settlement Financing Corporation as created under state law.

"Endowment" means the Tobacco Indemnification and Community Revitalization Endowment established pursuant to § 3.1-1109.1.

"Fund" means the Tobacco Indemnification and Community Revitalization Fund established pursuant to § 3.1-1111.

"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.

"Period of sale" means the time during which a purchaser under an agreement is entitled to receive the Commission Allocation.

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

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

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

§ 3.1-1109.1. Tobacco Indemnification and Community Revitalization Endowment.

A. There is hereby established in the state treasury a special fund to be designated the "Tobacco Indemnification and Community Revitalization Endowment" (the "Endowment"). The Endowment shall receive any proceeds from any sale of all or any portion of the Commission Allocation, and any gifts, grants and contributions that are specifically designated for inclusion in such Endowment. No part of the Endowment, neither corpus nor income, or interest thereon, shall revert to the general fund of the state treasury. 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. In addition, up to ten percent of the corpus of the

60 *Endowment shall be paid to the Fund annually upon request of the Commission to the Treasury Board;*
61 *provided, however, that upon two-thirds vote of the Commission, up to fifteen percent of the corpus of*
62 *the Endowment shall be so paid. No use of proceeds shall be made that would cause bonds issued on a*
63 *tax-exempt basis to be deemed taxable. For purposes of this section, "income" of the Endowment means*
64 *at the time of determination the lesser of the available cash in, or the realized investment income for the*
65 *applicable period of, the Endowment, and "corpus" of the Endowment means at the time of*
66 *determination the sum of the proceeds from the sale of all or any portion of the Commission Allocation,*
67 *any gifts, grants and contributions that have been credited to such Endowment, and any income not*
68 *appropriated and withdrawn from the Endowment prior to June 30 of each year, less withdrawals from*
69 *the corpus. Determinations by the Treasury Board, or the State Treasurer on behalf of the Treasury*
70 *Board, as to the amount of income or the amount of the corpus shall be conclusive.*

71 *B. The Treasury Board shall serve as trustee of the Endowment and the corpus and income of the*
72 *Endowment shall be withdrawn and credited to the Fund by order of the Treasury Board as provided in*
73 *subsection A. The State Treasurer shall be custodian of the funds credited to the Endowment. The*
74 *Treasury Board shall have full power to invest and reinvest funds credited to the Endowment in*
75 *accordance with the provisions of the Uniform Management of Institutional Funds Act (§ 55-268.1 et*
76 *seq.) and, in addition, as otherwise provided by law. The Treasury Board may borrow money in such*
77 *amounts as may be necessary whenever in its judgment it would be more advantageous to borrow*
78 *money than to sell securities held for the Fund. Any debt so incurred may be evidenced by notes duly*
79 *authorized by resolution of the Treasury Board, such notes to be retired no later than the end of the*
80 *biennium in which such debt is incurred. The Treasury Board may commingle, for purposes of*
81 *investment, the corpus of the Endowment provided that it shall appropriately account for the investments*
82 *credited to the Endowment. The Treasury Board may hire independent investment advisors and*
83 *managers as it deems appropriate to assist with investing the Endowment. The expenses of making and*
84 *disposing of investments, such as brokerage commissions, legal expenses related to a particular*
85 *transaction, investment advisory and management fees and expenses, transfer taxes and other customary*
86 *transactional expenses shall be payable out of the income of the Endowment.*

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

92 *§ 3.1-1110. Appointment of director; Commission employees; counsel to the Commission.*

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

102 *B. Employees of the Commission shall be treated as state employees for purposes of participation in*
103 *the Virginia Retirement System, health insurance, and all other employee benefits offered by the*
104 *Commonwealth to its classified employees. Employees of the Commission shall not be subject to the*
105 *provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.*

106 *BC. The Office of the Attorney General shall provide counsel to the Commission.*

107 *§ 3.1-1111. Tobacco Indemnification and Community Revitalization Fund; tax credits for technology*
108 *industries in tobacco-dependent localities.*

109 *A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be*
110 *deposited into the state treasury subject to the special nonreverting funds established by subsection B of*
111 *this section and by §§ 3.1-1109.1 and 32.1-360 and shall be included in general fund revenue*
112 *calculations for purposes of subsection C of § 58.1-3524 and subsection B of § 58.1-3536. However, in*
113 *no case shall the amount received by the Endowment and Fund be included in general fund revenue*
114 *calculations for purposes of subsection C of § 58.1-3524 and subsection B of § 58.1-3536.*

115 *B. There is created in the state treasury a special nonreverting fund to be known as the Tobacco*
116 *Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the*
117 *Comptroller. Subject to the sale of all or any portion of the Commission Allocation, fifty percent of the*
118 *annual amount received by the Commonwealth from the Master Settlement Agreement shall be paid into*
119 *the state treasury and credited to the Fund. In the event of such sale (i) the Commission Allocation shall*
120 *be paid in accordance with the agreement for the period of sale and (ii) the Fund shall receive the*
121 *amounts withdrawn from the Endowment in accordance with § 3.1-1109.1. 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.

