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SENATE BILL NO. 1436

Offered January 23, 2015

A BILL to amend and reenact §§ 3.2-3100 through 3.2-3108 of the Code of Virginia, relating to the Tobacco Indemnification and Community Revitalization Commission.

Patron—McEachin

Referred to Committee on Rules

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3100 through 3.2-3108 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-3100. 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 § 3.2-3101.

"Commission Allocation" means 50 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 § 3.2-3104.

"Fund" means the Tobacco Indemnification and Community Revitalization Fund established pursuant to § 3.2-3106.

"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.

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

§ 3.2-3101. Tobacco Indemnification and Community Revitalization Commission created; purposes.

The Tobacco Indemnification and Community Revitalization Commission is created as a body corporate and a political subdivision of the Commonwealth and as such shall have, and is vested with, all of the politic and corporate powers as are set forth in this chapter. The Commission is established for the purposes of determining the appropriate recipients of moneys in the Tobacco Indemnification and Community Revitalization Fund and causing distribution of such moneys for the purposes provided in this chapter, including using moneys in the Fund to: (i) provide payments to tobacco farmers as compensation for the adverse economic effects resulting from loss of investment in specialized tobacco equipment and barns and lost tobacco production opportunities associated with a decline in quota; and

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59 *attract economic development and secure the expansion of existing industry; (ii) revitalize tobacco*
 60 *dependent promote initiatives that increase and enhance educational attainment levels in*
 61 *tobacco-dependent communities; (iii) increase investments for improving rural broadband infrastructure;*
 62 *and (iv) commercialize research in the agricultural sector conducted by Virginia colleges and*
 63 *universities. The Commission shall have only those powers enumerated in § 3.2-3103.*

64 **§ 3.2-3102. Membership; terms; vacancies; compensation and expenses; chairman; chairman's**
 65 **executive summary.**

66 A. The Commission shall be composed of ~~34~~ 15 members as follows:

67 1. Six members of the House of Delegates appointed by the Speaker of the House of Delegates;

68 2. Four members of the Senate appointed by the Senate Committee on Rules;

69 3. The Secretary of Commerce and Trade or his designee;

70 4. 2. The Secretary of Finance or his designee;

71 5. 3. The Secretary of Agriculture and Forestry or his designee;

72 4. The Chancellor of the Virginia Community College System;

73 5. The president of a major state research institution of higher education;

74 6. Three nonlegislative citizen members who shall be active flue-cured tobacco producers appointed
 75 by the Governor. Of the active flue-cured tobacco producers, two shall be appointed by the Governor
 76 from a list of six persons provided by the members of the General Assembly appointed to the
 77 Commission;

78 7. Three nonlegislative citizen members who shall be active burley tobacco producers appointed by
 79 the Governor. Of the active burley tobacco producers, one member shall be appointed by the Governor
 80 from a list of three persons provided by the members of the General Assembly appointed to the
 81 Commission;

82 8. One nonlegislative citizen member who shall be a representative of the Virginia Farm Bureau
 83 Federation appointed by the Governor from a list of at least three persons provided by Virginia Farm
 84 Bureau Federation; and

85 9. Eleven members shall be 7. Four nonlegislative citizens citizen members who shall be appointed
 86 by the Governor. Of the 11 nonlegislative citizen members, three shall be appointed by the Governor
 87 from a list of nine provided by the members of the General Assembly appointed to the Commission;
 88 and

89 8. Five nonlegislative citizen members who shall be appointed as follows: three nonlegislative citizen
 90 members to be appointed by the Speaker of the House of Delegates and two nonlegislative citizen
 91 members to be appointed by the Senate Committee on Rules.

92 With the exception of the Secretary of Commerce and Trade or his designee, the Secretary of
 93 Finance or his designee and, the Secretary of Agriculture and Forestry or his designee, and the
 94 Chancellor of the Virginia Community College System or his designee, all members of the Commission
 95 shall reside in the Southside and Southwest regions of the nonlegislative appointments to the
 96 Commission shall reflect the geographic diversity of the Commonwealth, to the extent possible, and shall
 97 be subject to confirmation by the General Assembly. To the extent feasible, appointments representing
 98 the Southside and Southwest regions shall be proportional to the tobacco quota production of each
 99 region.