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

2. That certain revenues derived from the Master Settlement Agreement, as defined in § 3.1-1106, shall be subject to the following provisions:

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

§ 2. Findings.

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 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, the majority of production occurs within six states, including Virginia, of 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 received under the Master Settlement Agreement into current assets and thereby 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 sale proceeds toward such needs.

D. The Governor is authorized to sell all or part of the Commission Allocation to the Corporation created hereby, such sale to transfer to the Corporation that portion of the Tobacco Assets as provided in this act.

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 the Tobacco Assets from the Commonwealth is compatible with the preceding subsections.

§ 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 hereof.

"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.

183 *"Commission Allocation" means fifty percent of the annual amount received under the Master*
184 *Settlement Agreement by the Commonwealth, or that would have been received but for a sale of such*
185 *allocation pursuant to an agreement, between the commencing and ending dates specified in the*
186 *agreement.*

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

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

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

194 *"Income" means the portion of the Commission Allocation received by the Corporation and all aid,*
195 *rents, fees, charges, payments and other income and receipts paid or payable to the Corporation or a*
196 *trustee for the account of the Corporation or the holders.*

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

199 *"Master Settlement Agreement" or "MSA" means the settlement agreement and related documents*
200 *between the Commonwealth and leading United States tobacco product manufacturers dated November*
201 *23, 1998, and including the Consent Decree and Final Judgment entered in the Circuit Court of the*
202 *City of Richmond on February 23, 1999, Chancery Number HJ-2241-4.*

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

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

209 *"Swap contracts" or "swaps" means contracts described in subsection B of § 15 hereof.*

210 *"Tobacco Assets" means all right, title, and interest in and to the portion of the Commission*
211 *Allocation that may be sold to the Corporation from time to time.*

212 *"Tobacco Bonds" means the bonds, notes and other obligations issued by the Corporation, exclusive*
213 *of bonds that the Corporation may issue to refund bonds, the net proceeds (after financing costs) of the*
214 *first issue, which shall be used by the Corporation to pay the cash portion of the purchase price to the*
215 *Commonwealth for the Tobacco Assets.*

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

218 *§ 5. Board; membership; terms; compensation and expenses; chairman and vice-chairman; quorum;*
219 *employees; agents, etc. The Board of the Corporation shall exercise all powers, rights and duties*
220 *conferred by this act or other provisions of law upon the Corporation. The Board shall consist of the*
221 *State Treasurer and five additional members from the public at large to be appointed by the Governor,*
222 *subject to confirmation by the General Assembly. The members appointed by the Governor shall have a*
223 *background and significant experience in financial management and investments. The members of the*
224 *Board appointed by the Governor shall serve at the pleasure of the Governor for terms of four years*
225 *each, or until their successors shall have been appointed and qualified, except that the initial terms of*
226 *three of the members shall expire on June 30, 2003, 2004, and 2005, respectively, as designated by the*
227 *Governor. Any appointment to fill a vacancy on the Board shall be made for the unexpired term of the*
228 *member whose death, resignation, or removal created such vacancy. Members with less than six years*
229 *of service on the Board may be appointed to an additional term. Members shall be reimbursed for*
230 *travel and other actual expenses incurred in performing their official duties as members. Members of*
231 *the Board appointed by the Governor shall be compensated at the rate provided in § 2.2-2813 of the*
232 *Code of Virginia for each day or portion thereof in which the member is engaged in the business of the*
233 *Corporation. The Governor shall designate one member of the Board as chairman. The State Treasurer*
234 *shall be ineligible to serve as chairman. The chairman shall sign and execute all vouchers for the*
235 *disbursement of funds belonging to the Corporation upon authorization by the Board. Four members of*
236 *the Board shall constitute a quorum for the transaction of all business of the Corporation. The Board*
237 *shall elect one of its members as vice-chairman, who shall exercise the powers of the chairman when so*
238 *directed by the chairman, or when the chairman is absent. The State Treasurer shall be the*
239 *secretary-treasurer. The Board may delegate its powers to its chairman, the secretary-treasurer, officers*
240 *of the Corporation or committees of the Board, with such standards for the exercise of delegated powers*
241 *as the Board may specify, and may, to the extent not inconsistent with the rights of the holders, revoke*
242 *any such delegation.*

243 *§ 6. Powers of Corporation enumerated.*

244 *A. To enable the Corporation to carry out the financing, purchasing, owning and managing of the*

Tobacco Assets and activities incidental thereto, the Corporation is vested (subject to § 8 and the other provisions hereof) with all the powers of a private corporation including, without limitation, the power to sue and be sued, to make contracts, to adopt and use a common seal and to alter the same and is further particularly authorized and empowered to:

1. Purchase the Tobacco Assets and receive, or to authorize the indenture trustee to receive, as the same shall be paid, the portion of the Commission Allocation sold to the Corporation;

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

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

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

5. Pay its operating expenses;

6. Establish the Residual Trust; and

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

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

C. The Corporation shall submit an annual report to the Governor, the Appropriations Committee of the House of Delegates and the Finance Committee of the Senate on or before November 1 of each year. Such report shall contain, at a minimum, the annual operating and financial statements of the Corporation for the year ending the preceding June 30. The annual report shall be distributed in accordance with the provisions of § 2.2-1127 of the Code of Virginia.

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

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

§ 7. Department of the 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. The Corporation, subject to the approval of such counsel, may employ or retain such other attorneys as it may deem necessary and fix their compensation.

C. The books and accounts of the Corporation shall be subject to audit not less than annually by the Auditor of Public Accounts or, at the discretion of the Corporation, independent certified public accountants.

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, bring to a conclusion 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.

§ 9. Exemptions from Public Procurement Act. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia) 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 over 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 Commission Allocation. Subject to the limitations and conditions set forth in this act,

the Governor is authorized to sell, at one time or from time to time, to the Corporation all or any portion of the Commission Allocation. The Governor is authorized to enter into one or more agreements, with such terms and covenants as he deems appropriate, and to execute and deliver an agreement on the Closing Date and the effective date of any subsequent sale. Each agreement shall provide that the purchase price payable by the Corporation to the Commonwealth for the Tobacco Assets sold shall consist of such cash and noncash consideration as provided in the agreement. 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 if less than all of the Commission Allocation is transferred, nor by the Commonwealth's acquisition of a direct or indirect 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. 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 such Tobacco Assets 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 Commission Allocation related thereto is to be paid directly to the indenture trustee for the account of the Corporation.

§ 13. Issuance of bonds of Corporation. The Board is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of bonds of the Corporation in such amount or amounts as the Board shall determine. Such bonds shall be payable solely from funds of the Corporation, including, without limitation, all or any combination of the following sources: (i) the Commission Allocation received by the Corporation, (ii) the proceeds of the sale of any such bonds, (iii) earnings on funds of the Corporation or the indenture trustee, and (iv) such other funds as may become available, as shall be provided by the resolution of the Board authorizing any such bonds. Bonds issued under the provisions of this act shall not be deemed to constitute a debt of the Commonwealth or a pledge of the faith or credit of the Commonwealth, and all bonds shall contain on the face thereof a statement to the effect that neither the faith and credit nor the taxing power nor any other assets or revenues of the Commonwealth or of any political subdivision thereof is or shall be pledged to the payment of the principal of or the interest on such bonds. The bonds of each issue shall be dated, shall bear interest, (which may be includable or excludable in the gross income of the holders for federal income tax purposes) at such fixed or variable rates, payable at or prior to maturity, and shall mature at such time or times, as may be determined by the Board and may be made redeemable before maturity, at the option of the Corporation, at such price or prices and under such terms and conditions as may be fixed by the Board. The principal and interest of such bonds may be made payable in any lawful medium. The Board shall determine the form of the bonds, including any interest coupons to be attached thereto, and the manner of execution of the bonds and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the Commonwealth. If any officer whose signature or a facsimile thereof appears on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form or both, as the Board may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and as to both principal and interest and for the reconversion of any bonds registered as to both principal and interest into coupon bonds. The Board may sell such bonds in such manner, either at public or at private sale, and for such price as it may determine to be for the best interests of the Corporation. The proceeds of such bonds shall be disbursed for the purposes for which such bonds were issued under such restrictions, if any, as the laws of the Commonwealth and the resolution authorizing the issuance of such bonds or the trust indenture provided for in § 14 hereof 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 outside 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 monies 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.

§ 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. Distributions subject to appropriation. Amounts received by the Commonwealth as a result of its sale of all or any portion of the Commission Allocation shall be subject to appropriation in accordance with the provisions of Article X, Section 7 of the Constitution of Virginia.

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

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

450 § 21. *Appropriation. There is hereby appropriated to the Tobacco Indemnification and Community*
451 *Revitalization Endowment all of the proceeds of any sale of the Commission Allocation pursuant to this*
452 *act between the effective date of this act and June 30, 2004.*