100 Except as otherwise provided herein, all appointments shall be for terms of four years each.
 101 Legislative members, the Secretary of Commerce and Trade, the Secretary of Finance, and the Secretary
 102 of Agriculture and Forestry or his designee shall serve terms coincident with their terms of office. No
 103 nonlegislative citizen member shall be eligible to serve more than two successive four-year terms. After
 104 expiration of a term of three years or less, two additional four-year terms may be served by such
 105 member if appointed thereto. Appointments to fill vacancies, other than by expiration of a term, shall be
 106 made for the unexpired terms. Any appointment to fill a vacancy shall be made in the same manner as
 107 the original appointment. The remainder of any term to which a member is appointed to fill a vacancy
 108 shall not constitute a term in determining the member's eligibility for reappointment.

109 The initial appointments of the active flue-cured tobacco producers, the active burley tobacco
 110 producers, and other nonlegislative citizen members shall be as follows: one active flue-cured tobacco
 111 producer, one active burley tobacco producer and four nonlegislative citizen members shall be appointed
 112 for terms of two years; one active flue-cured tobacco producer, one active burley tobacco producer and
 113 four nonlegislative citizen members shall be appointed for terms of three years; and one active
 114 flue-cured tobacco producer, one active burley tobacco producer and three nonlegislative citizen
 115 members shall be appointed for terms of four years. Thereafter all appointments shall be for terms of
 116 four years.

117 B. The Commission shall appoint from its membership a chairman and a vice-chairman, both of
 118 whom shall serve in such capacities at the pleasure of the Commission. The chairman, or in his absence,
 119 the vice-chairman, shall preside at all meetings of the Commission. The meetings of the Commission
 120 shall be held on the call of the chairman or whenever the majority of the members so request. A

majority of members of the Commission serving at any one time shall constitute a quorum for the transaction of business.

C. ~~Legislative members of the Commission shall receive such compensation as is set forth in § 30-19.12, and nonlegislative~~ *Nonlegislative* members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Such compensation and expenses shall be paid from the Fund.

D. Members and employees of the Commission shall be subject to the standards of conduct set forth in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) and may be removed from office for misfeasance, malfeasance, nonfeasance, neglect of duty, or misconduct in the manner set forth therein.

E. Except as otherwise provided in this chapter, members and employees of the Commission shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

F. The chairman of the Commission shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Commission no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

§ 3.2-3103. Powers and duties of the Tobacco Indemnification and Community Revitalization Commission.

A. The Commission shall have the power and duty to:

1. Adopt, use, and alter at will an official seal;
2. Make bylaws for the management and regulation of its affairs;
3. Maintain an office at such place or places within the Commonwealth as it may designate;
4. Accept, hold, and administer moneys, grants, securities, or other property transferred, given, or bequeathed to the Commission, absolutely or in trust, for the purposes for which the Commission is created;
5. Determine how moneys in the Fund are to be distributed and to authorize grants, loans, or other distributions of moneys in the Fund for the purposes set forth in this chapter;
6. Make and execute contracts and all other instruments and agreements necessary or convenient for the exercise of its powers and functions;
7. Invest its funds as provided in this chapter or permitted by applicable law; and
8. Do any lawful act necessary or appropriate to carry out the powers herein granted or reasonably implied, including use of whatever lawful means may be necessary and appropriate to recover any payments wrongfully made from the Fund.

B. The Commission shall undertake studies and gather information and data in order to determine: (i) ~~the economic consequences of the reduction in or elimination of quota for tobacco growers~~ *the potential effects of agricultural, industrial, and educational initiatives in the Southside and southwest regions of the Commonwealth;* (ii) the potential for alternative cash crops; ~~and (iii) any other matters the Commission believes will affect tobacco growers in the Commonwealth in the Southside and southwest regions of the Commonwealth; and (iii) the economic impact of prior investments approved by the Commission.~~

C. The Commission shall submit a report annually to the Governor and the General Assembly.

§ 3.2-3104. 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 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 10 percent of the corpus of the Endowment shall be paid to the Fund annually upon request of the Commission to the Treasury Board. ~~Upon two-thirds vote of the Commission, up to 15 percent of the corpus of the Endowment shall be so paid. The annual income of the Endowment and the percentage of the corpus of the Endowment paid annually into the Fund, up to 10 percent, shall be distributed as described in § 3.2-3108.~~ No use of proceeds shall be made that would cause bonds issued on a tax-exempt basis to be deemed taxable. 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 proceeds from the sale of

all or any portion of the Commission Allocation, 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 as provided in subsection A. The State Treasurer shall be custodian of the funds credited to the Endowment. The Treasury Board shall have full power to invest and reinvest funds credited to the Endowment in accordance with the provisions of the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 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 for the Fund. Any debt so incurred may be evidenced by notes duly authorized by resolution of the Treasury Board, such notes to be retired no later than the end of the biennium in which such debt is incurred. The Treasury Board may commingle, for purposes of investment, the corpus of the Endowment provided that it shall appropriately account for the investments credited to the Endowment. The Treasury Board may hire independent investment advisors and managers as it deems appropriate to assist with investing the Endowment. The expenses of making and disposing of investments, such as brokerage commissions, legal expenses related to a particular transaction, investment advisory and management fees and expenses, transfer taxes, and other customary transactional expenses shall be payable out of the income of the Endowment.

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

§ 3.2-3105. Appointment of director; Commission employees; counsel to the Commission.

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

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

C. The Office of the Attorney General shall provide counsel to the Commission.

§ 3.2-3106. Tobacco Indemnification and Community Revitalization Fund.

A. Money received by the Commonwealth pursuant to the Master Settlement Agreement shall be deposited into the state treasury subject to the special nonreverting funds established by subsection B and by §§ 3.2-3104 and 32.1-360.

B. There is created in the state treasury a special nonreverting fund to be known as the Tobacco Indemnification and Community Revitalization Fund. The Fund shall be established on the books of the Comptroller. Subject to the sale of all or any portion of the Commission Allocation, 50 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. In the event of such sale: (i) the Commission Allocation shall be paid in accordance with the agreement for the period of sale; and (ii) the Fund shall receive the amounts withdrawn from the Endowment in accordance with § 3.2-3104. 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. ~~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, 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.

§ 3.2-3107. Payments from the Fund; transfer and recovery of payments; limitation on claims.

A. No payments made, or otherwise payable, to tobacco farmers under this chapter shall be transferable or assignable, at law or in equity, except by testate or intestate succession, or by a property settlement agreement, separation agreement, or judicial decree in a separation or divorce proceeding. Except in actions initiated by or on behalf of the Commission, no payments made, or otherwise payable, to tobacco farmers under this chapter shall be subject to execution, levy, attachment, garnishment, or other legal process until such money has been paid or distributed. The Commonwealth, and any department, agency, or institution thereof, the Commission, and their agents and employees, shall not be a party or otherwise subject to such execution, levy, attachment, garnishment, or other legal process.

B. Grants, loans, or other distributions paid or payable from the Fund to promote economic growth and development shall not be subject to execution, levy, attachment, garnishment, or other legal process, except in actions initiated by or on behalf of the Commission. Such grants, loans, or other distributions shall only be transferable or assignable in accordance with terms established by the Commission.

C. B. Any payment from the Fund that is later determined to have been made wrongly or erroneously may be recovered by the Commission either by way of a credit or offset against any future payments otherwise distributable to the recipient or by judicial action. Prior to making any such determination, the Commission shall give the recipient reasonable prior written notice and an opportunity to be heard in accordance with rules established by the Commission.

D. C. In addition to any other penalties provided by law, any person requesting or applying for a payment from the Fund who knowingly makes any false, fictitious, or fraudulent statements or representations or otherwise knowingly provides any false, fictitious, or fraudulent information to the Commission shall forfeit his opportunity or eligibility to receive any payments from the Fund.

E. Any eligible person who fails, for any reason whatsoever, to apply for any indemnification payment determined to be distributable by the Commission by the deadline established by the Commission or its Executive Director for the receipt of applications or verification forms shall be forever barred from receiving such payment unless the person makes appropriate written application to the Commission that is received within one year of the established deadline. At the end of such one-year period, no action shall lie against the Fund or the Commission for such payments to the person from the Fund.

F. D. All payments made or eligible to be made under this chapter shall be deemed to be granted and to be held subject to the provisions of this chapter and any amending or repealing act that may hereafter be passed, and no person shall have any claim for compensation, or otherwise, by reason of his payments or payment eligibility being affected in any way by any amending or repealing act.

§ 3.2-3108. Distribution of Fund.

The Fund shall be distributed by the Commission for the following purposes *and in the following manner*:

1. The compensation of Virginia tobacco farmers for the decline or elimination of the tobacco quota based on averaging the basic burley and flue-cured quota as allocated by the USDA for the crop years 1995 through 1998.

To the extent quota holders in Virginia are not otherwise compensated by a national tobacco community trust fund or a federal tobacco loss assistance program that is based on substantially the same distribution criteria established by the Commission for indemnification payments and to the extent moneys are available in the Fund, the Fund shall be used to compensate quota holders in an amount equal to the total lost asset value in quota incurred annually by such quota holders.

To the extent active tobacco producers in Virginia are not otherwise compensated by a national tobacco community trust fund or a federal tobacco loss assistance program that is based on substantially the same distribution criteria established by the Commission for indemnification payments and to the extent moneys are available in the Fund, the Fund shall be used to compensate active tobacco producers for the economic loss resulting from any annual quota reduction.

For the purposes of this section, the total asset loss value in quota and economic losses for tobacco farmers in Virginia shall be estimated to be \$1.2 billion.

The Commission may establish criteria for determining economic loss resulting from any annual quota reduction, including any similar criteria established pursuant to the creation of a national tobacco community trust fund;

2. The stimulation of economic growth and development in tobacco-dependent communities in an equitable manner throughout the southside and southwest regions of the Commonwealth, to assist such communities in reducing their dependency on, or finding alternative uses for, tobacco and

305 tobacco-related business; and

306 ~~3. Scientific~~ *Not more than 25 percent of the annual allocations to the Fund shall be appropriated*
307 *for the attraction of prospective economic development projects and securing the expansion of existing*
308 *industry in tobacco-dependent communities in an equitable manner throughout the Southside and*
309 *southwest regions of the Commonwealth, in order to assist such communities in reducing their*
310 *dependency on, or finding alternative uses for, tobacco and tobacco-related businesses;*

311 *2. Not more than 25 percent of the annual allocation to the Fund shall be appropriated to promote*
312 *initiatives that increase and enhance educational attainment throughout the Southside and southwest*
313 *regions of the Commonwealth;*

314 *3. Not more than 25 percent of the annual allocation to the Fund shall be used to increase*
315 *investments in the deployment of rural broadband infrastructure; and*

316 *4. Not more than 25 percent of the annual allocation to the Fund shall be used for commercializing*
317 *agricultural research conducted at colleges and universities in the Commonwealth and scientific*
318 *research performed at one of the Commonwealth's National Cancer Institute-designated research*
319 *institutes designed to advance the treatment and prevention of cancers that directly impact the citizens of*
320 *tobacco-dependent communities throughout the southside Southside and southwest regions of the*
321 *Commonwealth.*

322 The Commission may require that as a condition of receiving any grant or loan incentive that is
323 based on employment goals, a recipient company must provide copies of employer quarterly payroll
324 reports provided to the Virginia Employment Commission to verify the employment status of any
325 position included in the employment goal.